HINDÚ LAW BOOKS.

THE VYAVAHÁRA MAYÚKHA,

TRANSLATED BY BORRODAILE:

THE DÁYA BHÁGA OF JÍMÚTA VÁHANA

AND

THE LAW OF INHERITANCE, FROM THE MITÁKSHARA,

TRANSLATED BY COLEBROOKE:

THE DATTAKÁ MÍMÁNSÁ

AND

THE DATTAKÁ CHANDRIKÁ,

TRANSLATED BY SUTHERLAND.

EDITED,

WITH NOTES AND AN INDEX,

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CORRIGENDA.

P. 5, line 14 of note, *read* ‘ Viçvamitra.’
P. 18, par. 21, line 7, *read* ‘ Kátyáyana.’
P 20, par. 27, line 1, *read* ‘ Yájñavalkya.’
P. 28, note (*a*) line 1, *read* ‘ attested.’
P. 30, note (*a*) line 2, *read* ‘ advantageously.’
P. 33, line 1, *after* ‘ Çrotriyas’ *insert* ‘ (*a*).’
P. 35, note (*b*), line 1, *for* ‘ 18’ *read* “ II.”
P. 38, par. 16, line 2, *for* ‘ Siva’ *read* “ Çiva.”
P. 46, note 1, line 4, *for* ‘ Mayúkhá,’ *read* ‘ Mayúkha.’
P. 51, head-line, *for* ‘ VI’ *read* ‘ IV.’
par. 14, line 4, *read* ‘ Vijñaneçvara.’
P. 77, par. 16, line 2, *for* ‘ person who partakes’ *read* ‘ persons who partake.’
line 6, *for* ‘ partakes’ *read* ‘ partake.’
P. 89, note (*j*) line 4, *add* ‘ *Ed.*’
P. 91, line 2, *for* ‘ Çudras’ *read* ‘ Çúdras.’
P. 93, line 4, *for* ‘ or’ *read* ‘ of.’
P. 102, par. 13, line 1, *before* ‘ that’ *insert* ‘ to.’
P. 114, par. 4, line 2, *before* ‘ creditor’ *insert* ‘ the’ in marg. note, *for* ‘ removed’ *read* ‘ renewed.’
P. 117, par. 5, line 3 }
P. 141, par. 2, line 2 } *for* ‘ Bṛiháspati’ *read* Bṛihaspati.
P. 142, note 3, *read* ‘ Víramitrodaya.’
P. 153, par. 3, line 5, *read* ‘ physician.’
P. 154, par. 5, line 1, }
P. 166, line 31, } *read* ‘ Yájnavalkya.’
P. 173, line 32, *read* ‘ Mitákshará.’
P. 182, line 6, *read*, ‘ Nárada.’
P. 195, line 21, *read* ‘ Çankha.’
P. 205, line 4 from bottom, *for* ‘ coheirs’ *read* ‘ coheir.’
P. 207, line 12, *read* ‘ texts.’
P. 234, line 4 of Annot. 42, *for* ‘ enjoyed’ *read* enjoined.’
P. 245, par. 9 in marg. line 2, *for* ‘ eithers’ *read* ‘ either.’
P. 249, par. 24, line 5, *for* ‘ Açura’ *read* ‘ Ásura.’
P. 251, par. 3, *for* ‘ Gándharba’ *read* ‘ Gándharva.’
P. 275, Annot. 41, line 2, *read* ‘ Asclepias.’
P. 279, par. 53, line 2, *dele* the comma after ‘ without.’
P. 291, par. 2, line 7, *for* ‘ Çúdrá’ *read* ‘ Çúdra.’
P. 339, line 6, *read* ‘ directs.’
P. 383, par. 10, line 8, of marg. *read* ‘ devolves.’
P. 388, par. 20, line 2, *read* ‘ similarly.’
P. 421, line 6, from bottom *read* ‘ legitimate.’
P. 494, par. 16, line 7, *read* ‘ Dáyabhaga.’
P. 505, par. 17, *read* ‘ sweetmeats.’

P. 511, line 8, *read* ‘ the estate.
P. 514, par. 10, line 2, *read* ‘ in as much.’
P. 523, par. 11, line 2, *read* ‘ otherwise.’
P. 531, last line, *read* ‘ Gaṇeça.’
P. 533, Annot. 9, line 6, *read* ‘ performing.’
P. 547, par. 64, par. 2, *read* ‘ Çaunaka.’
P 571, par. 107, line 3, *read* ‘ adopt.’
P. 575, line 2, *read* ‘ used.’
P. 594, note (*a*), *add* ‘ *Ed.*’
P. 603, Annot. 24, line 1, *read* ‘ dadhi.’
P. 610, par. 39, line 8, *read* ‘ absolutely.’
P. 613, par. 52, line 4, *read* ‘ secondary.’
P. 621, line 11, *read* ‘ Dasaratha.’
P. 622, par 38, line 5, *read* ‘ Çakuntalá.’
P. 635, par. 25, line 1, *dele* the comma after ‘ exempted.’
Annot. line 6, *read* ‘ solemnities.’
P. 646, par. 39, *read* ‘ Paiṭhínasi.’
P. 654, Annot. line 4, *read* ‘ *etc.*’
P. 657, Note (*a*),
P. 664, Note (*a*)
P. 666, Note (*a*) *add* ‘ *Ed.*’
P. 669, Note I, line 1,
P. 660, Note II, line 2, - *for* ‘ 221,’ *read* ‘ 663.’
——— Note III, line 1,
P. 670, Note IV, line 1, *for* ‘ 222’ *read* ‘ 664.’
P. 671, Note V, line 1, *for* ‘ *his*’ *read* ‘ *her*’ and *for* ‘ 222’ *read* ‘ 664.’
P. 672, Note VI, line 2, *for* ‘ 222’ *read* ‘ 664’ line 5, *read* ‘ Chintámaṇi.
P. 673, Note VII, line 1,
——— Note VIII, line 2,
——— Note IX, line 2, for ‘ 224’ *read* ‘ 665.’
——— Note IX, line 5, *read* ‘ ability.’
P. 674, Note X, line 1,
——— Note XI, line 2, *for* ‘ 226’ *read* ‘ 666.’
P. 675, Notes XII, XIII, XIV, *for* ‘ 227’ *read* ‘ 667.’
P. 676, Notes XV and XVI, *for* ‘ 228’ *read* ‘ 667.’
——— Note XVII, line 2, for ‘ 228’ *read* ‘ 668.’
P. 677, Note XVIII, *for* ‘ 228’ *read* ‘ 668.’
Notes XIX and XX, for ‘ 229’ *read* ‘ 668.’
P. 678, Note XXI, *for* ‘ 229’ *read* ‘ 668.’
Note XXII, *for* ‘ 230’ *read* ‘ 669.’

THE

VYAVAHÁRA MAYÚKHA,

AN AUTHENTIC AND COMPLETE

TREATISE,

EMBRACING ALL THE HEADS OF

HINDÚ LAW,

APPLICABLE TO THE TOPICS OF

CIVIL AND CRIMINAL JURISPRUDENCE,

AND

OF EXTENSIVE AUTHORITY IN WESTERN INDIA.

Translated from the Original

BY

HARRY BORRADAILE, ESQUIRE,

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under the authority of the Bombay

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1827.

BEYZNUJEE PAULNUJEE.

PREFACE.

THE translator of the following work, fully conscious of its imperfections, hopes that a candid statement of the motives and circumstances under which he commenced and concluded it, may avert criticism, and save him from the imputation of presumption at least, in trying his strength at a task to which he is unequal.

Placed unexpectedly in a situation requiring some knowledge of Hindú Law, for the examination of the Vyavasthás, or expositions of civil law recorded in the courts under this Presidency, and at the same time totally ignorant of the subject, as well as of the language of that law, he naturally sought for information respecting the authorities by which the Çástrís were guided in their answers to the courts.

Very little enquiry sufficed to shew, that the Mitákshará and Vyavahára Mayúkha were on all occasions quoted by them. The first was found to exist in print, and a manuscript copy of the latter was procured, very incorrect, as was afterwards discovered, but which sufficiently answered the purpose of reference at the time.

Having had at various periods occasion to translate, with a Çástrí's assistance, a few detached passages as tests of the Vyavasthás, the Sanskrit manuscript was bound with blank leaves, and these passages entered in their proper places. The facility of reference to Manu's Institutes, by its arrangement into chapters and verses, then led him to enter also the translations of its texts, wherever they occurred throughout, and becoming now tolerably familiar with the names of authors, he, after a tedious and somewhat laborious collocation of the subjects of Mr. Colebrooke's Digest with the corresponding chapters in the Mayúkha, was enabled to collect translations of almost all the texts in the fifth and several succeeding chapters. Filling in, by translations of his own, the comments of the author, and the remaining texts not found in the Digest, he thus completed those chapters, and considered this sufficient encouragement to continue the translation to the end. The two first chapters were next attempted, and all that could be found to apply in Sir F. Macnaghten's Treatise, published about the time, being substituted for the Translator's own version, the work might be said to be finished, with the exception of the chapter on Inheritance; since that on Ordeals, being of little or no use, it was determined not to attempt.

Had the difficulties of the chapter on Inheritance been known at the time the translation was begun, they would certainly have put a stop to it altogether: but fortunately (it may perhaps be allowed to say, if the utility of the work be admitted), the facilities met with in the first instance had led the Translator so far, that he felt bound not to leave it undone, when so much had been got through. He enjoyed likewise advantages, which few, however inclined to be useful, would ever meet with: the four Çástrís, of the Ṣadr 'Adálat and Surat 'Adálat, were at his

side, with one attached to himself, and he had in the mean time gained some experience in the Law, and a little knowledge of the Sanskrit language.

Drawing therefore as much as possible from the invaluable translations by Mr. Colebrooke, both of the Digest and of the works on Inheritance, and from that of the Dattaka Mímáṁsá, he worked in the chapter on Inheritance, and put the finishing hand to the translation, for which indulgence is thus solicited.

The liberality of the Bombay Government has led them to extend their patronage and support to the book: at the same time it must be fairly stated, that such patronage does not involve responsibility for correctness, as the translation was submitted, in consequence of the season, in an unfinished state, and was honoured with such notice, probably from a desire to hold out encouragement to others to undertake useful works even if imperfectly executed, and from the personal kindness of the Head of the Government, rather than as a pledge that they were fully satisfied of its worth.

The faults of execution therefore, many as they are, rest with the Translator: he unfortunately could obtain no European aid, but would cheerfully bear the charge of rashness and incompetence, if the merit be conceded to him, of some industry, and a sincere desire to make himself useful: he seeks no further praise; censure he trusts to have disarmed.

A short account of the nature of Hindú law-books, and of those works which have as yet appeared in English, may assist in appreciating the real value of this now submitted.

The Mitákshará gives a list of twenty sacred authors, said to have written in ancient times upon Law (among other subjects), and whose works are entitled to equal and high veneration by the moderns. Their names are: Manu, Atri, Vishṇu, Hárita, Yájñavalkya, Uçanas, Angiras, Yama, Ápastamba, Saṁvartta, Kátyáyana, Bṛihaspati, Paráçara, Vyása, Çaṅkha, Likhita, Daksha, Gautama, Çátátapa, and Vasishṭha.[1] Their institutes are technically termed Smṛiti, of which only a small number now exist complete, and of many only a few texts remain.

Besides these, there were institutes of the following Legislators, considered by some perhaps of inferior authority, (and therefore often termed Upasmṛiti;) but now equally imperfect with those of their supposed predecessors. The names and number of both classes, indeed, are very uncertain,[2] the same author being sometimes ranked with the first, and sometimes with the second class, by different modern commentators. They are: Paiṭhínasi, Ṛshyaçriṅga, Baudháyana, Pulastya, Maríci, Gárgya, Kaçyapa, Nárada, Jábáli, Lokákshi, Kuṭhumi, Dhaumya, Açvaláyana, Datta, Pracetas, Bṛigu, Viçvamitra, Devala, Sumantu

1—Pref. Strange's Elem. page xii.

2—Pref. to Digest, page xiii.

Vyághra, Satyavrata, Átreya, Vatsa, Soma, Kṛshṇájini, Náciketu, Kaṇḍeya, and perhaps others *(a)*.

Modern legislators seem to have composed their treatises by selecting, each, such texts from these ancient institutes as best suited their own notions, working them up with a gloss of their own, "explaining their sense, and endeavouring to reconcile seeming contradictions, to fulfil this precept of their great lawgiver (Manu, chap. 2d, v. 14):— 'Where there are two sacred texts, seemingly inconsistent, both are held to be law, for both are pronounced by the wise to be valid and reconcileable.'"[1]

The numerous and conflicting volumes which such a system has produced, will be at once seen.[2] From them several Schools have arisen: the Gauriya (or Bengal), the Maithila, (or North Bahár), and the Benares, with the Mahárâshtra, and the Drávida, or Southern school. In all but the first, the Mitákshará, one of the very earliest of these compilations, is received with respect, as the chief general authority, though in each some more modern local work is allowed to compete with it on a few points. The most remarkable of these are, the

(a) The following list of the authors of Hindú law books, with their names arranged according to the order of the Sanskrit alphabet, has been made up from the lists given by Yájñavalkya, Parâçara, the Padma-Purâṇa, Madhusúdana Sarasvatí, Ráma-Kishṇa in his commentary on Pâraskara's Gṛhya-Sutra and Wilson, *Mackenzie Collection* i. p. 19. See Stenzler in Weber's *Indische Studien* i. 232, 246.

1. Agni
2. Angiras (three redactions: A. Madhyama A. and Bṛhad A.)
3. Atri
4. Á'pastamba
5. Uçanas
6. Ṛshyaçṛṅga
7. Kaṇva
8. Kaçyapa
9. Kátyáyana (two redactions: K. and Vṛddha K.)
10. Kuṭhumi
11. Gárgya
12. Gautama (two redactions as in No. 9)
13. Cidambara
14. Cyavana
15. Chágaleya
16. Játákarṇya
17. Jábáli
18. Daksha
19. Devala
20. Nârada
21. Parâçara
22. Pâraskara
23. Pitâmaha
24. Pulastya (two redactions, P. and Lagu P.)
25. Paiṭhînasi
26. Pracetas (two redactions P. and Bṛhat P.)
27. Prajâpati
28. Budha
29. Bṛhaspati (two redactions as in No. 26)
30. Baudhâyana
31. Bhâradvâja
32. Bhṛgu
33. Manu (three redactions, Manu, Vṛddha Manu and Bṛhan Manu)
34. Marîci
35. Yama (two redactions as in No. 26)
36. Yájñavalkya (three redactions Y., Vṛddha Y., Bṛhad Y.,)
37. Likhita
38. Lohita
39. Lokâkshi
40. Vasishṭha (three redactions as in No. 36)
41. Viçvámitra
42. Vishṇu (three redactions as in No 36)
43. Vyâsa (two redactions as in No. 26)
44. Çaukha
45. Çândilya
46. Çâtâtapa (three redactions as in No. 36)
47. Çâṭyâyana
48. Samvarta (two redactions as in No. 26)
49. Sumantu
50. Soma
51. Hârîta (three redactions as in No. 36)

The above list, it will be seen, does not contain the following ten names given by Mr. Borradaile: Açvalâyana, A'treya, Kṛshṇâjini, Datta, Dhaumya, Nâciketu, Markaṇḍeya, Vatsa, Vyâghra, Satyavrata.—*Ed.*

1—Pref. Digest xi.

2—Pref. to the Digest, to the Inheritance, and to Strange's Elements.

Mayúkha for the Maháráshtra and the west, the Smṛti Chandriká for the South, of India; the Ratnákara and Chintámani, for Mithila. Bengal proper alone denies authority to the Mitákshará, having established for itself a totally different school, of which the Dáya-bhága of Jímúta Váhana is the head.[1] The references in the margin preclude the necessity of noticing the other treatises of these schools.

The first work in the English language, on the subject, was the Code drawn up during Mr. Hastings' administration. The original, in Sanskrit, " consists, like the Roman Digest, of authentic texts, with the names of their several authors regularly prefixed to them, and explained, where an explanation is requisite, in short notes taken from commentaries of high authority: it is, as far as it goes, a very excellent work" :—" But, whatever be the merit of the original, the translation of it has no authority, and is of no other use than to suggest inquiries on the many dark passages which we find in it: properly speaking indeed, we cannot call it a translation; for though Mr. Halhed performed his part with fidelity, yet the Persian interpreter had supplied him only with a loose injudicious epitome of the original Sanskrit, in which abstract many essential passages are omitted, though several notes of little consequence are interpolated, from a vain idea of elucidating or improving the text."[2]

Upon these observations being made known to the Supreme Government, the Digest of Jagannátha was, under their authority, compiled, " from various digests, and from commentaries on the institutes of Law." But: " In restricting the compilation to the law of contracts and successions, he [Jagannátha] has omitted the law of evidence, the rules of pleading, the rights of landlord and tenant, the decision of questions respecting boundaries, with some other topics, which should be likewise treated, for the purpose of assisting courts of civil judicature in deciding private contests according to the laws, which the Hindú subjects of Great Britain hold sacred."[3]

The great value of the Digest to English readers will be found, probably, in its collection of texts, which includes, under each of its heads, all the above sacred authors. Scarcely one of those from Manu applicable to Inheritance has been omitted by Jagannátha, and a classification, made for private use by the Translator, of all the texts of each author contained in the present translations on Inheritance, shews that the Digest contains a great many of every author not to be met with in the others. When freed from the perplexing commentary, it forms an excellent key to those Sanskrit works of a similar nature, called Smṛti Saṅgraha, as the English version of any text may be found in a few minutes.

Sir William Jones's translation of the Institutes of Manu, coming in order of time between the above Code and Digest, is too famous to

1—Pref. to Inh : iv.

2—Sir W. Jones quoted in Preface, Digest IX—X.

3—Preface to Digest, page XI. and to Inheritance, page II; likewise Strange' Elements, 2nd, 150.

need notice. The opinion of it expressed in Sir T. Strange's work would, it is believed, hold good here, " that it is of authority as a text-book, but no further."

To make up for the deficiencies in the Code and the Digest, Mr. Colebrooke " long ago undertook a new compilation of the law of suc- " cessions with other collections of Hindú Law, under the sanction of the " Government of Bengal, for preparing for publication a supplementary " Digest of such parts of the law as he considered to be most useful;" and in the mean time gave to the world a translation of the two treatises on Inheritance, containing the doctrines of the two great schools, of Bengal and Benares, elucidated by notes from their respective adherents.[1]

The first of these, the Dáya-bhága, is restricted in its operation to Bengal proper, as is the Dáya-krama-saṁgraha, a work of the same school, subsequently translated into English by Mr. Wynch, of which no copy has yet reached these parts. *(a)*

The other, the Mitákshará, is equally authoritative with us on this side of India, as elsewhere, but, as previously observed, the doctrines of it are sometimes opposed by the Mayúkha, which is allowed to compete with it.

Two treatises on Adoption were in the same manner translated by Mr. T. C. C. Sutherland. As neither of them exists in the original in this part of the country, the Çástrís have no knowledge of them, and take the Mayúkha for their authority on that head. But great praise has been passed on the English version, by a high authority.[2]

The work of Sir F. Macnaghten, being avowedly controversial and founded on Bengal law, is of no utility as a guide here. Every one must regret, that the two first chapters of the Mitákshará, those on judicial proceedings and evidence, were not given entire. Valuable as any extracts from such a work are, the insertion of the translation complete, would, we may venture to say, have doubled the value of this book to practical readers.

Of the last work published, the Elements of Hindú Law, by Sir T. Strange, it is scarcely necessary to make mention, as it is in every one's hands; but if it be not too presumptuous, we may remark that the learned author has cheerfully followed the steps, and entirely adopted the doctrine and advice, of the greatest of all European authorities on the subject of Hindú law and literature, which is of itself sufficient to stamp a high value on the book.

Of Nílakaṇṭha, the author of the Mayúkha, scarcely any thing is

1—Preface to Inheritance, page III. 2—Preface to Strange's Elements, XXIV.

(a) The Dáyacrama-sangraha, an original treatise on the *Hindoo* Law of Inheritance, translated by P. M. Wynch, Esq. fol. Calcutta: Printed by Philip Pereira, at the Hindoostanee Press. 1818. The original text in the Bengáli character is printed at the close of Mr. Wynch's translation.—*Ed.*

known here beyond his name, though his work is by repute acknowledged at Benares, Bengal, and also in Tanjore.[1] Even at Puná, where one of his descendants, Hara Bhatta Kassíkar, of great repute for learning, resided till very lately, no certain information is to be gained. The family is Deshast Mahárâshtra, long settled at Benares, where Çaṁkara Bhatta the father, [author of several very celebrated works on the Mímáṁsa particularly the Dvaita Nirṇaya, which his son mentions] lived, and where our author was born, as he tells us in his preface, but at what date is uncertain. Hara Bhatta, above alluded to, says it was upwards of 200 years ago, whilst the general opinion is, that his writings were first circulated about 125 years ago. The manner in which, at the conclusion of the book, he speaks of himself and the dynasty under which he lived, might afford a clue, were not the authenticity of the passage doubted by some, and its meaning unknown to all. It is said that at Bhareh, a town situated at the confluence of the Chambal and Jamná, a Rájá bearing the title of Saṅgara or Yuddha-sura, the ruler of a Maṇḍal in that part of the country, held his court: that Bhagvant Deva, one of his successors, took our author under his protection, and that he, out of gratitude, gave the name of his patron to the Book thus compiled under his auspices; and that sixteen generations have elapsed since the parties flourished.[2]

Mr. Colebrooke declares him to be "an authority, concurrently with the Mitákshará, among the Mahrattas"[3]: and in an account of the different schools of law furnished by him to Sir T. Strange,[4] Mr. Colebrooke observed: "In the west of India, and particularly among the Mahrattas, the greatest authority after the Mitákshará, is Nílakaṁṭha, author of the Vyavahára Mayúkha, and of other treatises bearing the same title."

These, twelve in number, were collectively styled by their author, Bhagvata Bháskara, and in detail are generally classed as follows: 1st Saṁskára Mayúkha, expounding the various rites and ceremonies of a Hindú's life. 2nd Áchára Mayúkha, treating of rules for conduct, in morals and religion. 3rd Samaya Mayúkha, of dates and astronomical calculations for regulating the chief actions of life. 4th Çráddha Mayúkha, of funeral ceremonies. 5th Níti Mayúkha, of the power, conduct, and duties of kings. 6th Vyavahára Mayúkha, of law and justice. 7th Dána Mayúkha, of religious gifts. 8th Utsarga Mayúkha, of public edifices. 9th Pratishṭhá Mayúkha, of the consecration of the same. 10th Prayáçcitta Mayúkha, of penance and expiation. 11th Çuddha Mayúkha, of purification. 12th Çántí Mayúkha, of planetary influence and worship.

The present one, the Vyavahára Mayúkha, is strictly speaking the only one touching upon law. Its doctrines are quoted and alluded

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1—Strange's Elements 2nd, 164 note.

2—For this account I am indebted to a kind and valued friend, Captain H. D. Robertson, Collector of Puná, who has also most materially assisted me by procuring translations and explanations of doubtful and disputed passages from the Puná Pandits.

3—Preface to Inheritance, page iv. 4—Strange's Elements 1st, 316.

to with approbation by Mr. Colebrooke in more than one place in his translations, and by Mr. Sutherland in the Dattaka Mímáṁsá and Chandriká; and appears, particularly in the concluding chapters, to be rather of the nature of a Smṛiti saṁgraha, or general collection of texts, without much commentary, than of those books elucidating the doctrines of one favourite author (like the Mitákshará on Yájñavalkya) by a perpetual gloss, interspersed with a few texts out of the other institutes.

The reference to the authorities, troublesome as many may find them, are not without value, having been given as vouchers for the correctness of the version, as well as to guide those referring to the Mayúkha on business, to the particular page of the work where each text is to be found. The example of Mr. Colebrooke warrants this. In the cases of Sir T. Strange's Elements, vol. 2nd, explained by him, the Mitákshará and Digest are quoted indiscriminately in many places. But it is necessary, with regard to chapter fourth on Inheritance, to explain, that the reading of the Mitákshará has, for reasons stated, always been retained in preference either to Jímúta Váhana, or the Digest. Many of the texts, however, are only to be found in the two latter, or in the last one, and as Nílakaṁṭha's doctrine sometimes accords with one and sometimes with the other, the reference will enable the professional reader to judge which school his author follows, still remembering that conformity with the Mitákshará should be aimed at as far as consistency will allow, with which hope, the author's peculiar opinions, where he differs materially, have mostly been pointed out.

The Çástrís of the Courts can at any time discover the distinction, if called upon; for in the Sanskrit edition, prepared (from five manuscripts found in Surat, collated with an old one borrowed from Puná, one from Broach, and a new copy sent from Benares) by the five Government Çástrís of this place, and afterwards printed at Bombay (*a*) by order of Government, care was taken to insert, opposite to every text of Manu, the number of the chapter and verse, and opposite to every text quoted from Yájñavalkya, the leaf and page of the Sanskrit large edition of the Mitákshará printed in Calcutta, of which the Courts generally have copies. The commencement of each page of the original is likewise denoted by the Roman numerals in the margin.

(*a*) Çríçaṁkarabhaṭṭátmajabhaṭṭanílakaṁṭhakṛte bhagavadbhá-skare vyavahárámayú-kham. 4to. Bombay.

PREFACE OF THE AUTHOR.

1. Salutation to Ganeça. Having declared the rules for a king's guidance[1] and having duly bowed myself before the lotos-footed Sun, I, Nílakaṁṭha, proceed to compose something on decisions of law.

2. I meditate upon Çaṁkara, my Guru [whom I consider as an incarnation of him] who wears the crescent on his forehead, the lord of the bull, and consort of Párvati, he who gives counsel to all those who visit the holy city.

3. He [who is] the chief of men [Çiva] has assumed a double form, with a view to point out [by the simile below given, that which is correct of] the two conflicting paths [of the divisibility or indivisibility of the spirit of god].[2] Çrí Çaṁkara [Çiva] himself is one form : Bhatta Çaṁkara is the other form here on earth, who has admitted the reasoning, that the spirit of god is indivisible.[3]

4. False reasoners, deceivers, have on this point in some sort advocated the doctrine of divisibility, but it has been thrown out by me, as unfounded. For this reason there is no deficiency of discussion on my part ; for the worship of god is not the less complete for want of flowers from the sky. [a miracle].

1—In the last chapter of the A'chára Mayúkha ; see a similar work, Reports 1st 460-61, tit. Ráj dharma.

2—The one side supported by the Mádhava, the other by the Hemádri.

3—Those holding the contrary, rejecting the doctrine of Máya, the cornerstone of the doctrine of indivisibility.

THE VYAVAHÁRA MAYÚKHA.

A COMPLETE TREATISE

ON

HINDÚ LAW,

BY NILAKAMTHA BHATTA.

CHAPTER I.

PROCEEDINGS AT LAW [VYAVAHA'RA MA'TREKA'.]

SECTION I.

I. Justice is the consistent art or practice [by a third person] of discovering the unknown point of "who is in the wrong" between two persons mutually disputing. Or that business, in which a Plaintiff and Defendant exist as the Agents, which is supported with proof, by possession and witnesses, and which admits of a fair discrimination between conflicting pleadings, is called Justice. But according to the Madanaratna[1] "In an answer of confession, the further [usual] proceedings in the suit are unnecessary." This is one part of the law; the other is calculated for the exclusion of [unfounded] disputes, false pleadings, and the like.

Definition of Justice.

2. Now these are the divisions of it. Yájñavalkya;[2] "When a person aggrieved by another, in a manner contrary to law, or approved usage, represents it to the King, or to the chief Judge, that representation is termed the subject of a judicial proceeding." *Aggrieved*, abused.

II.

3. Eighteen divisions of it are laid down by Manu:[3] "Of those titles, the first, is debt on loans for consumption; the second, deposits and loans for use; the third, sale

Heads of Law.

1—Followed by our author on many points, contrary to the Benares doctrines.

2—Macnaghten, page 409.

3—Ch. 8th, vs. 4th, ad. 7th Colebrooke on Obligations, 18, para. 36. The arrangement of the Mayúkha varies from the above, though the titles, or chapters, will be found the same, in names and in number, by excluding the three first, or introductory chapters, and the last, on miscellaneous topics, or sundries, which make twenty-two in all.

without ownership ; the fourth, concerns among partners ; the fifth, subtraction of what has been given ; the sixth, non-payment of wages or hire ; the seventh, non-performance of agreements ; the eighth, rescission of sale and purchase ; the ninth, disputes between master and servant ; the tenth, contests on boundaries ; the eleventh and twelfth, assault and slander ; the thirteenth, larceny ; the fourteenth, robbery and other violence ; the fifteenth, adultery ; the sixteenth, altercation between man and wife and their several duties ; the seventeenth, the law of inheritance ; the eighteenth, gaming, with dice and with living creatures : these eighteen titles of law are settled as the groundwork of all judicial procedure in this world." *Subtraction*, non-performance. —*Rescission*, repentance. *Gaming*, [dyútam], playing with inanimate agents : when with live agents, it is called samâhvaya.

4. Here, though it is said by Bṛihaspati :[1] "Killing a human being, robbery, touching another man's wife, and both species of assault, compose the four kinds of heinous offences," we may infer that by reason of the distinctions in the nature of crimes, connexion with women, and assault by word or deed, are here enumerated distinct and different, from the example of a bull and bullock. But I will hereafter clearly point out the distinctions [or characteristics] of these eighteen titles of law, [each in its separate chapter].

5. The Initials of Justice.[2] Bṛihaspati : "Let them erect a house in the midst of a fortified town, having in its vicinity water and trees ; apart from other buildings, and situated in the east quarter, with the door on that side ; there let them determine on erecting a properly constituted assembly house."—Or in other words, a court of justice, as it has been declared by Kátyáyana : "That place is truly termed a court of justice, where the king practises justice, discriminating between truth and falsehood, by a reference to the Dharmaçâstra." Manu :[3] "A King, desirous of inspecting judicial proceedings, must enter his court of justice, composed and sedate in his demeanour, together with Bráhmans and counsellors, who know how to give him advice. Without ostentation in his dress and ornaments, let him examine the affairs of

Constitution of a Court.

1—See post, Ch 18th, para. 2nd.

2—Ellis's Lectures, "Part the 2nd—Constitution of the Hindú courts ; duties of the prince as chief magistrate ; duties of the sabhásadáh or assessors ; duties of the prádviváka or chief-justice [who is likened to an archon, prætor, and English judge] ; several descriptions of courts ; institution of suits ; inadmissible suits ; plaint, how to be drawn ; answer, how to be drawn ; proof, by which party to be produced ; the four steps, páda, or divisions of a suit, viz., bháshápáda and uttarapáda, pleadings of the two parties ; kriyápáda, production of evidence, and sádyasiddhipáda, decision by the decree ; miscellaneous subjects connected with the administration of justice ; the nature of proof, pramánam, and its kinds, namely human proof or evidence, manushya pramánam, and divine proof, by oath and ordeal, divyapramánam ; evidence, of three kinds ; namely, likhita, writings ; sákshi, witnesses ; bhukti, enjoyment ; nature of each briefly stated." This exactly corresponds with the two first chapters of the Mayúkha. *Initials of justice*,—literally the "letters, or alphabet," of law.

3—Ch. 8th, vs. 1st, and [the last hemistich of] the 2nd.

litigant parties." Yájñavalkya :[1] "The king, divested of anger and avarice, and associated with learned Bráhmans, should investigate judicial proceedings, conformably to the sacred code of laws."—*The king*, is any one, whoever properly affords protection to the people, not merely one of the royal tribe or Kshatriya.

Officers of the Court.

6. Kátyáyana :[2] "A king who investigates together with his chief judge [prádvivéka] minister, bráhmans, domestic priest, and assessors of the court, according to law, shall attain paradise." Here, the *bráhmans* are those [aniyukta] unappointed [to the court] : but the *ministers* are those appointed. Even as it has been said :[3] "A person, whether appointed or not, is entitled to furnish legal advice."

Examiner or chief judge.

7. Bṛihaspati gives this definition of the chief judge [prádvivéka] : "He who in a cause asks the questions, and in like manner cross-examines, and who, extracting the [desired] information, speaks first, is termed the chief judge." Vyása shews the nature of a minister, or councillor [amátya :] Let the king appoint as his minister, a man well informed in the meaning of all the sciences, free from avarice, one who speaks justly, a Bráhman [vipra], wise, of a family famed of old for these qualities, being a twiceborn man [dvija]." Here the recapitulation conveyed by dvija, or a twiceborn man [after vipra] is made specially with a view to the choosing a minister, either from the royal or commercial tribe, in default of one of the priestly class [vipra] : for thus says Kátyáyana[4] : "If there be no learned Bráhman, let the king then associate in the administration, a Kshatriya or a Vaiçya, skilled in the Dharmaçástra ; let him carefully keep a Çúdra [from such affairs]."

Assessors

8. And Yájñavalkya thus declares an assessor [sabhya] :[5] "Persons who are versed in literature, acquainted with the law, addicted to truth, and impartial towards friend and foe, should be appointed assessors of the court, by the king."—Bṛihaspati gives this enumeration of them.[6] "That assembly, in which seven, five or three Bráhmans, versed in religious and worldly duties, preside, is to equal sacrificial ground."

and others.

9. The same author says : "Two persons must be appointed by the king, a secretary and an accountant, who are skilled in expounding words, and meanings, adepts at counting, free from error, and learned in the different characters [or dialects]" *Words*, the science of etymology. *Meanings*, a dictionary. Kátyáyana : "Merchants who have just views of justice are to be there appointed hearers of causes." *There*, in the assembly. Bṛihaspati : "A vera-

1—2—3—McNtn. page 407.

4 —Macnaghten, page 408. There is some difference in the text here : my version is literal.

cious man must be specially appointed, under the orders of the assessors, for calling and taking charge of the witnesses, plaintiffs, and defendants." And he must be none other than a Çúdra, even as Vyása says: "But an attentive servant must be appointed by the king for collecting the materials for trial, a stout Çúdra, whose ancestors have followed the same employment, and he shall be placed under the orders of the assessors." Yájñavalkya:[1] "But if justice cannot be supervised by the king in person, from press of [other] business, let a Bráhman acquainted with all duties be associated with the assessors."

Their respective duties.

10. Bṛihaspati mentions the duties, of the king, the chief Judge, and the rest: "The chief Judge is to report the case; the king is to give the necessary orders; the assessors are to investigate the matter [in the first instance]; the accountant is to calculate the money [transactions]; and the secretary is to take down the proceedings of the trial." The same author says: "Let the king sit with his face to the east, the assessors looking towards the north, the accountant facing the west, and the secretary turning towards the south." Yájñavalkya, speaking of the royal court, says further, respecting judicial functionaries:[2] "The superintendants [adhikṛitáḥ] appointed by the prince, the separate trades [púgáḥ], the joint companies [çreṇí], as well as families [kuláni], must be accounted to rank according to the order in which they are here named, in all rules of justice among men." *Superintendents* appointed by the prince, the chief Judge and the rest. *Separate trades* [lit. a multitude] a collection of men getting their living by different trades, inhabitants of the same village, but of different caste. *Joint companies* are the very opposite of separate trades. *Families*, an union of kinsmen, connexions, and cognate kindred.[3] Bṛihaspati also says; "For those who wander in forests, let an office be established in the forest, that for soldiers in their quarters, and in like manner that for the merchants, in their meetings." *An office*, a court of justice.

Court hours and days.

11. Kátyáyana notes the time for inspecting judicial cases: "The king shall give decisions on complaints, in the place appointed for the court, in the first part of the day, in the way laid down in the Çástra, putting down those who act inimically; passing over the first eighth portion of the day, the period

1—Macnaghten, page 408.

2—Mentn. p. 433, q. v. The 'púga' and 'çreni' are here translated according to the commentary. 'Corporation, and 'community' might sufficiently denote them could we divest ourselves of English associations in using those terms, to which the Hindú societies do not in all respects conform. Mention of them occurs again at sec. 2nd, para. 1st, and chapter 2nd, sec. 3rd, para. 6th, and in the 12th chapter, para. 3rd. They are also very clearly enumerated and elucidated in detail, by Mr. Ellis; see Asiatic Journal, v. 8th, p. 17-21, and Strange's Elem. 1st, 319.

3—Jñyati, denoting, from the context, 'kindred,' and not 'caste.'

which includes the next three eighths,[1] is declared by sages to be the very best time pointed out by the Çástra for judicial business." Half the first watch [yáma] is the eighth of the day; the next three eighths are contained between that time and [the sun's reaching] the zenith. Samvartta again declares the days to be set apart as unfit [for business]: "The man who is wise will not look at judicial business on the days here mentioned, the fourteenth, the new moon, the full moon, and likewise the eighth [of each fortnight]." Bṛihaspati: "Let the king, sitting there in the first part of the day, together with old men, his ministers and his servants, examine causes and hear them read the puráṇas, and the laws, the religious [dharma-] as well as the moral laws." [artha-çástra] *There,* in the court. *Moral laws,* the laws of equity [nítiçástra].

Disagreement between law and equity, or two texts of law.

12. Nárada, on the disagreement between the religious law, and the moral law, says: "When a difference may occur between the religious law, and the moral, then let them set aside what is declared in the moral law [artha-çástra] and follow that which is enjoined by the religious law [dharma-çástra]." But where discrepancy occurs in the dharmaçástra itself, Yájñavalkya says:[2] "If two texts [smṛiti] differ, reason [níti, or that which reason best supports,] must in practice [vyavahára] prevail." The faults of those who do not look to the essentials of justice are thus declared by Bṛihaspati:[3] "A decision must not be made solely by having recourse to the letter of written codes [çástra], since, if no decision were made according to the reason of the law, [or according to immemorial usage, for the word *yukti* admits both senses] there might be a failure of justice."

Customs of the country &c. to be

13. They should fully attend to the customs of the country [Deçáchára] and the like; thus Bṛihaspati says:[4] "Let all Rules, of each country, caste, and family, that have been derived and preserved from ancient times, be still observed in the same way: otherwise the subjects will rise in rebellion, discontent will be produced among the people, and the army and the Treasury will suffer injury." The twiceborn classes, [dvija] in the Dakhan, take the daughter of a mother's brother in marriage. In the Madhya deça, they follow various professions, and are artizans, and eaters of kine; and in the east [púrve] the men eat fish, whilst their women are notorious prostitutes. In the North, their women drink intoxicating liquors, and women in

Examples.

1—At midsummer, from about seven o'clock, till about half-past eleven, A. M.

2—Digest, 2nd 570 note.

3—Colc. Digest. 1st, 137-8.—2nd, 128, Ellis's Lectures in Asiatic Journal, 8th, 22.

4—Reports, vol. 1st, 65--126.

their courses are by the men there considered fit to be touched. These people are not deserving of penance, or punishment for such acts as these. The Púrve are the same as the Prácyáḥ,[1] but in some copies they read *sarve*, 'all,' for *púrve*, that is all classes, Bráhmans and the rest. *Punishment* means legal correction. Some one here declares: "However, what is laid down by law as the penance &c., for such acts, applies to countries which are not included among the abovementioned." But others again say: "Punishment is to be construed of the nature of Penance; thus the people of that country will escape legal punishment only; and in other countries, both legal punishment and penance will ensue."

Reference to professional men.

Vyásа says: "If a decision cannot be obtained from the other [appointed] persons, in disputes among men who live by commerce, any handicraft, tillage, dying, or such profession, then let the matter be tried by those skilled in the same trade." Manu:[2] "Let not a prince, who seeks the good of his own soul, [hastily and alone] pronounce the law on a dispute concerning any legal observance, among twice-born men in their several orders."

VIII.

15. Kátyáyana:[3] "The king should thus interrogate a person coming before him [at a proper time, and in a respectful attitude], saying, 'Fear not, O man, but disclose by whom, where, when, and for what cause, your grievance arises?' He should then, in conjunction with his Bráhmans and assessors, deliberate upon the representation thus made, and should it appear reasonable, he shall deliver to the complainant a summons, or depute an officer for the purpose of citing the adverse party."

16. Nárada:[4] "A person being about to prefer a claim, may arrest his adversary [evading it, or not giving satisfaction in the matter] until the arrival of the summons." The same author declares four kinds of arrest or duress [*asedha*]:[5] "Arrest is fourfold: local, temporary, inhibition from travelling, and the pursuit of a particular occupation: the person in confinement by one of these modes, shall not break away from it." He also[6] declares there is a punishment for breaking through restraint, by one thus confined: "One who, being arrested at a proper time, breaks his arrest, is to be fined." In some cases, says the same author, punishment is also to be inflicted on the party putting in duress: "But if a man inflicts duress upon any one in an illegal mode, as by confining [any of] his ten members [limbs, functions, or senses]; by stopping his speech, or breath, or the like, he

Arrest or duress.

1—Those on the S. E. of the river Sarasvatí.

2—Ch. 8th. vs. 390. 3—Macnaghten, p 410.

4—Mentn. p. 411. Strange's Elem. 1st. 387. 5—Mentn. p 411.

6—Mentn p. 411. The remaining words there appear to apply to our next text

worthy of punishment; not the man who breaks through [such is illegal restraint]." Nárada mentions an exemption from punishment in some cases of resisting duress: "A person placed in duress whilst crossing a river, or passing a forest, or in a bad [place or] country, or during an affray, or in other [distress] does not become liable to punishment, if he break through such severe duress." Kátyáyana declares this punishment for confining one exempt from restraint: "But it is thus decreed, that he who imprisons one not amenable to confinement, shall be punished by the king."

Persons exempt from process.

17. The same author defines those who are exempt from confinement: "Persons standing upon a tree or hill, or situated upon an elephant, horse, carriage, or vessel; and one standing in a dangerous place, are all exempt from arrest by those enforcing a demand; as well as one afflicted with sickness, and one suffering under misfortunes, and one employed [as a minister of religion] by Yajamánas."*(a)*—"Let not the King cause to be summoned, persons in a weak state, nor minors, old men, persons in danger, those actually employed in religious offices immersed in [worldy] business, those overcome with desire or habitual estrangements, nor persons employed on the duty of the king or of the Gods [utsava]'[1] "Nor those intoxicated, deranged, or idiotic; nor persons in grief, nor servants. Nor a young woman who is without friends [hínapaksha] on either side, nor any woman born of a noble family nor one lately delivered of a child, nor a damsel of the highest tribe. These are termed dependent on their relations."

Those not exempt.

18. "But women upon whom their families are dependent, profligates, and harlots, and those who are expelled from their families, or degraded, may be summoned." "Having well examined the charge, the King in weighty matters may summon, but in a gentle way, even those who have withdrawn [as hermits] to the woods, and the like of them."[2] Having ascertained the time, place, and comparative importance of the charge, the king may summon even those who are sick, causing them to be brought slowly in carriages." In some copies, they read, *by a messenger.*

Contempt.

19. A person who, being called, does not attend, deserves punishment, even as Bṛihaspati says: "Where a person possessed of relatives or family, from arrogance neglects to go where he is called, let them deliberate upon his punishment, in proportion to the cause at issue." Kátyáyana specifies certain grades of fine for corresponding sorts of complaints: "In petty causes, the fine shall be fifty, but in the middling, not lower than an hundred [panas], and in great causes, never less than five hundred."

(a) Persons employing priests to perform religious ceremonies—*Ed.*

1—Mentn. p 410. I have altered the translation.

2—Mentn. page 411.

20. Pitámahā declares what is to be done on the arrival of the person summoned: "Let the person prosecuted be placed standing before the Court with the complainant likewise—" The third case [by or with] is used here in the sense of *in company with*. Kátyáyana: "Then let the Plaintiff fully tell his case, and the Defendant immediately afterwards; at the end of their pleadings then let the assessors [speak], and the Chief Judge after that." Bṛihaspati: "If the Plaintiff and Defendant should come, each saying, 'I was first [in suing],' let the Plaint be registered with reference to the class of the parties, or regulated by the injury."[1]

21. "Relations, or any other man duly appointed, may undertake the plea, or answer, for persons weak [in mind or body], idiots, madmen, old men, women, minors, and sick people." Nárada: "He on whose account another is litigating, whether he be appointed [*Niyukta*] by the Plaintiff or sent by the Defendant, his is the victory or defeat, by whom he is delegated." Kátáyana[2] however says:[3] "He is guilty of officiousness, who is neither brother, father, son, nor constituted agent of the party: should he interfere, he is liable to amercement." But this relates to one not duly appointed.

Attorneys permitted.

22. In some cases, the absence of a deputy is enjoined by the very same author: "In [prosecutions for] killing a Bráhman, drunkenness, robbery, adultery with a spiritual preceptor's wife, killing a man, theft [steya],[4] touching another man's wife, and also eating forbidden things; in charges for abduction, or ruin, of a virgin, assault, and forgery, as well as injury to the king, a substitute [prativádi] is not to be given; the doer of the act shall defend his cause himself." The word *steya* is used a second time, with a view to a more particular prohibition of an attorney. A *substitute*, a deputy [or attorney].

Exceptions.

XI.

23. Yájñavalkya points out the proceedings of the plaintiff, when the defendant has been brought up: "Let there be [a record] written in presence of the defendant, exactly what was made known by the plaintiff, marked with the year, month, and half month; the day, name, caste, and other [necessary notes]." In another smṛiti it is said:[5] "That is termed a charge, or declaration, which is significant, technically precise, comprehensive, unconfused, direct, unequivocal, conform-

Requisites of a good plaint.

1—In the [manuscript] Pariçishta, the reading is "Vado varṇ ânurûpena"—In the printed one, or Víramitrodaya, "Vado varṇ ânupûrvena." In all the old copies of the Mayûkha, "Dando varṇ ânurûpena." The last they all agreed to reject; of the other two readings, the first has been followed.

2—Nárada in the Mitákshará. 3—Mcntn. p. 411.

4—In the original the same word [steya] is used for both.

5—Mcntn. p. 412. Strange's Elements, 1st, 509.

able to the original complaint, probable, uncontradictory, clear, susceptible of proof, concise, not deficient, not adverse [to local and temporal usages],[1] comprising the year, season, month, fortnight, day, hour; country, situation, place, village; the complaint and its nature; the tribe, appearance, and age of the adverse party; the weight and quantity of the property in dispute; the names of the complainant, and his adversary; the names of their respective ancestors, and of the ruling kings; the grievance done, and the names of the original acquirer, and grantor." The year and other [points] here mentioned, are declared to be of use in cases of mortgage and the like. And the necessity of sometimes noting the country, &c., is declared in another smṛti:[2]

XII. The country; place site, tribe, name, neighbourhood, dimensions, nature of the soil, the names of ancestors, and of former kings: these ten should be specified in a suit for immovable property."

Correction of it. Kátyáyana: "Let the Chief Judge record at length the first side of the cause, as told in the [Plaintiff's] own way on paper, after it has been corrected on a writing-board, in white letters." Nárada defines the limits of correction:[3] "He may amend his declaration until the answer is given in, but being stopped by the answer, the corrections must cease." "But as long as the Defendant shall not enter the answer of the plaint, so long may the Plaintiff cause them to write any [further] account of the matter."

25. The properties of a plaint being thus laid down, false plaints at variance with them, are also touched upon, though well known as fictitious. Thus in another smṛti: inadmissible. "Let them utterly dismiss a false suit, unknown [to reason], shewing no trespass, unmeaning, unfounded, whether incapable of proof, or contrary." *Unknown*, as if he said, 'Flowers from heaven have been stolen from me.' *Shewing no trespass*, as, 'He follows his business by the light of my lamp.' *Unmeaning*, as, 'What d'ye call it [kacaṭatapa] *(a)* has been taken from me.' *Unfounded*, as, 'He living opposite to me reads with a loud voice.' *Incapable of proof*, as, 'This person laughed at me with a scowling brow,' or the like. *Contrary*, to common sense, as, 'I was abused by a dumb man.'—Plaints in opposition to the City, district, or other point, are also touched upon:[4] "That complaint which is prohibited by

XXII. the Government, or detrimental to the interests of a City, or a country, or to the different trades-people, citizens, villagers and merchants, is pronounced to be inadmissible."

1—For instance, a man in Central India, [Madhyadeça,] suing for a plantation of betel-nut trees, [knowing they cannot grow at a distance from the coast,] or for mangoes, out of season, &c. Vîramit. leaf 20th p. 1st.

2—Yájñavalkya—Mcntn, p. 412. 3—Mcntn, page 413.

4—Mcntn. page 413.

(*a*) This word—*ka-ca-ṭa-ta-pa*—is composed of the first, rough or *parusha* letter of each varga of the Nágarí alphabet: a similar formation is *ga-ja-ḍa-da-ba*, the third, smooth, or *sarala* letter of each such varga.—*Ed.*

26. But that suit which contains different heads of charge, does not thus partake of the nature of the false complaint; otherwise we should have the misfortune of finding a law contrary to this of Kátyáyana: "The King may also without doubt receive, from desire of seeking out the truth, that cause which contains many counts, and is decidedly admissible among legal proceedings." As for the saying, 'that a plaint jumbling together different heads of law does not stand,' it must be understood [that the different counts] may not be taken up at one time, but in their proper order.[1]

Exceptions.

27. Yájñavlkya states what is to to be done when the plaint has been thus prepared:[2] "The answer of the party who has heard the declaration, must be written down in presence of the plaintiff."

The answer.

28. Nárada explains the qualities of an answer:[3] "The wise have held that to be an answer, which embraces the declaration, which is solid, clear, consistent, and obvious." Kátyáyana specifies four sorts of them:[4] A denial, a confession, a special exception, and a plea of "former judgment, are the four sorts of answer." The same author explains a denying answer [mithyottara:] "When the Defendant makes denial of the claim, that should be considered in law as an answer of denial." The same author declares this again to be of four kinds: "An answer of denial is of four kinds; as 'this is false;' 'I know not this matter;' 'I was not then present'; or 'I was not born at that time.'" An answer of assent [satyottara] is noted in another smriti: "A declaration affirmative of the matter in dispute, is termed an assent." Nárada exemplifies a special exception [pratyavaskandana]:[5] "When the defendant acknowledges the [receipt of the] sum as declared by the plaintiff, but alleges a consideration, it is deemed a special plea." Kátyáyana thus propounds the plea of former judgment [pránnyáya]:[6] "If a man though cast at law, revive the suit, he should be considered as one previously confuted, and is called an appellant from a former decision."

Answers enumerated.

XIV.

29. The properties of an answer being thus fixed, [a defective one] is also explained in another smriti, though the nature of an answer wanting these properties conveys intrinsic proof against itself:[7] "That is not an answer, which is dubious, not to the point, too confined, too extensive, or not embracing all parts of the declaration. That which is relative to other matter, incomplete, obscure, confused, not obvious, is a faulty answer." Kátyáyana also says: "When an answer admits the truth of the plaint on one count, and on another sets up a special

Inadmissible answers.

1—A passage, apparently a text, agreeable to this is found in Mentn.

2—Mentn. p. 413. 3—Mentn. p. 414.

4—Mentn. 414. 5—6—Cole. Digest. 1st, 370. 7—Mentn. p. 414.

exception [kâranam] and at the same time denies another Count altogether, it is, from its mixed nature, held to be no answer."

30. The same author states the reason for this notice of a void answer :[1] "For in one suit, the proof cannot rest on both parties, nor can both obtain judgment, nor can two answers be offered at once." Here, the meaning is this : 'In giving a flat denial and a special exception in one answer, the actions of two different plaintiffs are opposed to each other.' It has been thus declared by Nârada :[2] "It has been recorded, that in the case of a total contradiction, the proof rests with the complainant; and in the case of a special exception, with his adversary." Therefore both parties in one cause [exhibiting proof] is contrary [to law.] Even so, both actions lie on the Defendant, when there is a jumbling of a special plea, with plea of former judgment; for it is said by Vyâsa: "In pleading a former judgment and special exception, the Defendant must exhibit the proof." And again by the same: "In plea of former decision, it must be satisfactorily established, by exhibiting [copy of] the decree so gained to the Chief Judge, and the rest likewise." Therefore, in pleading a former decision, it must be established, either by exhibition of the decree, or by those who saw the original decree, or the like. But in an answer setting up a special exception, the defence [must be supported] also by witnesses, documents, and other proof. Here also, [proof on both sides in one cause] is contrary [to law.] The same rules must be observed also in a mixture of three or four [pleas in one answer.]

Onus probandi. XV.

31. And in these matters, the properties of a void answer arise from conjunction : for if in due order, the properties of a [valid] answer are preserved ; and this order, must depend upon the pleasure of the Plaintiff, Defendant, and the Assessors. And even thus Hârita says: "When a denial and special plea are both contained in one answer together; also a confession with any other [answer,] then which [of them] is to be taken as an answer [to that plaint]? that which contains the most important matter, or that wherein there is something of use to the action, is to be considered as the proper answer, to prevent confusion : for otherwise." 'There will be confusion' is wanting [to complete the sense].

32. The meaning of it is this: 'In a claim for gold and clothes, when it is pleaded, that the gold was not received, and that the clothes were received and returned; first let them decide about the gold, and afterwards, the point relating to the clothes may be settled.' The same course is to be pursued, in a mixture of a denial with plea of former decision, and of the latter with a special plea. Likewise even in those disputes, where it is pleaded, 'the gold was received, but the clothes were not;' or, '[the

XVI.

1—Macnaghten, p. 415. On the subject of the "Onus probandi," see Bentham on Evidence, p 257. [Ch. 16th].

2—Macnaghten, p. 415.

clothes] 'were given back;' or [where it is said:] 'I gained a former action about the clothes;' the case must be tried only with respect to the clothes, not with reference to the gold. For though it is a matter of more value, yet there is no action, or proof, upon it. But in a dispute where the Plaintiff says: 'This is my cow which ran away at such a time; I saw it in his house just now:' and the Defendant answers: 'This is utterly false; even before the time set forth [in the plaint,] it was standing at my house,' it comprehends both a denial and special plea; there is no property of a void answer in this, which is an answer of denial, [at the same time] shewing cause or special exception. The action lies here with the Defendant alone; not at all with the Plaintiff, because of this text of Háríta:[1] "When an answer involves a denial, and a special plea, the special plea is to be first considered." Even so, if there be a conjunction of a denial with plea of former judgment, or of a special plea together with plea of former judgment, in a suit of only one count, it does not partake of a void answer. In both of these cases, the proof lies with the defendant only. This is enough to shew, that in no one case can proof on both sides exist by any means.

Exhibition of

33. Yájñavalkya lays down the order for exhibiting the proof, after the answer has been recorded in writing:[2] After this, let the Plaintiff immediately get them to write down the proof of the matter complained about: when that is satisfactory he will gain the cause, but when it is otherwise, it will be reversed." This again relates to an answer of denial, but in the other kinds of answer, the exhibition of proof lies with the defendant alone. Thus Háríta:[3] "For in an answer pleading a former decree or a special exception, the defendant shall exhibit the proofs; in answer of denial, the plaintiff; but issue cannot be had in an answer of assent."

Pleadings enumerated.

34. Yájñavalkya mentions, that there are four feet, or requisites of a decided suit: "A decision in causes is shewn to have four quarters." And these four quarters are explained in another smriti:[4] "It has four divisions; namely the declaratory, replicative, probatory, and adjudicative, and is termed quadruple." But this has reference to an answer distinct from one of assent; because in an answer of assent, there are only two members: even as Bṛhaspati says: "In an answer of denial, the cause must be completed in its four members; and likewise in a special plea; but in one confessing the claim, the suit may be considered as complete with two members."

1—Macnaghten, page 416.

2—Macnaghten, p. 449, where some little variation is found in the reading.

3—Macnaghten, p. 451.

4—Macnaghten, p. 416-17, where the whole text, of which this is only the latter hemistich, is recorded.

35. Yájñavalkya[1] "A person complained against, not having cleared himself, shall not retort, nor shall another charge a person already labouring under a charge, nor shall any thing foreign to the original complaint be introduced. But he may make a countercharge in cases of affrays, or criminal prosecutions."[2]

Retort prohibited.

Exception.

36. Nárada :[3] "That man, who forsaking his original claim, rests on other grounds, is known for a false claimant, by reason of the confusion of his proceedings." The meaning is, that the false claimant becomes [only] liable to punishment; he is not to be cast in his cause so laid. And this must be taken with reference to suits for money: Even as the same author says :[4] "A verbal error, is not fatal in all [any] civil actions; [for instance, in actions brought,] for seduction, for landed property, or for debt, the Plaintiff is to be punished, but it does not annul his claim." The second hemistich is added for the sake of clearing up the first.

XVIII.

Technical errors remediable.

37. Yájñavalkya :[5] "When witnesses are adduced on both sides, the witnesses of the first complainant [are to be examined]. If the first side be weak, or wanting in that point, those of the Defendant may be received. *The first complainant*, the Plaintiff in the suit. *The first side*, the plaint. *If it be weak;* when there is no proof required [of the plaintiff,] because of the Defendant's taking it on himself, by an answer shewing cause. The receipt of oral evidence, is put for the sake of denoting proof in other ways also.

of Evi-.

38. The same author says :[6] "A competent surety must be taken "from each party for the decision of the dispute." *The decision of the dispute*, the satisfaction of the judgment. Kátyáyana specifies who are not to be received in the matter of security: "Neither a master, nor an enemy; nor in like manner the master's foreman, nor one confined, nor in like manner, one sentenced to punishment, nor one of doubtful character at any time; neither an heir, nor a poor man, nor even one obliged to dwell elsewhere; nor one appointed on the king's

Sureties.

Inadmissible.

1—Macnaghten, p, 417.

2—See chapters 16th and 18th.

3—Macnaghten, p. 417, where it is translated 'must be nonsuited.' I have made the text literal, to agree with the comment following.

4—Macnaghten, page 417.

5—Macnaghten, p. 420, 451, p. v. Here the text is made to apply to a general rule between plaintiff and defendant: in the Mitákshará, [Sir F. M's. authority] it is laid down for a particular case, between two claimants for the same property and thus the Mayúkha and Mitákshará differ widely.

6—Macnaghten, p. 418. Strange's Elements, 1st, 307.

business; nor an ascetic; nor he who is unable to liquidate the claim of the individual, and a sum equal to it, as a fine to the king: nor one unknown, are to be taken [as sureties] in matters requiring security." *Confined,* bound in fetters, or the like. *One of doubtful character,* one addicted to particular vices. *An heir,* sons, grandsons, and others entitled to take a man's estate. A *poor man,* one indigent. Obliged to *dwell elsewhere,* one turned out of the country. Yájñavalkya: "But the being security, contracting debts, and giving evidence, between brothers, as well as between man and wife, and likewise a father and son, if they be unseparated, is not recorded."

XIX.

39. In default of security, Kátyáyana says:[1] "If a party be unable to furnish a competent surety, he is to be guarded; and at the close of each day, is to furnish wages for the payment of his guards." The same author adds: "A man of the twice born classes, who is deficient in security, shall be guarded by men accompanying him out of doors; but they shall confine in prison, Çúdras and the other [low castes] who cannot give security."

Confinement in default of surety.

40. Nárada[2] sets forth the qualities of a false plaintiff [hínavádi]: "That man, who, entirely giving up his first ground of action, again takes up another plea, is, by reason of his passing away from one cause, decidedly known to be a false claimant." Yájñavalkya shews how to distinguish the party who is in the wrong:[3] "One who is constantly shifting his position, who licks about his mouth, whose forehead sweats, and whose countenance continually changes colour; one whose mouth dries up, and who faulters in his speech, who contradicts himself often; one who does not look up, or return an answer; who contorts his lips; one who undergoes spontaneous changes, whether mental, verbal, corporeal, or actual: such person, whether making a claim or giving evidence, is esteemed false." *His mouth,* the region of the lips.

False Plaints.

XX.

SECTION II.

Of Proof in General (Pramáṇa.)

1. Yájñavalkya:[4] "Evidence is said to consist of documents, possession, and witnesses. In the absence of all these, a divine test is prescribed." Kátyáyana also:[5] "When one adduces human evidence, and the other appeals to a divine test, the king will, in this instance, proceed to examine the

Nature of Proof.

1—Macnaghten, p. 419. 2—Macnaghten p. 418,

3—Vide ante, para. 36. Macnaghten, 117. p. v.

4—Macnaghten p. 438. Strange's Elem. 1st, 309. 5—Macnaghten, p. 439.

human evidence, and will not have recourse to the divine test." "Even when human testimony is applicable to only one part of the case, that is to be received in preference; and recourse must not be had to persons willing to establish the whole case by supernatural means."

Proof by deeds.

Proof by ordeal is not declared, when living witnesses are present; and when there are deeds or documents in a cause, neither ordeal nor witnesses shall be [resorted to]. As for those rules which are set up by separate trades, [púga] joint companies [çreṇí] corporate bodies, [gaṇa] and the like, the proof of them must be written deeds; neither ordeal, nor witnesses."[1]

By witnesses. XXI.

2. [2] "In nonfulfilment of a gift, as well as in gift, and in cases where a decision is required between a master and his servant; in nonfulfilment of sale, and refusal to receive goods purchased; in gambling also, whether with inanimate or living objects, when disputes are brought up, proof by witnesses is declared requisite, not by ordeal nor by documents."

And by possession.

3. In disputes respecting the making of doorways and roads, and that about enjoyment of any thing, watercourses, and the like, possession is the strongest proof, not documents,[3] nor witnesses."

Ordeal, when lawful.

4. Bṛhaspati declares ordeal to be in some cases the strongest: "Makers of false jewels, pearls, or coins; they who steal deposited articles; murderers, and those who commit adultery with other men's wives, are always to be examined by [ordeal of] oath; in charges of deadly sin, if witnesses are present, and the defendant [vádí] *(a)* accepts the ordeal, the witnesses then shall not be examined. Vyása: "If he say, 'this writing was not made by me; it was forged by this man;' having laid down that writing, a decision on the case shall be made by ordeal."[4] "In the case of a capital offence committed in a desert, in an uninhabited place, at night, or in the interior of a dwelling; and in the case of a denial of a deposit, divine test must be resorted to." Bṛhaspati: "When doubts are produced in written or oral evidence; and where the circumstantial evidence is incomplete, ordeal is then to be made the means of clearing up the matter."

Matters of choice.

5. The same author states a liberty of choice in some cases, between ordeal and witnesses:[5] "In the investigation of a capital offence, or affray by deed or words, and in all cases of violence committed long ago, both witnesses,

1—See ante, section 1st, para. 10th; and post, Chapter 2nd, sec. 3rd, para. chap. 12th, para. 3rd.

2—See subsequent Chapters on these heads. 3—Ordeal, Mitákshará.

(*a*) Some mistake here: *vádí* is plaintiff: *prativádí* is defendant.—*Ed.*

4—Nárada, in the Mitákshará, Macnaghten, p. 439.

5—Macnaghten, p. 439. q. v. 'Assault and battery' does not exactly define the Hindú law-term, which includes 'abuse, &c.' under this head. See Chapter 16th, sections 1st and 2nd.

and divine test may be had recourse to." "Writings for debt or witnesseś; as well as the entry of any trifling circumstance, or the like and ordeal, are mentioned as admissible, with a view to the wellbeing of the subjects." *Entry of any trifling circumstance,* one point of proof. *In an affray, by words,* meaning personal abuse, as 'you have murdered a Bráhman,' or the like.

Explanation. XXII.

6. But what Kátyáyana says that: "In wordy affrays, and in disputes for land, they shall not take notice of ordeal," relates to trifling cases of abuse; the word *land* is merely used to signify fixed property [in general,] by putting a part for the whole. Even as Pitámaha says: "In disputes for fixed property, they must cause ordeal to be excluded;" therefore, if there be witnesses or other legal proof then ordeal is prohibited. Even so the same author says: "They shall cause the matter to be proved by these [three means,] by witnesses; by documentary evidence, and by possession."

Total absence of evidence.

7. Pitámaha: "Where deeds are not to be procured, nor proof by possession, nor witnesses; and there is no manifestation, [or descent, of the judgment] of the Gods, then the proof lies in the opinion of the king." Disputes, which maintain such a doubtful form, that they are not capable of being determined with certainty, the King shall decide, by his own opinion of them, for he is the lord of all. Thus the Vyavahára Mátrekâ is finished.

CHAPTER II.

Of the different modes of proof.

SECTION I.

Of Evidence by Writings (Lekhya).

Evidence by writing. XXIII.

1 On this subject Bṛihaspati says: Writings are declared to be of three kinds; those written by the king, made at a particular place, and likewise written by any person with his own hand; but their further subdivisions are very numerous." As for only two kinds being mentioned by Vasishṭha: "Writings are understood to be of two natures, those executed among the people, and those relating to the king's affairs," it is occasioned by his considering as one, without distinguishing them, those made at a particular place, and those under a person's own hand. *Among the people,* is a parallel expression to that of, 'among mankind' [in general.] According to the author of the Saṁgraha,[1] written evidence is declared to be of two kinds, those deeds made by the king,[2] and those current among mankind.

1—The Smṛti Saṁgraha. 2—See post, para. 6, 8.

2. Bṛihaspati: "Writings among mankind are of seven kinds; for partition, gift, purchase, pledge, public agreements, slaves, debts, and the like: the king's orders are of three kinds."[1] "That record of partition which brothers, [or other coheirs,] execute, after making a just division by mutual consent, is called the written memorial of the distribution." And when a man has given away land, the deed which he gets drawn out, 'for holding the land as long as the moon and sun shall last *(a)*, unreserved, and incapable of being seized by any one,' that is known as a writing of gift. "When any one, having bought a house, field, or the like, causes a deed to be drawn up, containing an exact statement of the price, that is called a writing of purchase." "When a man, having given in pledge either moveable or fixed property, causes a writing to be made out, stating in it the conditions, whether of preservation or enjoyment [by the mortgagee], it is called a writing of pledge." "If the people of a whole village, or of a district, mutually execute a writing, under their own signatures, among themselves, for the sake of some ordinance not contrary to the king's [laws], that is called a writing of agreement." "When a person, destitute of clothes and food, makes a writing in a forest to this effect, 'I will do your work,' that is called a writing of slavery." "When a person, taking up money at interest, makes out a deed himself; and causes the same to be done by the other party, it is termed a writing of loan, and by the wise, a deed of debt." From the words *the like*, we must understand, 'of purification, and the like.

Enumeration of them.

Viz.

Deeds, of Partition,

Purchase,

Agreement,

XXIV.

Slavery and Debt.

3. Kátyáyana declares what are these deeds of purification and the like: "When an accusation has been sustained, and penance for it performed, by a man, the deed certifying his purity, is known as a deed of purification, if attested by witnesses." "In all the higher [classes,] where an accusation is sustained, the writing which is passed when the dispute is finished, is known as a deed of peace." When a decision is given in boundary disputes, a deed of boundaries is drawn out." Prajápati mentions a deed of bail: "When the bailee carries the very thing bailed again to another for pledge, he shall cause a deed of pledge to be recorded in writing, and give with it the deed [he received] in the first instance."

Likewise of Purification,

Peace,

Boundaries,

Bail

and

4. Yájñavalkya also;[2] Having discharged the whole debt, he should tear up the writing, or cause another to be executed for acquittance."

Acquittance.

1—Colebrooke's Digest, 3rd, 408.

(a) See J. Grimm's *Deutsche Rechtsalterthümer*, 2te ausg. s. 37.—*Ed.*

2—Macnaghten, page 459.

5. Nárada thus lays down the difference between the two kinds of writings before mentioned, those made with a person's own hand and by that of another :[1] "Documentary evidence is declared to be of two sorts; [the first] in the handwriting of the party himself, which need not have subscribing witnesses (*a*); and [the second,] in that of another person, which ought to be attested: the validity of both depends on the usage of the country." Yájñavalkya :[2] "But every document which is in the handwriting of the party himself, is considered as sufficient evidence, even without witnesses, unless obtained by force or fraud." *Force*, duress. *Fraud*, desire [to cheat], or the like. The same author states a distinction among those done by another :[3] "Whatever contract has been agreed upon between parties by mutual consent, a writing shall be made of it, attested by witnesses, headed with the name of the obligor; and[4] the year, month, fortnight, day, name, tribe, family, scholastic title, the names of the parties' fathers, &c. must be specified." *Scholastic title*, as, 'one well qualified in a branch of the Rg Veda,' or the like; taking his name from a particular qualification, as, a Rg Vedí, a student of the Rg Veda. The same author says :[5] "When the transaction is completed, the borrower should sign his name with his own hand; adding, 'what is above written has the assent of me, son of such a one;' and the witnesses, being equal, shall also write, putting the names of their father first, 'I, such an one, am witness to this writing.' And the writer shall then write at the end, [of the deed itself] 'this has been written by me, the son of such an one, having been sought for the purpose by both parties.'" Equal, in number and qualifications. In some copies, for equal, they read unequal, by inserting the letter *a* [the negative sign]. Nárada :[6] "That debtor who is ignorant of the art of writing, shall cause to be written his assent; or if the witness be so, by means of another witness, in presence of all the witnesses."

Execution of Writings.

XXV.

6. Yájñavalkya and Bṛhaspati illustrate the three kinds of royal Edicts, before alluded to :[7] "Let a king, having given land or assigned fixed property, cause his gift to be written, for the information of good princes who will

Royal deeds.

XXVI.

1—Digest, 1st. 21. Macnaghten, p. 443-454, q. v. Of the different readings here referred to, I have adopted that of the Digest as more intelligible, [the other seeming to infer four kinds] and agreeable to our author.

(*a*) So by Scottish law holograph deeds are held equivalent to an atteesed deed in affording proof at once of authenticity and of deliberate engagement. Bell, Principles of the Law of Scotland 3d ed. 320. As to holographs see 2 Benth. Jud. Ev 459. 460-461 Morton v. Copeland 16 C. B. per Maule J.—*Ed.*

2—Digest, Ist, 23. 3—Digest, 1st, 24.

4 and 5— Digest, 1st, 24-25. Macnaghten, 444-445.

en, page 444. Digest, 1st, p. 26, where this text is ascribed to

7—Digest, 2nd, 162, q. v.

succeed him, either on prepared silk, or on a plate of
Viz. of Gift. copper, sealed above with his own signet[1] *(a)*. "Having described his ancestors and himself, and stating the quantity of the gift, with the measure of the acquisition, and the divisions, and set his own hand to it, and specified the time, let him render his donation firm." *Fixed property*, a corody in mines or the like, given by the king or others, having the probable gains fixed. That which is received, is an *acquisition*, whether land or any other thing. *Its measure*, stating it to be so much. That which is given, is a *gift*, whether a house or any other thing. Its *divisions*, are the boundaries. *Stating*, reciting. Moreover: "If the king, pleased with the service or bravery of any one, bestow on him a district or other [portion of land,] by a written deed, that is a writing of favour." "When
Favour and Decrees. the king, after going through the plaint, answer, proofs, and decision, in a cause, issues a written [decree] to the gaining party, that is called a writing of victory."[2]

7. Vyása thus mentions the king's deputy: "A Secretary specially appointed by the king himself, shall fully write
Their execution. down the King's grants or orders, either for peace or war, on copper-plates, or else on strong cloth." And here the same author mentions what is to be written by the king, as his own signature of acknowledgement: "He shall himself write with his own hand, the boundaries and measurement [of the disputed land, adding] 'done before me, the son of such an one, being king of such a
XXVII. place.'" *Boundaries and measurement*; their acceptation will be understood from the former texts.

8. But Vasishṭha mentions four kinds of royal writings: "Grants are to be considered as the first, and next decrees; these, with his orders, and respectful correspondence,
Royal Orders. are the four kinds of royal writings." That writing, whereby he communicates any business to the heads of districts, to his servants, and to the guardian of the kingdom, is called a letter of orders." "That whereby he makes known any busi-
And private correspondence. ness to his family priest, his domestic chaplain, or his spiritual teacher, all persons to be respected and worshipped, is termed a letter of respectful address." *Grants*, and *decrees*, are already mentioned.

9. Yájñavalkya:[3] "An instrument being in another country, or badly written, or destroyed, or effaced, or stolen, or
Renewal and proof of Writings. torn, or burned, or divided, he shall cause another to be executed." Nárada:[4] "In the case of an instrument being deposited in another country, or destroyed, or

1—For examples of this, see Asiatic Researches, vol. 9th, page 108—406, &c.

(*a*) Compare the rule of the English common-law that no freehold may be derived from the Crown but by matter of record. Doct. and Stud. 6. 1. d. 8.—*Ed.*

2—A text similar to this will be found, attributed to Vasishṭha, in Macnaghten, p. 457.

3—Macnaghten, page 457. Digest, 1st, 395. 4—Macnaghten, p. 457.

badly written, or stolen; should it be in existence, time must be allowed; should it not be in existence, ocular evidence must be resorted to." *Evidence*, witnesses; in their absence, ordeal; for it is said by Kátyáyana: "In the absence of writings and witnesses, they may exhibit [proof by] ordeal in judicial matters." Yájñavalkya:[1] The correctness or validity of a disputed or doubtful writing, may be established by [comparing it with] something written [by the Defendant] with his own hand *(a)* or the like [test]; by its fitness, the possibility of receipt, the existing evidence; marks; established connection, or circumstances; title, and such reasonable marks." *Fitness*, the [debtor's] want of money. *Possibility of receipt*, residence of both parties in one place. *Marks*, impression of a seal, and the like. *Evidence*, by witnesses, or other proof. *Circumstances*, amounting to connexion, as, the possible means of receipt [of the matter in dispute.] *Title*, some possible mode of acquisition. *Reasons*, inferences. Prajápati: "A decision is to be made with the greatest care, when royal orders of a king are exhibited, by producing the impression of the seal set with the king's own hand, and the hand-writing of his Secretary."

XXVIII.

10. Bṛihaspati states what are bad deeds: "A writing made by persons dying, inimical, in fear, or in pain; by women; by intoxicated or profligate persons; by those diseased; or, [obtained] at night, or by fraud, or violence, does not stand good." "When only one witness, [and he] accused of crime, or a vile person, has attested a deed, it is called a false deed; and where the writer is a similar person, it is considered the same."

Invalid Deeds.

1—A text very similar to this is found in Macnaghten, p. 458, yet there are so many points of difference, that I cannot safely adopt it, in opposition to the commentary of the Mayúkha.

(*a*) As regards the *praesumptio ex comparatione scriptorum*, the Hindú law contrasts advantageously with the English common-law, which totally excluded the proof of handwriting by comparison See now Stat. 17 and 18, Vict. c. 125, ss. 27 and 103. The Indian Act II of 1855, sec. 47, provides that "on an enquiry whether a signature, writing or seal is genuine, any undisputed signature, writing or seal of the party whose signature, writing or seal is under dispute, may be compared with the disputed one, though such signature, writing or seal be on an instrument which is not evidence in the cause."

The proof by comparison of writings was admitted by the Civil law with great caution and under restrictions which show its distrust of this species of testimony. "Literarum examinatione penitus non repulsâ, sed solâ non sufficiente, augmento autem testium confirmandâ" (Novell. 72, c. 2). It was to be admitted only in cases of necessity. "Sed necesse est omnino collationem literarum suppletiones eorum qui subscripserint, assumere: tunc competens est properare quidem ad comparationes (neque enim eas modis omnibus interdicimus) per omnem autem subtilitatem procedere, et omnino, (si putaverit cis judex oportere credi), etiam jusjurandum injicere proferenti (Novell. 73, c. 7) Burge, *Commentaries on Colonial and Foreign Laws*, II, 701.—*Ed.*

SECTION II.

On Evidence by Possession.—(Bhukti.)

Evidence by possession.

1. Nárada:[1] "Possession, with a clear title [ágama] affords evidence; but possession constitutes no evidence, if unaccompanied by a clear title." Vyása mentions [possession as] distinguished by various qualities, similar to that supported by title:[2] Possession is fivefold; titled, long, continuous, uninterrupted, and known to the adverse party." Nárada declares the imperfection of [right in] the thing contested, when supported by enjoyment only:[3] "He who simply pleads possession, but no title, in consequence of proving such false possession, is to be considered a thief."

When it constitutes title, and how.

XXIX.

2. And this is to be taken within a period fit for recollection of legal title: But where it is not fit, even enjoyment alone is declared to be sufficiently valid, by the same author:[4] "In cases falling within the memory of man [smárttakála] possession with a title is admitted as evidence. In cases extending beyond the memory of man, the hereditary succession of three ancestors, is admitted as evidence, even though the title be not produced" *(a)*. *Though the title be not produced*; the absence of title arising from the non-attainment of that fit period; because of the impossibility of determining it afterwards. In cases beyond the age of man also, the same author says, on the applying to recollection in the absence of title[5] "He who enjoys without right, even for many hundred years, the ruler of the earth should inflict on that sinner the punishment of a thief."

3. But whereas he again says:[6] "When possession has been held, even by injustice, by three former men, including the father [of the

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1—Macnaghten, p. 430. For 'title,' see Strange's Elements, 1st, 31.

2—Macnaghten, p. 430. 3—Macnaghten, p. 430.

4—Macnaghten, p. 431. It is attributed in the Mitákshará to Kátyáyana.

5—Macnaghten, p 424-432. 6—Reports 1st. 367.

(a) See a letter of Sir W. Jones cited in Röer and Montriou's *Hindú Law and Judicature* (Calcutta 1859) p. 15. If the owner of real property, whether land or other, allow another to hold it for three generations under any deed without claiming it, such property becomes lost to him, and ownership accrues to the person in possession. But as three generations may lapse in two or three years, it is provided by the Çástra that the actual possessor's ownership shall ensue if the property has been held for any time after the *smárttakála* or extreme age [leg. memory] of man. In the Mitákshará this *smárttakála* is fixed at 100 years; however Kátyáyana and Vyása state 60 years as the time when three generations may be said to have passed over and after which the claim of the original proprietor is null under any plea, 1 Morley Dig. 423 citing *Suyud Ghoolam Ruza* v. *Aja Bhace and others*, 1 Borr. 367. The right of a Hindú widow [in Bengal] is not necessarily forfeited by her omitting to apply for separate possession of her husband's undivided share for more than twelve years after his death 1 Morley Dig. 423 citing *Mt. Dhunmunnee* v. *Sonatun Sahoo*, 3 S. D. A. Rep. 30. As to the Bengal Rule of limitation, see Beng. Regs. III of 1793 and II of 1805. As to the Madras Rule, see Mad. Reg. II of 1802. As to the Bombay Rule see Bom. Regs. I of 1800, and V of 1827.—

present occupant], that is not capable of being taken away from him, when it has gone in order through three lives:" This means, 'If property enjoyed even without legal title, as well as after unjust acquisition, by three former persons including his father, is not capable of being taken away, how much less so, when it is impossible to fix the absence of legal title [in the present occupant]' Since, also, there is a text of Hárita: "When possession has been held without very good title, but by three former men, that cannot be taken away when it has gone in order through three lives," this must be considered as of possession without a good title proper for attainment of property, and not without the form of a title altogether.

Proof of it; of whom required.

4. What is further said in a text of Yájñavalkya:[1] "He by whom a title has been obtained, must produce it when impugned, but his son and grandson need not; for them, possession is of weight," only means, that the maker of the title alone is punishable in default of proving it, and not his sons or other heirs: but the fulfilment of their intent does not consequently [follow]. Even as Hárita says:[2] "He by whom a title has been acquired, is subject to penalty in case of not producing it; but not his son, or his grandson; though the possession of these two also, is forfeited." Yájñavalkya:[3] "When a person dies during his defence of a cause, his heirs shall support it; enjoyment held without legal title is there of no use." *Heirs*, those who take shares in his estate, whether sons or other persons. *It*, the title in dispute.

XXX.

Opponent's argument.

5. On the other hand: it may be said that the assertion of possession during a long space of time being requisite as proof, is contrary to law; because the prosecutor's defeat also occurs, from enjoyment by another during a very short space of time; from what the same author says:[4] "Loss accrues to him, who for twenty years observes his land enjoyed by another without interfering; and in the case of movable property, for ten years."

Refuted.

6. To this it is answered, that it only means there shall be a loss of the fruits, or profits produced from the land, or other thing litigated, for so long as the owner has observed [its occupation] by another, uncontested by him; but not loss of the land, or other thing itself also, because such interpretation would be contrary to the [former] text,[5] "He who enjoys without right," &c.

Possession invalid.

7. Kátyáyana:[6] "This law has been clearly settled, that no weight of title attaches to the possession of him who has violently carried off cattle, women, men, or other [animals]; neither by his son after him." Nárada: "A pledge, boundaries, a minor's estate; deposits, both specified and unknown; women; the property of the king, and that

1—Macnaghten, p. 432. 2—3—Macnaghten, p. 433.

4—Reports, vol. 2nd. 373—Macnaghten, p. 424. 5—Para. 2nd.

6—A somewhat similar text is found in Macnaghten, p. 424.

of Çrotriyas, are not lost to the owner's by another's possession of them." Manu:[1] "A milch-cow, a camel, a riding
XXXI. horse; [a bull, or other beast] which has been sent to be tamed for labour; and other things used with friendly assent, are not lost, [by length of time], to the owner." *Sent to be tamed,* what is given in charge to another for the sake of taming.

SECTION III.

On evidence by witnesses (Sákshí).

Evidence by Witnesses

1. In the Todaránanda, Nárada says: "But in doubtful matters, when two men are disputing, strict attention must be paid to their witnesses, as to what was seen, heard, or understood."

Their nature.

2. Bṛihaspati states the distinctions of them: "Witnesses are declared to be of twelve sorts, written, caused to be written, concealed, or recollected;[2] a member of the family, a messenger; a spontaneous witness[3] and one in answer; another man employed in the business; the king; his superintendant [adhyaksha;] and likewise the village." *Written,* entered by the plaintiff in a deed. *Caused to be written,* one entered [in the same] by the defendant at the plaintiff's request. *Concealed,* one made to hear behind a partition, or the like. *Recollected,* reminded from time to time of the business [to be proved]. *Spontaneous,* a witness coming to give evidence of his own accord. *One in answer,* speaking after other witnesses, upon hearing or being told [their evidence]. *Superintendent,* the chief judge: and this is meant to include the assessors and other [members of the Court], by reason of this text of Kátyáyana: "The secretary, chief judge, and assesXXXII. sors in succession, [are witnesses when the king presides in a cause."][4]

And number.

3. The same author[5] says: "There shall be nine, seven, or five, [witnesses]; even four or three; or two may be taken, if they are both Çrotriyas*(a)*; a single witness shall not be examined at any time." *Written* witnesses shall be two, as well as *concealed* ones; three, four or five, shall be the number of those *caused to be written, spontaneous, reminded,* men of the family, and likewise, those called *in answer;* a messenger, and accountant, and

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1—Chap. 8th, v. 146.

2—Bentham's Treatise on Evidence, page 26—57.

3—Ditto, ditto, page 89.—The term in Sanskrit signifies 'self-willed'

4—The last hemistich is omitted in the text, and supplied here from Macnaghten, page 442.

5—Probably Bṛihaspati, elucidating his own preceding text.

(*a*) Bráhmans well read in the Vedas.—*Ed.*

likewise one employed in the business, may give evidence as a single witness, and the king, as well as the superintendant [and other officers of the Court."]

4. Yájñavalkya declares the admissibility even of the *written* witness and the rest, as a single witness, with mutual consent of both parties:[1] " By the consent of both parties, even one person, of virtuous knowledge, may be a witness." Vyásа: " A witness, whose actions are pure, and who knows his duty [towards men], whose word is known, is admissible, even if the only witness, when it is necessary, in criminal cases." *Whose word is known,* often seen to be a speaker of truth. A single witness, if unconnected with the party, may be taken in cases of deposit and the like; for Kátyáyana says: " In a very secret deposit, even one single witness is declared admissible; as well as one witness, sent by the plaintiff in a case of things borrowed for use," *Borrowed,* ornaments or other jewellery, as ear-ornaments or the like, obtained for the sake of a wedding, or the like. The same author says one witness is also admissible in disputes about saleable articles: " They shall cause the article to be identified by the very man who finished it; that single witness is in such a dispute declared good evidence."(*a*)

One witness when legal.

5. Vyásа details their qualifications: " Persons religiously brought up, fathers of sons, purely descended, of a good family, veracious speakers; constantly performing their duties towards Gods and men, who have forsaken hate and envy; Çrotriyas, and those independent; learned men; persons stationary; and young men, may all be received as witnesses in case of debt or the like, by the wise."

Requisite qualifications.

XXXIII.

6. Nárada: " Among companies of artizans, men who are artizans shall be witnesses; and men of one tribe among those of the same; foreigners [outcasts] among those living outside, and women among women." Kátyáyana tells us who are men of one tribe [varga]: " Bhṛgu calls them men of one tribe, who are wearers of [false] tokens,[2] members of joint companies and of separate trades;[3] and other merchants; also communities [Samúhastha] and other such men. The Nayakas of the several communities, whether of slaves, bards, wrestlers, or the drivers of elephants, horses, and carriages, are termed in law, Vargi." Yájñavalkya makes this mention of those of another caste:[4]

1—Macnaghten, page 447-449.

(*a*) By Act II of 1855 sec. 28, except in cases of treason, the direct evidence of *one* witness, who is entitled to full credit, shall be sufficient for proof of any fact, but this provision shall not affect any rule or practice of any Court that requires corroborative evidence in support of the testimony of an accomplice or of a single witness in the case of perjury.–

2—Liṅgí. The context would induce us to apply it to the Liṅgáít Vánís of the Dakhan, who do actually wear a liṅga upon their arms as a distinctive mark.

3—Çreni and Púgí, for which see chap. 1st sec. 1st para. 10; 2d para. 1st—and chap 12th para. 3.

4—Macnaghten, p. 442, Dig. 1st

"There should [in general] be three witnesses; persons who take delight in acts ordained in the Veda and in sacred law-books; and properly, they should be of the same sex and class with the party for whom they give evidence: but, if that cannot be, those of all classes may be examined."

Inadmissible witnesses.

7. The same author tells us who are excluded:[1] "A woman, a minor, an old man, a gamester, an intoxicated person, a madman, an infamous person, a juggler, an infidel, a forger, one deformed, one degraded from caste, a friend, one interested in the subject-matter,(*b*) a partner, an enemy, a robber, a public offender, one convicted, an out-caste, and others, are incompetent witnesses." An *out-caste*, turned out by his own family. From the phrase, slaves *and others*, and the like must be understood. Bṛihaspati; "The evidence of a mother's father, and of a father's brother; of a wife's brother, and her maternal uncle; of a brother and his son; a friend, and a daughter's husband, is inadmissible in all disputes." Nárada:[2] "He, who not having been pointed out, comes and offers his evidence, is technically called a self-spoken man; he is not proper to be examined in evidence." Kátyáyana.[3] "Of witnesses recorded, and summoned by a litigant party, should one utter a contradiction, all will be rendered incompetent by that contradiction."(*c*)

XXXIV.

Exceptions.

8. Of these also, Nárada declares in some cases the admissibility: "Slaves, degraded persons, and the rest, who are declared not to be [legal] witnesses, may also be admitted to give evidence, with due consideration of the weight of the matter in dispute." In the absence, says Manu:[4] "On failure [of witnesses duly qualified] evidence may [in such cases] be given by a woman, by a child, or by an aged man; by a pupil, by a kinsman, by a slave, or by a hired servant." Yájñavalkya:[5] "All persons may be witnesses in cases of adultery, theft, affray, and criminal business." Here, the separate mention of adultery, and the rest, in

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1—Macnaghten, p. 446; Reports 1st 105-6-7.

(*b*) By Act 18 of 1855 sec. 11, no person shall, by reason of any interest in the result of any suit or of any interest connected therewith or by reason of relationship to any of the parties thereto, be incompetent to give evidence in such suit.—*Ed.*

2—Macnaghten, p. 446.

3—Macnaghten, p. 446.

(*c*) Act II of 1855 sec. 14 enacts that the following persons only shall be incompetent to testify. 1, Children under seven years of age, who appear incapable of receiving just impressions of the facts respecting which they are examined, or of relating them truly. 2, Persons of unsound mind, who, at the time of their examination, appear incapable of receiving just impressions of the facts respecting which they are examined, or of relating them truly; and no person who is known to be of unsound mind shall be liable to be summoned as a witness, without the consent previously obtained of the Court or person before whom his attendance is required. By sec. 15 any person who, by reason of immature age or want of religious belief, or who by reason of defect of religious belief, ought not, in the opinion of such Court or person, to be admitted to give evidence on oath or solemn affirmation, shall be admitted to give evidence on a simple affirmation declaring that he will speak the truth, the whole truth, and nothing but the truth.—*Ed.*

4—Chap. 8th v. 70. Reports 1st 105.

5—Macnaghten, p. 447.

treating of actions of a criminal nature, has reference to the act of adultery or other [offence] in a secret way. Uçanas: "A slave, a blind man, one deaf, a woman, a minor, an old man, and the like, these persons also, if unconnected with the party, are admitted as witnesses, in criminal cases." *Unconnected*, not partial to either side.

Objections to receipt of evidence.

9. Bṛihaspati: "Witnesses acquainted with the matter, if there be any objections to them, they shall declare faulty; if the opponent charge as faulty [witnesses] who have no fault, he is worthy of a fine equal to it." The *opponent* [vádí] here means the defendant. *Equal to it*, an amount equal to what forms the ground of suit. Vyása: "Objections to witnesses are to be recited in court by the defendant; and they shall cause to be read out [to the witnesses] all the objections, when taken down in writing, and they shall give a reply to them." The meaning is, 'having clearly set before the witnesses the disqualifications alleged, as taken down in writing [from the Defendant], they shall be made by the Court to state their explanations on the subject.' The same author says: "But on their admission [of the disqualifications], their evidence is never at any time fit to be received. But [if the case is] otherwise, the objections must be substantiated, with evidence, by the Defendant."[1] "A person failing to establish an exception openly made against witnesses, should be punished; but if proved, the witnesses are to be dismissed, and deprived of the privilege of giving evidence." "Moreover, they shall undergo humiliation in the mode consonant to the Çástra: provided the plaintiff's sole reliance has been placed on the veracity of the witnesses." *If otherwise*, in case of their not confessing. *Substantiated*, made to acknowledge it. *With evidence*, by proof. The meaning is, that the charge shall be substantiated as clearly as possible.

XXXV.

and proceedings thereon.

Further explanations.

10. However, this text: "Objections to witnesses, apparent to the members of the court, or those universally admitted by the world to be true, are to be taken for granted, and not to be considered as requiring proof with a view to obviate that particular disqualification," has reference to witnesses publicly known to be in the confidence of the party.[2] In case of these disqualifications being unknown to the defendant, the same author says: "Those objections in proof [which are known] are to be made manifest by assessors in the time [of trial], be declared by the defendant; but concealed faults are to be pointing them out from the Çástra."

XXXVI.

Time for stating them.

11. This is the meaning, 'That concealed [objections] are to be declared, by quoting the Çástra upon them, at [any], time before the witnesses speak.' But they are not to be mentioned afterwards, for thus says Bṛihaspati: For any legal objections to written deeds, as well as

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1—Macnaghten, p. 448.

2—Bentham on Evidence, page 46, applies here, in as far as the Members of the Court are not bound to shut their eyes to their own knowledge.

to witnesses, which may exist, are to be declared in the time of trial; if mentioned afterwards, it shall not vitiate them as proof." *Mentioned*, proper to be spoken; that is, 'proper to be stated in the commencement, according to the rule of grammar, "The affix [kta] implies an act begun and not past[1] and likewise an agent." Here this affix denotes the agent. Here, their punishment is stated by Kátyáyana: "He who, when the matter has been spoken, shall charge, as disqualified, witnesses before unsullied, and shall not state any cause for it, shall receive the lowest amercement." In case of the inability of the witnesses to explain away the objections urged against them, the plaintiff must do it: thus says Bṛihaspati: "The action of him whose documents or witnesses in a cause are alleged to be faulty, shall not be favorably adjudged, so long as he fails to clear them from the charge." Then, the documents, &c.

Subornation of perjury.

12. Kátyáyana declares the punishment for suborning false witnesses: "He, by whom false witnesses have been set up, through wicked desire of gaining any object, shall have the whole of his property confiscated, and then have his object made null." *Object made null*, go without the object of his suit.

False witnesses.

13. Nárada declares the means of discovering false witnesses: "He who, by reason of his wicked state, caused by his own crimes, appears as if irresolute, goes from place to place, or runs after every person; who suddenly coughs much, and likewise every now and then draws his breath; who scratches, as if writing, with his feet; and who shakes his hand and clothes; whose face changes colour, and whose forehead sweats; whose lips become dry, who looks above and about him, and who speaks much, in a hurried manner, without restraint, unquestioned, such an one is to be known for a false witness: they shall punish one so sinning severely."

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of

14. Kátyáyana and Manu[2] state the mode of examining witnesses: "In the forenoon, let the Judge, being purified, severally call on the twice-born, being purified also, to declare the truth in the presence of [some image, a symbol of] the divinity, and of Bráhmans, while the witnesses turn their faces either to the North or to the East." Manu:[3] "The witnesses being assembled in the middle of the Court-room, in the presence of the plaintiff and the defendant, let the Judge examine them, after having addressed them [all together,] in the following manner: 'What ye know to have been transacted in the matter before us, between the parties reciprocally, declare at large, and with truth; for your evidence in this cause is required.'"

Production of the disputed article.

15. In disputes about kine, horses, and the like, the same author requires the production of the thing in dispute: "In the presence of the plaintiff and defendant, and in company with the thing to be proved, they shall cause them to state their evidence openly; not at any time

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1—Cole. Mit. 306. note. 2—Chap. 8th v. 87. Macnaghten, p. 447.

3—Chap. 8th v. 79-80. Macnaghten, 447. Strange, 1st 310.

without having it before their eyes. Evidence may be given upon the disputed article alone, without either attending, in some cases; this is the law in causes respecting quadrupeds, and likewise in those for bipeds, and fixed property." "In disputes about articles of weight, number, or measure,[1] they may also in its absence, cause the witnesses to state their evidence. In all matters capable of proof, evidence is requisite, but not otherwise." *Without either, in some cases;* that is, without both the plaintiff and defendant, in presence of the disputed article. *In sŏme cases,* meaning, in cases of quadrupeds and the rest. *Articles of weight,,* gold, or the like, proper to be weighed. *Of number,* coin or the like, fit to be counted. *Of measure,* things proper to be measured, as rice, wheat, and the like. *In absence,* in default of the production of the thing to be proved. *In matters capable of proof,* in disputes at law.

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16. In cases involving murder, the same author says, the depositions of witnesses are to be taken in presence of Siva: "In charges of killing living creatures, they shall deliver their evidence in presence of Çiva; in default of the marks, they shall cause them to deliver it; not otherwise." *It,* the deposition of the witnesses, to be given in default of marks of the murder. *Otherwise,* in existence of marks of the murder. The same author says: "Procrastination must not be used by the king in the examination of witnesses; it becomes a great fault, by reason of the time [lost], and bears the quality of denial of justice." Nárada: "Having called the witnesses, and bound them down firmly by an oath, he shall examine them separately, all of them well versed in the established rules of life, and acquainted with the matter in dispute." Vasishṭha: "That act, which was seen by all of them together, is to be told by them even in the same manner [together]; but that which was [seen] by them separate, shall be related separately by each.

Further rules of examination of witnesses.

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But where the acts known by the witnesses, were done at different times, each shall then be made to depose [separately]; this rule is declared."

17. Manu:[2] "Let the Judge cause a Bráhman to swear by his veracity; a Kshatriya, by his horse, or elephant, and his weapons; a Vaiçya, by his kine, grain and gold; a mechanic, or servile man, [Çúdra] by [imprecating on his own head, if he speaks falsely,] all possible crimes." "Bráhmans who tend herds of cattle, who trade, who practise mechanical arts, who

Tendering of Oaths.

1—The gloss enumerating only articles of quantity, it might be doubtful, did common sense allow such a supposition, whether articles measured by length were not excluded, but the latitude always claimed for that frequently occurring phrase, 'the like,' would include measures of length as well as quantity. *A'di,* et cætera, the like, the rest. The same is not unknown to the English law. Burn's Justice, Preface to 1st edition. "Also, upon another account, he hath sometimes made use of more words than otherwise he would have done, namely, to avoid the frequent repetition of the term, &c. which is a *vague expression* and apt to create uneasiness in the reader's mind, for that he cannot be satisfied from thence how much or how little is intended to be understood."

2—Chap. 8th, v 113, 102. see post, Chap. 3, para. 3.

profess dancing and singing, who are hired servants, or usurers, let the Judge exhort and examine as if they were Çúdras." "They who are fallen from their proper sphere of life; they who live by the bodies of others; they who long for the privileges of twice-born men, are to be examined as if they were Çúdras." The meaning is, that he should exhort them thus: 'By speaking contrary [to truth], your honourable character will be lost,' or the like.

Test of evidence.

18. The test for depositions of witnesses is declared: "The king shall declare the matter in dispute clearly proved, if the evidence be nothing wanting as to the place, [or country], the time, age, thing in dispute itself, the name, caste, [family or kind, its weight [or measure]." Yájñavalkya states this [rule for] decision on the counter-statements of witnesses:[1] "If the evidence be discordant, the testimony of the greater number shall prevail; if the witnesses be equal in number, the testimony of the virtuous; if virtuous men depose two inconsistent facts, the testimony of those who are most eminent by their honesty."

Punishment for refusing to give evidence.

19. The same author declares the punishment for not deposing after having agreed to give evidence: "If a man does not give his evidence, he shall be made by the king to pay the whole debt, with a tenth imposed besides, before the lapse of forty-six days." *The whole*, including interest. *A tenth*, together with a tenth share. This tenth share is to be taken [from the witness] by the king; and the debt, with its interest, is to be taken [from the same] by the creditor. This is on the authority of the Mitákshará. The punishment for refusal to give evidence, by a witness knowing [any thing of the matter] is thus stated by the same author:[2] "He who, having been called on for his testimony, being influenced by his passions, conceals it from others, should be made to pay eight fold, and if a Bráhman, should suffer expulsion." *Be made to pay*, eight times as much as the fine laid down for a defeat; if he be a Bráhman, and unable to pay this fine, he is to be banished. Kshatriyas and the other [lower castes] are to be made to work at their own proper profession, according to the Mitákshará.

Further test.

20. Manu:[3] "The witness who has given evidence, and to whom within seven days after, [a misfortune] happens, [from] disease, fire, or the death of a kinsman, shall be condemned to pay the debt, and a fine." Yájnavalkya: "Even when evidence has been delivered by witnesses, if other more excellent witnesses, or double the number of the first, depose contrary to them, the first witnesses shall be declared false."

Limit to receipt of evidence.

21. Nárada: "But after the cause has been decided, all proof, whether by documents or witnesses, shall be useless, provided it were not made known before."

1—Cole. Digest, 1st, 233, note. Macnaghten, p. 449.

2—Macnaghten, p. 452. 3—Chap. 8th, v. 108.

22. Yájñavalkya declares a command for witnesses giving untrue statements in some cases, and the penance for so doing :[1] "Where men of the four great classes would be liable to suffer capital punishment, there indeed the witness may speak untruths: A Sárasvata oblation must be presented by regenerate men, for the sake of purification from the offence." Vishṇu declares the penance for Çúdras: "And a Çúdra shall give one day's fodder for ten kine." *One day's*, that is, what will be fully sufficient for their food during one whole day. Thus far of witnesses.

Perjury when lawful.

CHAPTER III.

On Ordeal, (Divya).

1. It has been thought useless and unnecessary to translate the Chapter on Ordeals, of which a sufficiently copious account is given in Sir F. Macnaghten's work on Hindú Law, page 460 et seq., to which, as well as to a very interesting paper in the first volume of the Asiatic Researches, page 389, on the same subject, the reader is referred. But as one mode of Ordeal is by oath, the section relating to it is here added, for the satisfaction of those who consider an oath necessary duly to appreciate testimony; though it will be observed, this oath of Ordeal evidently refers to the litigating parties, and not to witnesses.

2. Nine modes of Ordeal having been discussed in order, [as enumerated in the following text of Bṛihaspati :[1] "Ordeal by the Scales, by Fire, and by Water, [are the three first]; that by Poison [the fourth], and by consecrated Water, [Kosha] is the fifth; that by Rice is stated as the sixth, that by Burning Oil the seventh, that by Iron is named as the eighth, and that by Lot is recorded as the ninth," * * * * * * * * * * * * * * * * *. we come to

Nine sorts of it.

1—Macnaghten, p. 454 q. v.

2—Ellis's Lectures, part the third. "Oaths and Ordeals; the several kinds of expurgatory ordeals [namely, according to Yájñavalkya and others, agni-divyam, by fire; Jala-divyam, by water; Visha-divyam, by poison; Kosha-divyam, by holy water; and, according to Nárada and others, Tandula-divyam, by chewing dry rice; Tapta másha-divyam, by taking gold from clarified butter while hot; Phála-divyam, by the hot ploughshare; Dharmaja-divyam, by taking one of two images, representing justice and injustice, from a covered pot]; occasions on which the ordeals may be lawfully performed; the penalty incurred by the party demanding the ordeal, in case his adversary succeeds in performing it; the seasons of the year in which, and the persons, considered with respect to caste, age, sex, &c. by whom, the several ordeals may be legally performed; nature of the ordeals to be performed in suits for property, determined by the value of the thing in dispute; places where the ordeals can be legally performed; the punishment to be inflicted for failure in an ordeal; ceremonies common to all ordeals, as upavásanam, fasting, &c.; particulars to be observed in the performance of the several ordeals; and first, in the ordeal of the balance: materials of which the scales are to be made; mode in which this ordeal is to be performed; the same with respect to the ordeal by fire, water, poison, holy water, rice, gold, the plough-share, and images; different kinds of *imprecatory oaths, and occasions on which they are lawful.*"

Oaths by oath. LXXXI. [Çapathás,] Manu:[1] "Let the Judge cause a Bráhman to swear by his veracity: a Kshatriya, by his horse, or elephant, and his weapons; a Vaiçya, by his kine, grain, and gold; a mechanic, or servile man, [Çúdra] by [imprecating on his own head, if he speak falsely,] all possible crimes." And Bṛihaspati says, "A man's honour, vehicles, weapons, kine, seed, and gold; [imprecation] by the feet of the Gods and of Bráhmans, and by the heads of his children or wife; all these oaths are declared at all times attainable in small disputes. In criminal accusations, ordeals are declared purificatory." *(a)*.

In what cases permitted.

4. Yájñavalkya: "He, upon whom no frightful calamity happens, whether by the act of God or the King, within the term of fourteen days, shall be held pure; there is no doubt." *Frightful*, great. One of small moment, according to the Mitákshará, [does not affect him], because of the non-inviolability of mortal bodies. Kátyáyana also: "He to whom a frightful calamity does not happen, whether by the act of God or the King, within fourteen days, is to be known as one pure by his oath." *Calamity*, accident.

The result how determined.

LXXXII. *Frightful*, causing great anguish. According to Váchaspati Misra and Smártta Bhattáchárya, a small accident does not affect him, because it is the lot of humanity. Again Kátyáyana says: "Now in case of contradiction [of the oath] by ten Gods, within twice seven days, the debtor shall be made, by every possible means, to pay the money sued for, and a fine as well." "When to him alone, and not to all, there happens disease, fire, or the death of a near relation, he shall be made to pay the debt, and a fine." "Fever, dysentery, boils, great pains in the deepseated bones, diseases of the eyes, or of the throat, or madness, and pains in the head, with loss of use of the hand, are the heaven-directed diseases of mankind." *In contradiction by the Gods*, death of a relation or the like, happening to him alone. By this, [is intended], the exclusion of epidemic diseases and the like. Here, by the phrase *to him alone*, distinguishing the before-mentioned debtor, is meant the mark of disease or the other calamity accruing to the debtor alone, not to his sons or other [relatives]: and those, only great, not slight ones, as has been already mentioned. By this reasoning, it means only a mark appearing against the defendant himself, as some uncommon disease, or the like, according to Váchaspati Misra. For this very reason, the death of a near relation is specified, but not their diseases or the like.

1—Chap. 8th, v. 113, Ante. Chap. 2, Sec. 3, para. 17.

(a) Act V. of 1840, which substitutes solemn affirmations for oaths among Hindús and Muhamadans, does not extend to any declaration or affirmation made in any of Her Majesty's Courts of justice. See 1 Mad. H. C. Rep. 99.—*Ed.*

CHAPTER IV.

On inheritance, [da'ya-vibha'ga].

SECTION I.

Of Property or Ownership, (Swatwa),

1 Now we come to speak of such ownership, as is necessary for deciding regarding heritable property. The distinctions as to its power and operation, are produced by purchase, acceptance, &c. The reason of this is, that the causes of purchases, &c. arise from worldly transactions alone, not from the Çástra ; for proprietary rights understood even by those not acquainted with that sacred code, in deducing it from which the subject is needlessly enlarged. Bhavanátha is of this opinion in his Naya Viveka.

Generation of operty.

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2. As for the text of Gautama :[1] "An owner is by inheritance, purchase, partition, seizure, or finding. Acceptance is for a Bráhman an additional mode ; conquest for a Kshatriya ; gain for a Vaiçya or Çúdra," it is by way of repetition in matters established in the world. For people admit inheritance [to be] in that, which becomes one's own by the mere loss of the owner's property therein. The word *mere* is used to include purchase, seizure, [or acceptance] and the rest. Here even, in such like loss, the word inheritance, has force ; by reason of its joint application [in the text] to purchase and the other means of ownership. And the same may be proved by the argument, that 'without admitting a cause [there can be no effect].'

Text of Gautama explained.

3. According to Dhárecvara A'chárya : 'The ownership of sons and the rest, in the wealth of the father, is not generated previously during his life, but is produced by partition.' And the author of the Smriti Sangraha says the same. But it is not so ; for, from the plain sense of this text : "Even by birth, ownership in wealth is obtained," and other similar ones, it is evident, that, ownership in the father's wealth depending on the filial relation, it is generated even by

Argument, that ownership is generated by birth, not by partition.

LXXXIV.

Yájñavalky[illegible] [illegible] same results] from this text of [illegible] is the same, in [illegible] or in a corody, or in chat-

[illegible] iori [prasakteh]

244-250. Reports vol. 2d 312. 514.

2—Cole. Mit. 277-8.

is no equal ownership in [property] acquired by the great-grandfather, and other [more remote ancestors]. And the argument of 'cause and effect' might here be repeated.

Text of Devala

4. As for this text of Devala:[1] "When the father is deceased, let the sons divide the father's wealth; for sons have not ownership, while the father is alive and free from defect;" the first hemistich comprehends up to the time of partition, because it declares the [ascertainment or] instrument, or agents, of the [act or] ceremony; but the last hemistich refers to their dependance, as declaring the same person's praises; but it does not mean the absence of ownership. It is also made clear in this

and of Çankha.

text of Çankha: "From this it results, that while the father lives, sons shall not divide the wealth: even if there should be afterwards an increase by [means of] them, still the sons are unfit, by reason of their dependance upon the wealth and religious offices of the father." Here, *dependance*

explained.

is specified immediately, with a view more strongly to inculcate the foregoing prohibition. '*Even if by them subsequently*, [be made]' is the proper interpretation. *By them*, by the sons, subsequently to their birth. *Increase*, what is

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obtained by acceptance, or the like. The proposition is this: 'If in property accepted by sons or other [heirs], their dependance [is clear] from the [father's] undisputed ownership, how [can we doubt their dependance] in property acquired by the father.' And this dependance attaches to partition, supererogatory moral observances, industry, and the like. So also Hárita:[2] "While the father lives, sons are not independent in regard to the receipt and alienation of wealth, to the partition of it, or to censure." By the words *receipt* and *alienation*, supererogation is pointed out. *Censure*, according to Madana, means, reproving of the slaves and other [household servants].

Anonymous text, touching the power of the father and grandfather, explained.

5. As for this text:[3] "The father is master of all gems, pearls and corals; but neither the father nor the grandfather, is so of the whole immovable estate," it also means the father's independance, only in the wearing and other [use] of ear-rings, rings, [&c.], but not as far as gift or other [alienation]: neither is it with a view to the cessation of the cause of his ownership on the production of a son. This very meaning is made manifest also by [the text] noticing [only] gems, and such things as are not injured by use. Even so, this text:[4] "Though immovables and bipeds have been acquired by the man himself, a gift

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1—Coleb. Jím. Vá. page. 9. Digest 2d, 522.

2—Colebrooke's Jímúta Váhaha, 19.—Digest, 2d 527. q. v. In all the translations of this text, as well as in some of the original versions of it, there is nothing about "partition." The word has crept in from a modern copy of the Mayúkha procured at Benares, and used in preparing it for the press. It will be observed that there is a variation in the readings of the last part in all the books.

3—Cole. Mit. 254, where the word "sarvvasya" is translated "*of all* [other moveable property];" but the present version is made conformable to the interpretation of our author. Reports 2nd 451.

4—In some works this text is assigned to Vyása. Here and in the
ge 257, it is anonymous.

or sale of them should not be made without convening all the sons," is only a prohibition against their gift, sale, or the like, not against the use of them.

Ownership is pre-existing, and merely defined by partition.

6. Now the pre-existing undefined [joint] ownership of more than one brother or other [co-heir] is, by partition between each, defined and made apparent. On this point some one has said: "This [ownership] is produced different, as a separate portion, by the destruction of the former ownership contained in the common property." But, justly speaking, since prolixity arises in considering the production of, another ownership on the destruction of the former; therefore [separate] ownership, existing even originally from community [of interests], is discovered by partition, by the result furnishing separate substances or things.

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Resumption of the argument, of Gautama's text, as relates to Bráhmans.

7. To return to the Text:[1] *Acceptance is for a Bráhman an additional mode;* that is, according to some, 'What is obtained by acceptance, is the Bráhman's additional [mode of] increase.' With reference to inheritance, and the other [five modes common to all], this acceptance is, for a Bráhman alone, an additional mode. It results therefore, that *conquest* and the other [modes enumerated] are in like manner [additional] for Kshatriyas and the rest.

The king has no right to the soil, but merely to the revenue arising from it.

8. In conquest also, where the property of the conquered consists in houses, lands, money, or the like, there alone [ownership] is acquired by the conqueror; but in the revenues[2] of the conquered, the conqueror possesses the same, but no property in them. Even so in the sixth [book of the Mimánsá]: "The whole earth must not be given away by the king of the world, neither a [whole] district [mandala] by the ruler of that district." But the property in each village, house, or other [portion] of a whole country or a district of it, belongs solely to the owner of the soil [bhúmika] or other [proprietor]. The revenue only [may be taken] by the prince. Therefore, in gift, or other alienation of such lands as are here made mention of, a gift of the land is not brought about; we must only suppose a mere livelihood [given by the prince out of his revenues]. But in purchases from the owner of the soil, even ownership accrues in the [property transferred], whether houses, land, or other. Then indeed, the benefits of a gift of land also may be obtained from it [by buying land from the owners and then giving it away in charity.]

To Váiçyas and údras.

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9. Gain, [Nirvishṭa] is that which is acquired by usury, agriculture, commerce, tending of animals; and [secondly] what is acquired by service. From the dictionaries, we find the synonymes of 'Gain' to be, 'Hire,' and 'Enjoyment.' Hire again, is defined to be Service. Enjoyment, is usury and the rest. Here, the first men-

1—Of Gautama, para. 2.

2—The terms, 'kara grahita,' 'kara graha,' are used in the same sense in the inscription in As. Res. 9th, 419, note q v.

tioned [are sources of gain] to the Vaiçya class: The second [service] to the Çúdra class.

Conclusion drawn.

10. Now, the reason of sale and other transfer of property, is to be deduced solely from worldly motives, [and not from law; with which proposition we set out.] And in like manner, popular practice is established in the ownership of calves and other [produce] of a man's own cow, or the like: but it would not be so, if it depended on such means only as the law furnishes [for deciding such a question], because we do not learn from the law the means of distinguishing the produce of one's own cow or the like.

Opponent's argument

11. Yet, [an opponent may say]: 'There may be ownership in daughters, sons, or other issue of a wife, in the same way as there is in the produce of one's own cow; [and], a case of necessity being assumed, [for instance,] by the rule: "In a viçvajit sacrifice a man gives the whole of his possessions," the gift of every thing being granted, the necessity thence arises for the gift of a daughter or son, and therefore your reasoning from the sixth book of the Mímámsá, [that they are not to be given], will be at variance with such rule.'

Refuted.

12. [I answer] No; because there being no such property in a wife as there is in a cow or the like, there cannot be any property in the children produced from her: And in a worldly sense, the reason of ownership is determined, solely in the production of that which contains the principles of ownership. Neither can it be said, that property may also exist in wives, from acceptance [in marriage]; for then, by reason of the absence of property possessed by Kshatriyas and the other [two classes in] their wives, from their want of the [right of] acceptance, there is also a want of it [property] in their issue.

Argument drawn from affiliation of an adopted son.

13. Therefore, since the text:[1] "This law is propounded by me in regard to sons equal by class," restricts the taking of an adopted son solely to one equal in class; and since with respect to Kshatriyas and the rest, acceptance of an adopted son is even secondary; then also with respect to Bráhmans, it is not the principal mode; because it is contrary to reason to have two contrary, but connected, explanations of performing one and the same rite.

Power of adoption not restricted to Bráhmans. LXXXVIII.

Neither can it be said that a Bráhman alone is entitled to the rite of accepting a son, and that a Kshatriya is not entitled, since we know that the right [of accepting a son] does pertain to them, from the following and other texts of Çaunaka and others[2]: "A daughter's son as well as a sister's son, are affiliated by Çúdras." Even so, in the marriage of a Bráhman with the daughter of a Kshatriya or other [lower class], by the Bráhmya rite, the secondary rank must be admitted, both for the gift and acceptance; otherwise they are principal. Thus two explanations [of the same rite] are [here again] oppos-

1—Cole. Mit. 320. 2—See post, sec. 5th, para 9.

ed. As regards Kshatriyas, the admissibility of all to Bráhmya nuptials and the rest is in no degree contrary [to texts.] Even so Miçra in the Tantra Ratna has said: 'The gift of sons and the rest is inferior [or secondary].'

A verbal objection, over ruled.

15. Neither are we to suppose [absolute] property, merely because the laws of language [admit the expression], 'own wife, son, daughter; for in the same way as we say 'own father,' 'own mother,' and the like, the expression also arises in speaking of kindred. If so, the power of the word 'own,' might likewise affect the term kindred, for in dictionaries we find: "In the word *kindred*, the pronoun own [is feminine]; in *soul* [it is masculine]; in *kindred*, it is [common to] three [genders]; and in the expression peculiar wealth,[1] it is neuter,"

Consistency preserved.

16. However, since in the sixth book of the Mímámsá, gift of a slave born in the family is mentioned, this point must be considered. Since property in the mother is wanting, from absence of the complete power of gift, acceptance, purchase, sale, and the like, then in the household-slave begotten on her, there is also an absence of the power, from the impropriety of it. This conclusion is conformable to the argument with which we set out.

SECTION II.

Of Heritage, (Dáya

Definition of the Term.

1. Wealth not re-united, nor put back again into a common stock, and [still] admitting of partition, is Heritage. By *not re-united*, I mean to exclude wealth [never before joint, and now first] united for purposes of gain or the like, because the term 'partition of heritage,' does not apply to dividing of [wealth] thrown together by merchants. In like manner we must also exclude re-united property, in the sense in which that term will hereafter be defined.[2] Even as [we find] in the Smṛti Saṁgraha: "That which is received through the father, and that received through a mother, is described by the term Heritage: 'The

partition." The word *father* general, as a part for the whole.

1—In the Amara Koça, page 108, the expression is "Svostriyán dhane," signifying, "the pronoun is not feminine, in the word wealth," instead of 'Svannije dhane,' as here. Neither in the Trikándi, [page 76], nor in the Madini, [page 154], is the reading like the Mayúkhá; and in the Benares copy, it is according to the Amara Koça.

, section 9th.

2. This heritage is of two kinds, obstructed and unobstructed. When the life of the owner of the property, or that of his sons, or other [heirs], is interposed, that [property] is [termed] obstructed; for instance, the wealth of uncles, and the like. But where ownership accrues to sons, or other [next heirs], solely from affinity to the owner, without reference to other means of acquiring property, [the heritage] is then unobstructed, as, the wealth of a father. This is the definition of heritage.

It is of two kinds.

Obstructed.

And unobstructed.

SECTION III.

Of the Partition of Heritage.—(Dáya-Vibhága.)

1. This Nárada declares:[1] "Where a division of the paternal estate is instituted by sons, that becomes a topic of litigation, called by the wise, partition of heritage.'" The word *sons* includes [by synecdoche] grandsons, and the rest. And in the same way, by *paternal* [is intended the estate of] the grandfather and the rest. But Madana[2] has the very words, 'of a father and the rest.' And this definition, of 'partition of heritage,' has been declared.

Definition of the Term.

2. Even when there is a total failure of common property, a partition may also then be made, by the mere declaration, 'I am separate from thee.' A partition may even be a mere mental distinction. This exposition clearly distinguishes the various qualities of this [term].

It may take place without the existence of property.

SECTION IV.

The Periods of Partition,—(Vibhága-Kála.)

1. Manu:[3] "After the death of the father and mother, the brothers, being assembled, may divide among themselves the paternal [and maternal] estate; but they have no power over it, while their parents live [unless the father choose to distribute it]." By inserting the word *and*, the consummation of [both their] deaths is not required. Even thus, in the Madana Ratna and Smriti Sam-

Partition of the paternal estate, may take place at three periods, viz. after the father's death.

1—Of the various readings of this text noticed by Mr. Colebrooke, in his note to Mit. page 243, where it will be found, the author adopts the following, 'pitryasya.' 'prakalpyate,' 'tadvivádа padam,' and 'yatra.'

2—The Madana Ratna, referred to for this reading, by Mr. Colebrooke, and formerly mentioned, page 1 note.

3—Chapter 9th, v. 104. Colc. Mit. 263. Jím. Vá. page 8, Digest 2d, 521.

graha: "A partition of the father's wealth may take place, even whilst the mother lives, for this reason, that without her husband, the mother does not from her independence also derive ownership. "A partition of the mother's wealth also may take place, in like manner while the father is alive, for, if there be issue, the lord [of the wife] is not lord of the wife's wealth."[1]

Or before it, if e mother be st child-bearing.

2. This is opposed to a text of Bṛihaspati:[2] "On the demise of both parents, participation among brothers is allowed: and even while they are both living it is right, if the mother be past child bearing." Nárada:[3] "Let sons regularly divide the wealth, when the father is dead; or when the mother is past child bearing, and the sisters are married; or when the father's sensual passions are extinguished." *Sensual passions*, desire. *Extinguished*, averse. The expression, *and the sisters are married*, must be taken collectively with [the mother's] child-bearing, and extinction of [the father's] passions, after the simile of the crow's eye.[4]

Or, with the father's consent, at any time. XCI.

3. Gautama:[5] "After the demise of the father, let sons share his estate. Or, while he lives, and the mother be past child bearing, if he desire partition." From this expression, *if he desire*, partition is declared legal also, before the mother is past child-bearing, by the father's wish alone.

Partition of ancestral property, may take place even against the father's consent.

4. Bṛihaspati declares partition in some cases without his wish: "The father and sons are equal sharers in houses, and lands, derived regularly from ancestors: but sons are not worthy [in their own right,] of a share in wealth acquired by the father himself, when the father is unwilling:" From which it results, that sons are worthy of a share in property, acquired by the grandfather or other [ancestor], even though the father do not wish it. *(a)*.

With exception of such as he had recovered by his own exertions.

5. In the grandfather's property also, partition in some cases depends on the father's pleasure, say Manu[6] and Vishṇu: "And if a father by his own efforts, recover [a debt or property unjustly detained] which could not be recovered before [by his father], he shall not, unless by his free will, put it into parcenary with his sons, since

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1—See Section 10th on "Woman's property."

2—Cole. Jím. Vá. 23-36. Digest, 3d, 18-78.

3—Cole. Mit. 260.

4—That bird being fabled [from its singular mode of peering,] to look two ways at once, Cole. Mit. 358 note.

5—Colebrooke, Mitákshará, 260, but I have here followed the translation given in Jímúta Váhana, page 24, as more conformable to the doctrine of the Mayúkha, which allows only three periods of partition. The Mitákshará on the other hand asserts, four, and in support of this doctrine, divides this very text of Gautama into three portions.

6—Chap. 9th, verse 209. Cole. Jím. Vá. 28.—Mit. 270. Digest 3d, 33, and the note there.

(a) See *Nágalinga Mudali* v. *Subbiramaṇiya Mudali*, 1 Mad. H. C. Rep. 77.—*Ed.*

Over which, as well as over his own acquisitions, the father has full dominion.

in fact it was acquired by himself." Bṛihaspati :[1] "Over the grandfather's property, which has been seized [by strangers], and is recovered by the father through his own ability, and over [any thing], gained by him through science, valour, or the like, the father's full dominion is ordained. He may give it away at his pleasure, or he may defray his consumption with such wealth ; but on failure of him, the sons are pronounced entitled to equal shares."

Circumstances invalidating the father's power.

6. Nárada:[2] "A father who is afflicted with disease, or influenced by wrath, or whose mind is engrossed by a beloved object, or who acts otherwise than the law permits, has no power in the distribution of the estate." Háríta :[3] "If the father be free from desire, old, perverted in mind, or long afflicted with disease, partition of his wealth [may be made]." *Free from desire*, according to the Madana Ratna, means, without desire of partition. *Perverted in mind*, following practices contrary to law. The sense is, 'that partition may be made, even against the will of [such a] father.'

XCII.

The eldest son, in that case, manages the estate and the distribution of it ; or the next after him, with his consent.

7. Háríta says, that when the father is incapable, partition takes place by the concurrence of the eldest son :[4] "But if he be decayed, remotely absent, or afflicted with disease, let the eldest son manage the affairs as he pleases."[5] Çankha and Likhita :[6] "If the father be incapable, let the eldest son manage the affairs of the family ; or, with his consent, the next brother conversant with business." *The next*, the one born after him. Partition by the pleasure of one capable of the maintenance and other [care] of the family [is intended] From this it results that if all be so [qualified], it is [immaterial or] undetermined.

On voluntary partition by the father, shares defined.

8. Yájñavalkya :[7] "When the father makes a partition, let him separate his sons [from himself] at his pleasure, and either [dismiss] the eldest with the best share, or [if he choose], all may be equal sharers." A voluntary partition alone [is denoted] by the last hemistich ; since the dependance of the will in the two cases mentioned, has been above declared, from the impropriety of independance ; [and further] from the inconsistency [which would result in such construction] of the text : [For then he might give] to one a lákh [of rupees] ; to another a single kaurí ; to a third, nothing at all ; which

1—Cole. Jím. Vâ. 134, the reading of which, 'Bhogancheva,' is here followed Digest, 3d 32.

2—Cole. Jím. Vá. 52.—Mit. 263. Digest 2d, 541.

3—This text is found, but with a different reading, in Cole. Jím. Vá. page 19, to which, with the note there, the reader is referred.

4—Cole. Jím. Vâ. 19. Digest, 2d, 527.

5—The first hemistich of the stanza of which this is the sequel, occurred before at sec 1st, para. 4.

6—Cole. Jím. Vá. 19. Digest 2d, 533. 7—Cole. Mit. 258. Jím. Vá. 51. Digest 2d, 539.

Partition by deduction as defined

would be no [fair] exposition [of the law]. A distinction in the share of the eldest, is noticed by Manu :[1] "The portion deducted for the eldest, is a twentieth part [of the heritage], with the best of all the chattels; for the middlemost, half of that, [or a fortieth]; for the youngest, a quarter of it, [or an eightieth]:" But, if there be no deduction, the shares must be distributed in this manner: Let the eldest have a double share, and the next born, a share and a half, [if they clearly surpass the rest in virtue and learning;] the younger sons must have each a share: [if all be equal in good qualities, they must all take share and share alike."]

XCIII.

9. Between twins, the birthright of that one first born is thus declared by Manu :[2] "The right of invoking Indra by the texts, called Svabrâhmanyâ, depends on actual priority of birth; and of twins also, [if any such be conceived] among [different] wives, the eldest is he, who was first actually born."[3]: "Among twins, to him whose face [kinsmen] first see after his birth, belong [the privileges of] male offspring, [the right of performing obsequies] for his father, and [the honours of] primogeniture."

Primogeniture in case of twins.

10. However, in the Pinda Siddhi and other medical books, the right of primogeniture is awarded to the last born [of twins]. This is opposed by the above [texts] in the matter at issue, because it has no foundation in the sacred writings; like as: "Purification ensues after a month [to Çúdras."] However, the right of primogeniture of the last born is declared in the Bhâgvata,[4] in this text and the like: "When a double fœtus is conceived, the last conception is that first brought into the world." [But] this doctrine is also opposed to the above texts [of Manu and Devala], whilst in the Purânas, many practices are disclosed, contrary to the written law. According to some, the question ought to be decided by the customs of the country. But what I stated at first, [in favour of the first born], is the proper doctrine.

Partition by deduction, illegal in modern times.

11. And this partition by deduction, is not respected in the Kali [or present] age, for it is one of the things [expressly] set aside in the present age, as has been already proved by me in my Samaya Mayúkha.

The father, in partition with an only son, takes a double share.

12. Nârada allows the father a double share :[5] "Let the father, making a partition, reserve two shares for himself." This text relates to an only son. For in the Madana Ratna is this of Çankha and Likhita :[6] "If there be one son, let [the father] himself reserve two shares, and the best

1—Chap. 9th, vs. 112-116-117. Digest 2d, 548-52.

2—Chap. 9th, v. 126. Digest 2d, 577.

3—This following text is found in the Digest 2d, 578, attributed to Devala, and not Manu.

4—In the third Skanda, treating of the birth of Hiranyakasipu, and Hiranyaksha twins, Daityas, produced by Dítí, one of the wives of Kasyapa Rishi; the first hemistich of the text is omitted by our author, probably from its extreme grossness.

5—Cole. Mit. 278, Jím. Vá. 35-41. Digest 3rd, 43.

6. Jím. Vá 44 Digest 2d, 555, where the same gloss is mentioned nearly in the words of our author, though it is not found in the Madana Párijáta, which is probably the one alluded to here.

of the slaves and cattle." The word *one* relates to the most excellent. By the author of the Amara [Kosha], 'chief,' 'other,' 'only,' are declared the synonymes of *one*. All which, according to the Párijáta, denote a son well qualified.

13. Bṛhaspati, however, declares the right to only an equal share with his sons, even if there be only one, in property acquired by the grandfather[1]: "In wealth acquired by the grandfather, whether it consist of moveables or immoveables, the equal participation of father and son is ordained." Yájñavalkya:[2] "For the ownership of father and son is the same, in land which was acquired by the grandfather, or in a corody, or in chattels [which belonged to him]." Kátyáyana: "When the father and the sons even, take all that, which has been made upon the common wealth, in equal shares, it is called a legal partition."

The only son has even a right to half the ancestral property.

And no other division of ancestral property is legal.

14. As for this text of Yájñavalkya:[3] "A legal distribution, made by the father, among sons separated with greater or less shares, is pronounced valid;" according to Madana, Vijñáneçvara[4] and others, it means, 'If the [distribution], made by the father be legal, it cannot be set aside. This text again, of Nárada:[5] "For such as have been separated by the father with equal, greater, or less, allotments of wealth, that is a lawful distribution: for the father is lord of of all," relates to the former ages.

Two texts apparently to the contrary, explained away.

15. In a case of equal partition between a father and his sons, a share belongs also to the wife; says Yájñavalkya:[6] "If he make the allotments equal, his wives, to whom no separate property had been given by the husband or the father-in-law, must be rendered partakers of like portions." If any had been given, they are only to get half, for he adds:[7] "Or if any had been given, let him assign the half." *The half*; meaning, so much as, with what had been before given as separate property [stridhana], will make it equal to a son's share. But if her property be [already] more than such share, no share [belongs to her].

In equal partition between a father and his sons, the mother gets a share.

XCV.

To be made by additions to her private property previously received.

16. The same author treats of a want of wish to participate, in the case of a son able to earn, and not desiring a share:[8] "The separation of one who is able to support himself, and is not desirous of participation, may be completed by giving him some trifle." According to

Resignation of a share permitted, under certain forms to prevent future claims.

1—Jím. Vá. 42. Digest 3d, 34. 2—Cole. Mit 277-8: Jím. Vá. 25: Digest 3d, 34. Ante sec. 1st, para. 3.

3—4—Cole. Mit. 262, Jím. Vá. 50. Digest 2d, 548. 5—Digest 2d, 547, Jím. Vá. 50.

6—Cole. Mit. 261. Jím. Vá. 63: Digest 3d, 11, Reports 1st, 31. 7—Cole. Mit. 261-475.

8—Cole. Mit. 262. Jím. Vá 62, Digest 3d, 65. Reports 2d, 8 665. The subsequent quotation, as of Vijñaneçvara's comment on this text, seems imperfect. Cole on Obligations, page 25, but with regard to debts, see post, Chap 5th, sec 4th.

the Mitákshará it means that: 'Any thing whatever may be given, for the sake of preventing the desire being entertained by his sons, of receiving [a share of] the heritage.'

Partition after the father's death must be equal.

17. An equal partition, after the death of the father, is declared in another smṛiti:[1] "Let sons divide equally both the effects and the debts, after [the demise of] both parents." Hárita:[2] "When the father is dead, the partition of the inheritance should be made equally."

In this case the mother takes an equal share with the sons.

18. Yájñavalkya:[3] "Of heirs dividing after the death of the father, let the mother also take an equal share." Vishṇu:[4] "Mothers receive allotments according to the shares of sons." In another smṛiti [it is said:] "A mother, if she be dowerless, shall in a partition by sons, take an equal share." The meaning is, that if she have dower,[5] she shall take only as much as, with that dower, will make her an equal sharer with her sons. But no share [belongs to her], if her property be more than such share.

As do the step mothers, and paternal grandmothers

19. Vyásа[6] declares the [right to] share, even of a stepmother, and the paternal grandmother: "Even childless wives of the father are pronounced equal sharers *(a)*; and so are all the paternal grandmothers: they are declared equal to mothers." From this [word] *all*, the step-grandmothers also are to be included.

1—Yájñavalkya Mit. 263. Jím. Vá. 55. Digest 3d, 78, Cole. on Oblig. page 138.

2—Jím. Vá. page 61, where the word 'father' is omitted.

3—Cole Mit. 285. Reports 2d, 454. 4—Jím. Vá. 64. Digest 3d, 15.

5—Dhana, wealth, taken as before in that sense, of separate property, para. 15.

6—Jím. Vá. 64, Digest 3d, 12. Reports 2d, 452.

(*a*) So *infra*: the wife, if faithful takes the wealth, but if there be more than one, they will divide and take equal shares. See *In the Goods of Dadoo Mama* 1st Sept. 1862, Ind. Jur. Oct. 25th 1862 p. 59, before the High Court of Bombay where Arnould J., after citing these passages, said, "this doctrine has been followed by the late Supreme Court, in a case of the goods of Chapa Juddoo, decided on the 22nd of June 1861, of which we have been furnished with a note by the Chief Justice, where the Court, after consideration, and obtaining answer from the Çástris of the Sadr 'Adálat and at Puná, held that, "if there be more than one widow, each of them is entitled to an equal share of the property." It appears from those answers that, although the author of the Mayúkha cites no text in support of his opinion, such texts are to be met with in the Víramitrodáya, an authority of the Benares School, and Macnaghten's Principles of Hindú Law, a work of authority in Bengal. It is also said, page 19, that if there be more than one widow, their rights are equal. The case in Morton's Reports, page 314, handed up to us yesterday by Mr. Westropp, shows that this rule was acted upon by the Supreme Court in Calcutta as early as the year 1791, and in Morley's Digest, [N. S.] vol. I, p. [180, par.] 15, we find an instance of its being acted upon in the North-Western Provinces in 1850. On these authorities we hold that the widows in this case are *prima facie* entitled to equal shares of the property, and it remains to be considered whether either of them is disentitled by misconduct to her share, and if not, then, whether we ought to grant administration to them jointly or to one only, and, if the latter, to which of them. Is the elder widow then deprived of her right by the misconduct proved? As to the general doctrine that proved infidelity before widowhood disqualifies, and proved incontinence after widowhood, divests the inheritance, the authorities seems to clash, (See Act XXI of 1850, and Taylor's Rep,

20. Yájñavalkya declares the mode of partition among the sons of different brothers :[1] "Among grandsons by different fathers, the allotment of shares is according to the fathers." It means, that if there be one son of one, two sons of a second, three of a third [or the like,] their shares will be solely according to the number of the fathers, and not in the number of the sharers themselves.

Partitions among sons of different brothers, is according to their fathers.

21. Kátyáyana :[2] "Should a younger son die before partition, his share shall be allotted [by the elder brother] to his son, provided he had received no fortune from his grandfather." "That son's son shall receive his father's share from his uncle, or from his [uncle's] son; and the same] [proportionate] share shall be allotted to all the brothers according to law." Or [if that grandson be also dead] his son takes the share; beyond him succession stops." The *younger son* [anuja] denotes also that the eldest [is bound to portion off his brother's son]. *Stops*, at the great grandson.

Brother's sons also share with their uncles.

Or even their sons' sons, but no farther.

22. We must thus understand it: 'The son of the great grandson, or the rest will not, on the death of the father.[3] [grandfather, and great grandfather, without interval after the death of the great-great-] grandfather, obtain his wealth, being of another [line], so long as his son, or

Explanation of the above restriction.

300.) As to the nature of the proof of incontinence that disqualifies, there is again a discrepancy in the authorities. Sir T. Strange, page 136, after laying down the principle that "an unchaste wife is excluded from the inheritance," adds, "that nothing short of actual infidelity in this respect disqualifies," and the authorities collected in the appendix to which he refers support this view. In all the cases we have been able to consult, the proof of incontinence or infidelity seems to have been positive. The Mayukha, on the other hand, page 102, lays it down: "That even a suspicion of incontinence is enough to reduce a widow's rights to that of mere maintenance." This, as it seems to us, can hardly mean vague suspicion; it must mean a reasonably well grounded suspicion, short of actual proof. In this case, for instance, had Rumea gone off with Sitaram alone, and been proved afterwards to have been in company with him at a distance from her husband's residence—this would have constituted, as it seems to us, a case of suspicion sufficient to deprive her of the inheritance (on the authorities of the Mayúkha)." In Bengal two widows take the whole estate for life, and on the death of one the whole survives to the other, upon whose death it goes to the collateral heirs of the husband. 1 Morl. Dig. 313. In Madras it has been held, that the eldest widow succeeds the other widows being entitled during her life to maintenance only, the second widow succeeding on the death of the first. 1 Mad. Sel. Dec. 456, 457, and R. A. No. 1 of 1835, 2 *Ibid.* 44. But see Strange Manual H. L. 2d. ed. § 326 where the author lays down that in Southern India the wives are viewed as on an equality and inherit equally; and consider the following passage from the Mitákshará chap. II, sec. 1 par. 5, (omitted in Colebrooke's translation) which the Editor owes to Vakíl Çríniváságháryа. "The singular number "wife" signifies the kind: hence, if there are several wives belonging to the same or different castes, (they) divide the property according to the shares prescribed to them, and take it."—*Ed.*

1—Cole. Mit. 276. Jím. Vá. 60, Digest 3d, 6.

2—Digest 3d, 7. Both the readings noted there are thrown out by the author, who reads "anuja," instead of "nije."

3—This is an apparent interpolation of the words following between the brackets, in italics, as they are found only in the Benares copy.

other [heirs] are alive. In default of son, grandson, [and great grandson] in the general [family] only, he also will take [the succession].'

Referring it to a re-united family only.

23. And this does not refer to an undivided family, but to a re-united one. For it is said by Devala :[1] "Partition of heritage among undivided parceners, and a second partition among divided relatives living together [after re-union], shall extend to the fourth in descent: this is a settled rule." And[2] "Be it debt, or a written contract; or a house, or arable land, descended from his grandfather, he shall take his due share of it, when he comes, even though he had been very long in a foreign country." "If a man leave the common family and reside in another province, his share must undoubtedly be given to his male descendants when they appear." It means: 'between the great-great-grandfather, and his sons, separated when in a state of union, and [afterwards] re-united.'

II.

Removal of the limitation in case of residence abroad.

24. This refers to those fixed in the same district; because, where they reside in different districts, it will descend even to the fifth, as is declared by Bṛihaspati, in treating of residence in other lands :[3] "Be he the third person, or the fifth, or even the seventh, [that is, in the second, or fourth, or even in the sixth degree]; he shall receive the share that gradually descends to him, on full proof of his birth and family-name."

Partition is according to the mothers, in case their sons are of equal number.

25. Bṛihaspati[4] declares a partition in some cases according to the mothers: "If there be many [sons] sprung from one [father], alike in number, and in class, but born of rival mothers, partition must be made by them according to law, by the allotment of shares to the mothers." Vyáśa :[5] If there be many sons of one man, by different mothers, but equal in number, and like by class, a distribution among the mothers is approved."

If not, then according to the number of the sons themselves.

26. Bṛihaspati[5] gives this opposite example: "Among brothers, who are equal in class, but vary in regard to the number [of sons produced by each mother], the shares of the heritage are allotted to the males [not to their mothers]."

Partition among sons of different classes.

27. Yájñavalkya[6] states a partition among sons of different classes: The sons of a Bráhman, in the several tribes, have four shares, or three, or two, or one; the children of a Kshatriya have three portions, or two, or one; and those of a Vaiçya take two parts, or one." *The sons of a Bráhman*, that is, borne to him by a Bráhmaṇí, a Kshatriya, a Vaiçya, and a Çúdra. Those of a Kshatriya, those by a Kshatriya, a Vaiçya, and a Çúdra. Those of a Vaiçya, those borne to him by a Vaiçya and a Çúdra.

XCVIII.

1—Digest 3d, 10.

2—Digest 3d, 441, Jím. Vá. 140 : in both the text is assigned to Bṛihaspati.

3—Digest 3d, 441, Jím. Vá. 140. 4—Jím. Vá. 57, Digest 2d, 575. 5—Jím. Vá. 57.

5—Digest 2d, 576. 6—Cole. Mit. 201. Digest 3d, 114.

Land is confined to the son borne by the wife of equal class alone.

28. Bṛihaspati :[1] "Land, obtained by acceptance of donation, must not be given to the sons of a Kshatriya, or other wife of inferior tribe: even though his father give it him, the son of the Brâhmaṇí may resume it when his father is dead." Devala :[2] "The son begotten on a woman by any man of a twice-born class, is not entitled to a share of land: but one begotten on her, being of equal class, shall take all the property [whether land or chattels]: thus is the law settled." *Of land*, acquired by purchase, and the other modes also. Yet he does obtain a share of the [moveable] wealth.

Illegitimate sons do not inherit even moveable wealth.

29. But the son by a Çúdra woman, not legally married, does not obtain a share, even of the moveable property. And Manu :[3] "The son of a Brâhman, a Kshatriya, or a Vaiçya, by a woman of the servile class, shall inherit no part of the estate [unless he be virtuous; nor jointly with other sons, unless his mother was lawfully married:] whatever his father may give him, let that be his own."

But must be maintained.

30. Bṛihaspati declares this distinction after the father's death :[4] "The virtuous and obedient son, borne by a Çúdra woman to a man who has no other offspring, should obtain a maintenance; and let kinsmen take the residue of the estate." Gautama :[5] "A son by a Çúdra woman, born unto a man who leaves no [legitimate offspring, shall, if he be strictly obedient like a pupil, receive a provision for his maintenance." *A provision, for his maintenance*; or, 'as a means of livelihood.'

Shares of sons begotten in inverse order.

31. The same author :[6] Sons termed Pratiloma [shall have an allotment] similar to that of the son produced by a woman of the servile class." *Sons termed Pratiloma*, meaning, those produced by a woman, higher than the begetter with respect to class. *(a)*.

Illegitimate sons of Çúdras take a XCIX. share by the father's choice; and ... claim half a ... after his

32. Yájñavalkya[7] states a distinction with regard to a son begotten by a Çúdra on a woman not married to him: "Even a son begotten by a Çúdra on a female slave, may take a share, by the father's choice. But if the father be dead, the brethren should make him partaker of the moiety of a share." *Choice*, the pleasure of the father. From specifying *by a Çúdra*, it is clear, that a son begotten by a twice-born man on a female slave does not obtain a share, even by the father's choice:

1—Colc. Mit. 292. Jím. Vá. 147, Digest 3d, 130.

2—This is cited in other books as a text of Bṛihaspati: Jím. Vá. 148, Mit. 292, Digest 3d, 133.

3—Chap. 9th, 155, Mit. 293, Jím. Vá. 149, Digest 3d, 136.

4—Jím. Vá. 149, Digest 3d, 139. 5—Digest 3d, 139. 6—Digest 3d, 140.

7—Colc. Mit. 322. Jím. Vá. 153, Digest 3d, 143.

(*a*) Pratiloma literally means *against the hair* i. e. contrary to the regular course. The word in the text should have been *pratilomajáh*.—*Ed.*

Neither after the death of the father, will he get the half; nor, in the absence of sons or other [heirs], will he get the whole. This is the argument of the Madana Ratna, and others.

son born after a partition by the father, alone succeeds to him.

33. A distinction is thus declared respecting a son born after partition: One born [to a man] separated [from his sons] will alone take the father's [wealth]." Bṛihaspati:[1] "All the wealth, which is acquired by the father him- ; who has made a partition with his sons, goes to the sons begotten by him after the partition: those born before it, are declared to have no right.:"[2] "As in the wealth, so in the debts likewise, and in gifts, pledges, and purchases." They have no claims on each other except for acts of mourning and libations of water." If there be nothing but debts, then that [son] is not even bound to pay those debts, without receiving a share from those formerly separated; for, as will afterwards be shewn,[3] "He who takes the estate, must be made to pay the debts of it."

But is not bound cumstances.

re-union with the father gives a right to share with that son.

34. But if any one of them have re-united [with the father], a partition with that [son born after partition] shall be made. As is declared by Manu:[4] "A son born after a division, shall alone take the paternal wealth: or he shall participate with such of the brethren as are re-united with the father."

Distinction with regard to posthumous sons' shares.

C.

35. Yájñavalkya[5] states a distinction, at a partition after the father's death, with respect to a son borne immediately afterwards, by a mother, or step-mother, or brother's wife, whose pregnancy was uncertain: "When the sons have been separated, one who is [afterwards] born, of a woman equal in class, shares the distribution. The partition is to be thus effected: Something is to be contributed by all the brothers, or others [who had previously shared], each something out of his own share, until the [posthumous sons's] share is equal to their own. Vishṇu:[6] "Sons with whom the father has made a partition, should give a share to the son born after the distribution."

Deduction to be first made for expenses and income.

And this we must understand as allowing for [subsequent] expenses and income. For if it be so, then, says the same author:[7] "His allotment must absolutely be made, out of the visible estate, corrected for income and expenditure." *Out of the visible estate*, out of the wealth actually forthcoming.

1—Cole. Mit. 281. Jím. Vá. 137, 8. Digest 3d, 49, 435. 2—Jím. Vá. 138.

3—Post chap. 5th, section 4th, para. 16.

4—Chapter 9th, v. 216. Cole. Mit. 281. Jím. Vâ. 136.

Digest 3d, 50. The translation of the Mitákshará is followed.

5—Cole. Mit. 280, Jím. Vá 138, Digest 3d, 436. 6—Jím. Vá. 138, Digest 3d, 51,

7—Yájñavalkya [in continuation of his text partially quoted above], Cole. Mit. 282. Jím. Vá. 138, Digest 3d, 436.

Partition not to e made till delivery of pregnant women.

37. At the time of a partition among brothers, this distinction is noted by Vasishṭha:[1] "Partition of heritage [takes place] among brothers, [having waited] till after the delivery of such of the women as are childless [but pregnant]." *Having waited* is omitted [and supplied].

Initiation of younger brothers.

38. A further distinction in a partition after death of the father, is stated by Bṛhaspati:[2] "For younger brothers, whose investiture and other ceremonies have not been performed, their elder brothers shall perform them, out of the collected wealth of the father." The term yavíyasaḥ, [is substituted for yavíyáinsaḥ *(b)*, with the freedom exercised by ancient sages] after the manner of the Vedas, by omitting the regular inflection [num] and the prolongation of the vowel [dírgha].

And of sisters, to be made by the eldest brother out of the common estate.

39. The mention of *brothers*, brings in the sisters also. Even so the same author: "And those unmarried daughters who are as yet uninitiated, must be initiated, by their eldest brother, even out of the father's wealth, according to the [usual] rite."

CI

Amount to be owed for marge of daugh-

40. Yájñavalkya[3] [premising]: "Uninitiated brothers should be initiated by those, for whom the ceremonies have been already completed:" states a distinction in regard to initiation of sisters: "But sisters should be disposed of in marriage, giving them as an allotment, the fourth part of a brother's own share;" meaning, that a fourth part of such share as would be allotted to a son of such class as the sister [happens to be,] being given to each sister [according to her rank], they are to be initiated.[4]

Sons, principal and secondary.

41. For the sake of consistency in deciding upon taking the heritage Yájñavalkya[5] gives this [detailed] description of sons principal and secondary: 1st, The legitimate son, [aurasa] is one procreated on the lawful wedded wife: 2d, Equal to him is the son of an appointed daughter [putriká]: 3d, The son of the wife, [kshetraja] is one begotten on a wife by a kinsman of her husband, or by some other relative: 4th, One secretly produced in the house, is a son of hidden origin: 5th, A damsel's child, is one born of an unmarried woman: he is considered as son of his maternal grand-sire: 6th, A child begotten on a woman whose [first] marriage had not been consummated, or on one who had been deflowered [before

1—Cole. Mit. 283, Jím. Vá. 39

2—Digest 3d, 101. where the subsequent explanation is noticed.

3—Cole. Mit 285-6, Jím. Vâ. 65, Digest 3d, 96. Reports 1st, 419.

4—Or married, since marriage is the only one of the rites of initiation [saṁskára] to which a female is entitled. See note to page 289 of the Mitákshará.

5— Cole. Mit. 301, Digest 3d, 860, et

) Juniores.—*Ed.*

marriage] is called the son of a twice-married woman. 7th, He whom his father or his mother give for adoption, shall be considered as a son given [dattaka] : 8th, A son bought, is one who was sold by his father, and mother. 9th, A son made, is one adopted by the man himself. 10th, One who gives himself, is self-given. 11th, A child, accepted while yet in the womb, is one received with a bride. 12th. He who is taken for adoption, having been forsaken by his parents, is a deserted son."

42. The *legitimate son*, born of a woman of equal class, and lawfully married, is the principal, [Of those secondary].

43. The *son of an appointed daughter*, is of two kinds : Of which the first is thus explained by Vasishṭha :[1] " This damsel, who has no brother, " I will give unto thee, decked with ornaments : the son, who may be born of her shall be my son." And the other [kind] is thus noticed by the same :[2] " The appointed daughter is considered to be the third [description of sons]." In this case, the father's obsequies and the like, are to be performed by the [appointed]. daughter alone.

Of sons secondary, the author notices only the 2d.

CII

44. The *son of the wife*, is one begotten on the wife of a brother or other [relative dying] without male issue, under the orders of the eldest brother, by [his] younger brother, or other [relative as the case may be] being of the same lineage.

3d,

45. The *son of a twice-married woman*, is he who is produced of the second marriage of a woman, whether a virgin unenjoyed by her first husband, or whose first marriage had been consummated.

6th, and

46. Here we must mark, that with the exception of the given son, [all the other ten] secondary sons are set aside in the Kali or present age, for we read, in the prohibitions of it : " The acceptance likewise of affiliations, other than those of a legitimate and *adopted* son."[3]

7th,

SECTION V.

On Adoption (Dattaka).

1. Manu says :[4] " He is called a son given [dattrima], whom his " father *or* mother affectionately gives as a son, being alike [by class], and in a time of distress ; confirming the gift with water." According to Madana : ' The disjunctive ' *or*,' means, that if the mother be not present, the father alone may give him away ; and if the father be dead, the mother the same ; but if both be alive, then even both.' From his

Qualifications or an adoption.

1—Cole. Mit. 303. Jím. Vá. 153. Digest 3d, 171. 2—Cole. Mit. 304.

3—See " General note" to the translation of Manu : page 365, text, number 8.

4—Chapter 9th, 168. Mit. 309. Digest 3d, 258. Reports 1st, 193.

using the word in distress, (it seems that) if not in distress, he must not be given.

The want of them affects the gift as well as the giver.

2. Vijñáneçvara[1] says, 'This prohibition regards the giver only (and not the gift); as affecting the person, and not the religious ceremony, [kratvárthа']² But it is not so; for the certainty of the religious ceremony is ascertained from the invisible [or prospective] nature of this [rule regarding gift of a son] in the text. Or, if indeed a visible [existing] object [be allowed for obviating the exception, as to distress], still, by reason of the absolute necessity for the object of the rule being prospective in regard to the theme in hand, in going beyond it, the establishing of the invisible [prospective] benefit produced by the ceremony, and not before existing, [is brought about]. Some however say, 'To the word distress, the sense of a prohibition does not apply, because of the want of that quality of the Parisankhyá rules, [which would shew] non-existence of distress, by the absurdity they would involve, among other things, of quitting the straightforward sense of the text: and that we require only to suppose some sign or motive of distress; not that, when distress is the inciting motive, by not giving the son the crime of [not relieving] distress [will be incurred]; because the mere connexion of name and person in this text is to be understood, and there is, in [declaring] the necessity of distress, a want of the actual completion of the gift.

CIII.

3. Moreover, the assertion made by him [Vijñáneçvara] in his chapter on marriage[3] that: 'In transgressing the prohibition against [espousing] sickly brides, and the like, it is merely an opposition to a manifest object, [or rule], whilst the state of a lawful wife is superinduced notwithstanding,' is by the above argument overruled.

A disputed term examined, and defined.

4. *Alike*, according to Medhátithi, means, 'not by tribe, but by qualities suitable to the family: accordingly, a Kshatriya, or a person of any other inferior *class*, may be the given son [dattaka] of a Bráhmaṇa.[4] But Kulluka Bhatta says, it means 'equal in *class*,' and this is correct; for Yájñavalkya, after enumerating the twelve sorts of sons, in this way: "The legitimate son is one procreated on the lawful wedded wife:" &c., says:[5] This law is propounded by me in regard to sons equal by class." And this I will make clear by two texts of Çaunaka, to be cited hereafter [para. 9]. Vijñáneçvara also declares the same:[6] "By the eldest son, as soon as born, a man becomes the father of male

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1—Cole. Mit. 309. 2—Cole. Mit. 249.

3—A'chárádhyáya, viváha prakaraṇa, leaf 6, page 2d.

4—Cole. Mit. 369 note, where our Author is noticed—Datt. Mím. 32, Datt. Chand. 159. Reports 1st, 193.

5—Mit. 320, Jím. Vá 151, Digest 3d, 275.

6—Mit. 310, quoting Manu, chapter 9th, 106, the first hemistich here, and the last in the next paragraph.

issue;" 'for the eldest chiefly fulfils the office of a son, and is therefore not to be given.' And this prohibition also regards the giver only, and not the taker, according to the same authority.[1]

Prohibition proved to apply, both to the giver and receiver.

5. This prohibition might indeed apply to the giver alone, provided this text of Manu contained a prohibition of the gift of an eldest son. But it does not, for there is a want of proof [in the affirmative], and because the expression, *becomes the father of male issue*, is a declaration of parentage alone, and moreover that even, as regards its applicability to the discharge of debt alone. Accordingly, the last hemistich exactly agrees with this interpretation: "And is exonerated from debt to his ancestors; such a son therefore "is entitled to take the whole."[2] *The whole*, the wealth.

Analysis of the original text of Manu, to prove

6. And a male child alone becomes adopted, not a female, "He [*sáh*] is called a son given." From the pronoun *he*, entered in the text, [being masculine, and] referring to connexion between name and person, we must understand one, 'where a mother and father are agents; where affection, water, and proper qualifications exist; with necessity as a reason; and where the act of gift, equality of class, and male sex [are united],' in the same way as, from the [masculine] pronoun *him*, in the holy text: "Let a Bráhman of eight years be initiated, and let *him* [*tam*] be instructed," we infer, 'that the age is eight years; the order, that of a Bráhman; and the sex, male; his initiation with the string completed,' &c.

that a female may not be adopted.

7. From this results the refutation of what some persons have held, viz: 'That the terminations *ktre*, and *mam* being common to all genders; that the word *duttrima* ending in *ma-m* therefore, since there is no distinction between it, and the act by which a gift is concluded, it may be applied in like manner even to a girl, when given, whether to her husband or to any other.'

Ceremony of adoption.

8. Çaunaka thus declares the mode of adopting a son:[3] "I, Çaunaka, now declare the best adoption: One having no male issue, or one whose male issue has died, having fasted for a son; having given two pieces of cloth, a pair of earrings, a turban, a ring for the forefinger, to a priest religiously disposed, a follower of Vishṇu, and thoroughly read in the Vedas: having venerated the king and virtuous Bráhmaṇas, by a madhuparka:[4] both a bunch of sixty-four stems entirely of the kuça grass,

1—It is not however very clear that such is the intent of the Mitákshará.

2—Manu, chapter 9th, v. 106, Jím. Vá. 16-170.

3—Datt. Mím. 67, Datt. Chand. 167, Reports 2d, 35.

4—Datt Mím. 88-89-91—Datt. Chand. 168-69. The Madhuparka is a prepared food, of honey, liquid butter, and curds, ['presented to a person to whom it is intended to show particular respect on his coming to a house, as to a guest, to a bridegroom at a marriage, to a Bráhman at a sacrifice and the like,' Wilson.—*Ed.*]

and fuel of the paláça tree also: having collected these articles, having earnestly invited kinsmen and relations; having entertained the kinsmen with food; and especially Bráhmaṇas: having performed the rites, commencing with that of placing the consecrated fire, and ending with that of purifying the liquid butter: having advanced before the giver, let him cause to be asked thus, 'give the boy.' The giver, being capable of the gift, [should give] to him with the recitation of the five prayers, the initial words of the first of which are, Ye yájñyena, &c. Having taken him by both hands, with recitation of the prayer, commencing, "Devasya tva, &c;" having inaudibly repeated the mystical invocation, Aṅgád aṅge, &c. "having kissed the forehead of the child: having adorned with clothes, and so forth, the boy bearing the reflection of a son: Accompanied with dancing, songs, and benedictory words, having seated him in the middle of the house: having according to ordinance, offered a burnt offering of milk and curds, [to each incantation,] with recitation of the mystical invocation, 'Yastvá hridá: the portion of the Ṛgveda commencing, 'tubhyam agne:' and the five prayers, of which the initial words of the first are Somo 'dadat, &c." [let him close the ceremony.][1]

CV.

9. [2] "The adoption of a son, by any Bráhman, must be made from amongst sapiṇḍas, or kinsmen connected by an oblation of food(*a*); or on failure of these, an asapiṇḍa, or one not so connected, may be adopted: otherwise, let him not adopt."[3] "Of Kshatriyas, in their own class positively: and [on default of a sapiṇḍa kinsman] even in the general family, following the same primitive spiritual guide [guru]: Of Vaiçyas from amongst those of the Vaiçya class [Vaiçyajáteshu]; of Çúdras from amongst those of the Çúdra class. Of all, and the tribes likewise, in [their own] classes only: and not otherwise. But a daughter's son, and a sister's son are affiliated by Çúdras:"[4] "By no man, having an only son [ekaputra] is the gift of a son to be ever made. By a man having several sons [bahuputra] such gift is to be made, on account of difficulty [prayatnatas]:"[5] "Let the best of the regenerate [the Bráhman] to the extent of his ability, bestow a gratuity on the officiating priest. A king [Ksha-

What persons are capable of being adopted.

CVI.

(*a*) A Bráhman having a daughter and daughter-in-law living cannot adopt the son of a daughter predeceased; nor can such person, so illegally adopted, adopt his wife's sister's child, and make him heir to the grandfather's property, which would pass to the daughter-in law on the Bráhman's death and subsequently to the daughter, the daughter-in-law not being allowed to alienate the property during the daughter's life. *Baee Gunga* v. *Baee Sheosunkur* Sel. Rep. 73. 1 Morl. Dig. 18.—*Ed.*

1—This is added to render the passage intelligible. In the Datt. Mím. the sense breaks off here in a singular manner, being continued in other texts; our author leaves it equally incomplete.

2—Datt. Mím. 26, Datt. Chand. 118, Reports 1st, 194.

3—Datt. Mím. 50, Datt. Chand. 160.

4—Datt. Mím. 62, Datt. Chand. 166, where it is translated.

5—Datt. Mím. 92 3, Datt. Chand. 170. "is to be anxiously made."

triya, the produce of] half even of his dominion: next in order, a Vaiçya three hundred pieces; a Çúdra, the whole even of his property: if indigent, to the extent of his means." *Bearing the reflection*, equal to, [or like].

Argument upon the daughter's and sister's son for Çudras.

10. *A daughter's son and a sister's son:* Now, as in the instance of the stick, in the formula: "[The sacrificer, yajmán] delivers the stick to [the Bráhman, who personates] Maitrá Varuṇa:" though the stick [really] be the object required, from the necessity of its previous existence, still, by the use of the fourth case [to], Maitrá Varuṇa is alone denoted as the object, as is the most fit, from his act of uttering the summons in the formula: "The holder of the stick [he who personates Maitrá Varuṇa] then utters the invocations [to the deities, for their presence in the sacrifice]." Even so, in this place, since the state of non-release from debt [results from want of a son], and because the sixth case [of Cúdras, in the text] has the sense of the fourth [to or for], therefore both the daughter's and the sister's son alone, are to be admitted for Çúdras, as the means [of relieving the father from debt], So, by the propriety of only these two, the purport of the restriction of the rule is declared: thus, "The daughter's son and the sister's son alone are for Çúdras." But if the impossibility of it for Çúdras [be urged], by reason of the impropriety of the restriction, [I answer], they are both exhibited by the texts as the objects for Çudras alone since it would be absurd to make the restriction apply to the agent, [parisankhyá] in respect to Bráhmans and the rest.

Conclusion drawn that they are the most proper for Çudras.

11. Therefore the daughter's son, and sister's son even, are the most proper for Çúdras: In default of them, another also [may be adopted], if of similar class, as declared by the same author [para. 9]: "Of Çúdras from amongst those of the Çúdra class." This word, *class*, is not [necessarily] implied, by its connexion with daughter's son and sister's son,' alone, for there is no [necessary] mutual connexion between the states, of 'daughter's son, sister's son, and common caste:' And there is a risk of our [thereby] CVII. making an absurdity of parallel passages of the same author. This is fully explained by my father in his Dvaita Nirnaya, and the same is the rule [*áchára*] ordained by sages.

Assertion to the contrary, in the Çúddhi Viveka, controverted.

12. And the assertion of their right [to adopt] being demonstrable in the very same way, as [the argument upon] the word Nishádastha pati,[1] the assertion in the Çuddhi Viveka, that 'there is a want of title for Çúdras to celebrate the acceptance of a son with a Homa(*a*) authenticated by Vedaka mantras,' is hereby refuted.

13. The Homa however, being accompanied with mantras, must

1—['The lord of those residing among the Nishádas,' who might be of any caste, and therefore entitled to adopt; but when read Nisháda sthapati, 'the Lord of the Nishádas,' that is, one of that caste, he, as being lower than a Çúdra, could not adopt, in the proper form.]

(*a*) Burnt offering.—.

y, for Çúdras, to be by means of a Bráhman.

be celebrated by them through the instrumentality of a Bráhman, in conformity to the text of Paráçara: "When fasts, vows, burnt sacrifices, ablution at a tírtha, silent meditation, or prayer, and the like, are performed by a Bráhman [on the part of another] the benefit of them accrues to him who caused their performance." And the very same is declared, both by Smártha and Harinátha.

Another text of Paráçara explained.

14. However, what [in seeming contradiction] Paráçara himself adds: "The Bráhmaṇa who, for the sake of dakshiṇá(*a*), performs Homa with sacrificial materials furnished by a Çúdra, shall himself because a Çúdra and the Çúdra shall become a Bráhmaṇa," means, according to Madana, that the whole benefit of the act accrues to the Çúdra, whilst the crime fully attaches to the Bráhmaṇa.

One law, for women and Çúd-

15. The right also pertains to women, equally as to Çúdras, by reason of the text: "Women and Çúdras are governed by the same law."

The proper ob-

16. Vasishtha:[1] "Man, produced from virile seed and uterine blood, proceeds from his father and his mother, as an effect from its cause. Therefore his father and mother have power to give, to sell, or to abandon, their son. But let no man give, or accept, an only son: for he is [destined] to continue the line of his ancestors(*b*). Let not a woman give or accept a son, unless with the assent of her husband."[2] "A person, being about to adopt a son, should take an unremote kinsman, or the near relation of a kinsman, having convened his kindred, and announced his intention to the king, and having offered a burnt offering, with recitation of the prayers denominated 'vyáhriti' in the middle of his dwelling. But, if a doubt arise, let him set apart, like a Çúdra, one whose kindred are remote; for it is declared [in the Vedas]: 'Many are saved by one.' When a son has been adopted, if a legitimate son be afterwards born, the given son shares a fourth part."(*c*)

CVII.

Deduction in favour of widows' power to adopt

17. Therefore, if there must be an order from the husband, it is for a married woman only, as above shewn; but, for a widow, even without it [adoption] may be made, with the permission of her father, or, on failure of him, of the relations [Nyáti] under this precept: "Let a female be taken care of, by her father while a child, by her husband

1—Datt Mím. 93, Mit. 308-10-11-15 and notes. Digest 3d, 242. Reports 1st, 190

2—Datt. Chand. 169 takes up the text here, Reports 2d, 450.

3—Reports 1st, 197, 2d, 450 Nyáti is sometimes interpreted "Caste," but improperly. It means Gentile kindred only. See Mit. 308, note, where our author's opinion is noticed on this point.

(*a*) 'A present, especially one made to a Bráhman on the conclusion of any public ceremonial' WILSON.—*Ed.*

(*b*) This prohibition is directory only, not imperative. See *Chinna Gaundan* v. *Kumára Gaundan*, 1 Mad. H. C. Rep. 54.—*Ed.*

(*c*) So held in *Ayyávu Muppanár* v. *Niládatchi Ammál*, 1 Mad. H. C Rep 45.—

when married, and by her sons, in her old age. If none of these exist, let her other relations [Nyáti] take care of her. A woman is never fit for independence."*(d)*. This has been declared by Yájñavalkya[1] only with reference to difference of age, and the circumstances of a woman, being under the power of her husband. In case of his being dead, or [unable] from old age, or other [disqualification], or from helplessness, then [she is] indeed under the power of her sons or other relatives.

A similar text of Kátyáyana explained, only to relate to married women.

18. By Kátyáyana also it has been said[2] "If a woman, without the orders of her father, husband, or son, should perform obsequies, such obsequies are of doubtful validity." What is here said of the orders of her father, husband, &c. relates only to the difference of age. *Obsequies* here means, rites performed for the other world; wherefore, at whatever age a married woman may [require to] receive the command of her husband, that very command is in the case of a widow not required, since the command of any other person, not here mentioned, is nowhere declared requisite. Therefore the right of adoption, even without the order of her [late] husband, does pertain to a widow.

Explanation of Vásishṭha's text in favour of the brother's son first.

19. The *unremote kinsman*, means, in each case, the sapinda nearest [to the adopter]; among whom again, the nearest of all is the brother's son*(d)*; for: "If among several brothers of the whole blood, one of them have a son born, Manu[3] pronounces them all fathers of a male child by means of that son." And the Mitákshará[4] has the same. And this must be the proper motive of that precept; for it is impossible there can be any other. The *remote* kinsman, means 'one of another caste.' And my father has said that; "A married man, who has even had a son born, may become an adopted son."*(e)* This also is reasonable, for it is not in opposition [to other maxims].[1]

1—Digest 2d, 381. Reports 2d, 450. 2—Reports 1st, 195, 2nd 451.

3—4—Chapter 9th, 182. Mit. 320, Jím. Vá. 200, Digest 3rd, 266. Reports 2d, 86. Datt. Mím. 33. Datt. Chand. 161.

4—Reports 1st, 196.

(*d*) This 'precept' does not appear to be in point; and so far as regards the widow the doctrine in support of which it is cited, seems questionable. It has, however, been held in Bombay that a widow may adopt a son without consent of her husband, if she have obtained permission of the caste and the sanction of the ruling powers. But under such circumstances she must adopt the next of kin to the deceased husband—his brother's son if such exist. *Shee Brijhookunjee Muharaj* v. *Sree Gokoolootsaojee Muharaj* 1 Borr. 181, *Huebut Rao Mankur* v. *Govind Rao Bulwunt Rao Mankur* 2 Borr. 75. So in Madras the Pandits have said, *obiter*, that a widow's adoption with the mere consent of her husband's relations would be valid: *Kanee Seeagamy Nachiar* v. *Streemathoo Heraniah Gurhah* 1 Mad. Sel. Dec. 101, 104, and see M. S. D. 1849, p. 115, 117, and S. A. 156 of 1857 M. S. D. 1958, p. 5: Strange's Manual of Hindú Law, 2d ed. § 72: Gibelin *Etudes sur le Droit Civil des Hindous* 79, 94. 1 Strange H. L. 79: Colebrooke's note to Mitákshará, ch. 1, sec. XI, cl. 9. And see R A. 35 of 1861, heard 19th Dec. 1863, and reported in 1 Mad. H. C. Rep. In Bengal the husband's assent seems indispensable, Macn. Prin. 68, Macn. Cons. 195. 3 Coleb. Dig. 242. and so held in a Benares case 2. S. D. 'A. 169: *Raja Haimun Chull Sing* v. *Koomer Gunsheam Sing* 2 Knapp P. C. 203, 221.—*Ed.*

(*e*) So, apparently, held in Bombay provided he be a *sagotra* 1 Borr. 181: 1 Morl. Dig. 17 *Contra* in Madras; *Chetty Colum Prusanna* v. *Chetty Colum Moodoo* 1 Mad. Sel. Dec. 406.—*Ed.*

20. As for this text of the Kálikâ Puráṇa:[1] "O Lord of the earth, a son, having been initiated under the family name of his father, unto the ceremony of tonsure inclusive, does not become the son of another man [anyastas]. The ceremony of tonsure and of investiture[2] being indeed performed, under his own family name, sons given, and the rest may be considered as issue: else they are termed slaves. After their fifth year, O king, sons given, and the rest are not sons. [But] having taken a boy five years old, the adopter should first perform the sacrifice for male issue." It relates to asagotras only. *Unto the ceremony of tonsure inclusive*: The particle, *ang*, here is inceptive, used for the sake of entirely including all such cases; for if it be meant as a limit conclusive, it will have the objection of being in opposition to the ceremonies of tonsure and investiture [specified in the text.] But such reliance is not to be placed on this last passage, because it is not to be found in two or three copies of the Kálikâ Puráṇa.

A text of the Kalika Puráṇa, cited and explained.

CX.

21. The son given is of two sorts; first, simple; second, son of two fathers, (dvyámushyáyaṇa). The first, is one bestowed without any special compact; the last, is one given under an agreement to this effect, 'he shall belong to us both.'[3] Here the first will perform the funeral ceremony, and the other rites for the adopter only, as may thus [be demonstrated]: In the desire of accomplishing the acceptance of a son, by the term 'son' being in the second person, in the phrase, "being about to adopt a son" [para. 16] and the like, detailing the rules for the ceremony, the production of a son is declared. And not that the adopter can possibly imagine, 'his filial relationship is derived from my capacity of begetting' Therefore, from the word 'son,' after having instanced the whole duties of a son, we must admit the production of one, as far as requisite, and not previously existing. Hence, in the family of the acceptor, the condition may [in this way] be brought about: From which result the acts suitable to the different relations, of son, father, and the rest. Even as is declared by Manu:[4] "A given son must never claim the family and estate of his natural father: the funeral oblation follows the family and estate, but of him who has given away his son, the obsequies fail.'

'Son given,' of two kinds: 'Simple adopted,' and 'son of two fathers.'

22. *Follows the family and estate*, goes after the family and estate, the latter expression corresponding generally with the term "goes along with." The *given son*, the simple adopted; since, in the case of a Dvyámushyáyaṇa, the [double] obligation of family connexion and the like, will be hereafter declared. The *funeral oblation* according to Medhatithi, Kulluka Bhatta, and others, means the funeral

Explanation of Manu's text.

1—Datt. Mím. 68. Datt. Chand. 175. Mit. 310. and Notes quoting our Author's opinion. Digest 3d, 148-9. Reports 1st, 195.

2—The reading of the Mayukha is purposely more explicit here than in the other works, which read 'tonsure and other rites.'

3—Mit. 308 note, quoting this passage.

4—Chapter 9th, 142. Mit. 315. Digest 3d, 147 Datt. Mím 105. Datt. Chand. 191

ceremony, and other Çráddhas. According to other authors again the *funeral oblation,* means sapiṇḍa connexion; and *obsequies,* the funeral and other Çráddhas. The correct interpretation is this: As by the passage:[1] "He, who has begotten a son, and whose hair is [still] black, may maintain a sacred fire," the difference as to his age and condition is exemplified, and again, the difference of place, by the passage: He measures out the inner portion, and the outer portion of the altar;" even so, in this place, having merely exemplified the acts connected with the obligation of the funeral oblation for the natural father and the rest, by the terms, 'family,' 'estate,' 'funeral oblation,' and 'obsequies,' the cessation of them is declared.

23 From this also results, the establishment of the cessation of family connexion with the father's whole brother, and the rest. Therefore also, even the son begotten by the simple adopted son, shall perform [his father's] sapiṇḍí karan, párvana obsequies, and the rest, in conjunction even with the [original] adopter. Even so, his son also.

A text of Kátyáyana held to refer to the 'son of two fathers.'

24. However, what Kátyáyana, opening the discussion of the 'son of two fathers,' by this text: "Now, when the family connexion of sons, either adopted, purchased, or son of an appointed daughter, remains unsettled, through their acceptance by another they become sons of two fathers," and the like, says[2]: "If there be no offspring of these adopters by their own wives, they [the secondary sons,] take the estate, and give the funeral oblations to three ancestors; if there be no [offspring], to either [the giver or receiver], they will give the oblation for both. Having separately considered both in one Çráddha, they shall call upon both of them" Has reference to the 'son of two fathers,' because of his premising. '*They become sons of two fathers.*'

• CXII.

The obligations and rights of the son of two fathers in regard to obsequies and succession, defined whether other sons exist, or not.

25 If either the natural parent, or the adoptive father, have no other male issue, the Dvyámushyáyaṇa, or 'son of two fathers,' shall present the funeral oblation to him, and shall take his estate, but not so if there be [male issue] If both have legitimate sons, he offers an oblation to neither, but takes a quarter of the share allotted to a legitimate son of his adoptive father;[3] from this text of Vasishṭha:[4] "When a son has been adopted, if a legitimate son be afterwards born, the given son takes a fourth part:" and likewise this of Kátyáyana:[5] "If a legitimate son be born, the rest are pronounced shares of *a fourth part,* provided they belong to the same tribe: but if they be of a different class, they are entitled to food and raiment only." The reading in the Kalpataru is, 'a third part.' Those of *the same tribe,* according to Vijñáneçvara[6] are, the son of the wife, the son adopted, and the rest.

1—Mit. page 253 note. Reports 2nd, 663.

2—This passage is quoted in the notes to the Mitakshará, page 318.

3—Datt. Mím. 153. Datt. Chand. 201 Ante para. 16.

4—Mit. 316. Jím. Vá. 157. Datt. Mím. 61. Datt. Chand 200 and note there.

5—Mit page 316 Ante Section 4th, para. 11—et seq.

His duties defined in default of sons to both.

26. But if sons are wanting to both, then he shall perform a single Çráddha to both also; in the mode declared above, by the term "in one Çráddha," &c. Moreover in the Hemádri is a text of Kṛshnájini:[1] "As many as there may be degrees of forefathers, with so many, their own forefathers, let sons given, and the rest associate the deceased; in order, their sons with two forefathers, their grandsons with one, should [do] the same. The fourth degree, at pleasure.[2] This [sapiṇḍa relation] extends to three degrees." "At the regular seasons, there is no distinction of degrees: but on the [anniversary] day of death, having invoked them singly, let him perform the Çráddha according to the proper rite." Which sense is consonant also to the text of Kátyáyana. [para. 24.]

Detailed explanation of the text.

27. This is the meaning: 'The son of two fathers, and the rest, shall perform the sapiṇḍí karan of those dying in the families of both the real and adoptive father, together with those of the same degree, [that is] in company with the father [of the deceased], and the rest. But the sons of those adopted, and the rest, shall perform their sapiṇḍí karan together with that of both the natural, and adoptive [father]. Their grandsons also shall associate their real father with their adoptive grandfather, and their real great-grandfather.' *The fourth degree*, their great-grandson. *Pleasure*, desire; that is, they shall invoke the adopter, or not, [as they please]; but the real father, they shall even summon. *At the regular seasons*; that is, at the days of new moon, [amávásyá] and other seasons, the Çráddha according to the degrees of [forefathers] of the real and adoptive fathers, is to be celebrated. But on the anniversary of death, having invoked the single person alone, let them celebrate the Ekoddishṭa çráddha for him.

Opponents argument against the term 'simple adopted.'

28. Some however say: 'Since the rite of simple adoption is not [mentioned], it does not exist, and there is no agreement to the effect: 'He belongs to us both,' because no rite for it exists. One taken without this agreement, therefore, is even a son of two fathers.—And even by him, either a double Çráddha, or a single one, may be celebrated, by invoking [singly or together] both his real and adoptive father, in the Amávásya and other [Çráddhas]. But the sapiṇḍí karan, Párvana, and other Çráddhas, must be performed for the adopted son, in company with both his real and adoptive father, by his son. Even so, by his son, and the rest.'

Answered and refuted.

29. This must be considered. Because, though the phrase 'simple adopted' is certainly nowhere mentioned, still, however, this [meaning] satisfactorily results, even from the declaration of the entire cessation of the connexion with the real father and the rest, by the above recorded text of Manu [para. 21] which prohibition does not apply in a Dvyámushyáyana adoption. Further: A marriage in the family of the procreator [Viji] within seven degrees, which

CXIV.

1—Datt. Mím 120. Datt. Chand. 139.

2—Chhundu instead of Chhedu "excluded" which is the reading of the Datt. Mím. and Chand.

is altogether illegal according to the text of Gautama:[1] With the kinsmen on the side of the father, viz. of the procreator, [Víji] beyond the seventh degree; and with those on the mother's side, beyond the fifth, &c.," would be unmeaning in a Dvyámushấyaṇa adoption, because the sapiṇḍa affinity [to the procreator] still exists therein [beyond that]. Therefore, the term, 'simple adopted,' must necessarily be expressed, to make the same agree with that of the text, because of the declaration of the prohibition of the sapiṇḍa connexion.

A text of the Pravarádhyáya adduced in favour of the argument.

30. Moreover, in the Pravarádhyáya [it is said]:[2] "They who become sons of two fathers, [dvyámushấyaṇa] whether adopted, purchased, or the rest, cannot take in marriage any one of either Gotra, after the example of Çaunga and Çaishira." In which also, the term *either Gotra*, is spoken of the Dvyámushấyaṇa. And the prohibition of connexion in the real family [Gotra] is declared by the text of Manu; which is the difference [between the two]. By the distinction also, between adopted son, 'simple,' and, 'son of two fathers' [the term, simple] is proper to be included; whence even the propriety of the term 'simple adopted son' is established.

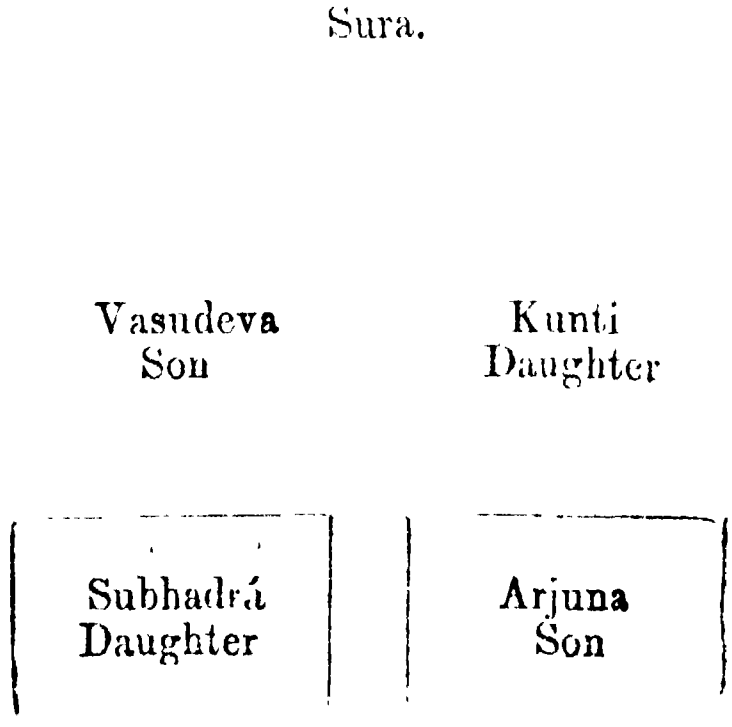
And supported by a quotation from the same.

31. Even so Bhatta Someçvara,[3] satisfactorily reconciles the one doctrine, under the text of Manu [para. 21]: "That there was a cessation of the sapiṇḍa connexion between Arjuna [as] the son of Kunti, born after she was] given in adoption by [her father] Sura to Kuntibhoja, and Subhadrá, [as] the daughter of Vasudeva, who was the son of Sura," with the opposite opinion, "that Arjuna could not marry the said Subhadrá," as might seem to result from that text of Gautama [para. 21], applying solely to the prohibition of [a wife] come of the father's kindred," by adducing the affirmation of the commentaries in favour of the utter exclusion of the family connexion [after the adoption.][4]

1—Datt. Mím. 107. 2—Datt. Mím. page 126 and note. Datt. Chan. 182.

3—In the Mímámsá.

4—This will be more intelligible from the following genealogy. Arjuna's real father was Indra, though he took the name of Pándava from his mother's husband Pánda, and his marrying Subhadrá, espoused his maternal uncle's daughter [which is reprobated in general: see Chap. 1st, Sec. 1st, para. 13]: but as the mother had been previously given away in adoption, their relationship, as cousins by the mother's side, had ceased.



32. As for what some author says: 'That the sapiṇda connexion of Kunti with the family of Sura, is declared by Someçvara, under the text of Gautama, to continue through seven degrees,' the reason is, that he has not read the book. Therefore, the text of Gautama, after having previously declared the cessation of sapiṇda relationship, refers to the prohibition [of marriage] in the family of the natural father, and not as considering the subject of sapiṇda relationship. In this way, the correctness of the terms, son 'simple adopted,' and 'son of two fathers,' being established, the possibility of an agreement to the effect: "He shall belong to us both," [para. 21] is likewise established; for the object is manifest, by the accepter knowing him to be 'son of two fathers.' And again, the sapiṇda relationship of the simple adopted son, extends, in his adoptive father's family, to seven degrees on the father's side, and to five degrees on the mother's side.

CXV. An author's opinion refuted.

As for these texts of Vriddha Gautama:[1] "The sons given, purchased, and the rest, who are adopted from those of his own general family, by the observance of form, enter the lineage [gotrata, of the adopter]. But the relation of sapiṇda is not included," as well as of Bṛhat Manu:[2] "Sons given, purchased, and the rest, retain relation of sapiṇda to the natural father, as extending to the fifth and the seventh, degrees: like this, their general family, which is also that of their adopter," and moreover of Nárada:[3] "For the sake of religious merit, [being adopted] like the real son, under the family name of each respectively [tat tat gotrena] sons [who are] reared: for such, merely participation in a share, and [the oblation of] the funeral cake, is declared" they are, all three, not of good authority; [at least, if their authority be good, they are to be used only for the sake of determining the want of sapiṇda relationship of] the Dvyámushyáyaṇa, as far as seven generations, in the family of the adopter; for, in the case of a simple adopted son, his sapiṇda relationship, as far as seven generations in the family of the adopter [Pálaka] is declared [to commence]. The authority of three texts denied, to apply to the simple adopted son.

CXVI. by the before quoted text of Gautama, [para. 29] and because his sapiṇda relationship at the same time, in the family of his real father, is declared to cease by the text of Manu [para. 21].

34. As for the following matter, written by certain respectable authors in discussing the subject of sapiṇda relationship: "Yet if [an adopted son's] investiture and other initiatory rites, have been celebrated in the general family [gotra] of his real father, his sapiṇda relationship to his real father's family [kula] is retained, both to the father, and to the mother; to the fifth degree [from the mother,] The reasoning of certain authors declared to be unfounded.

1—Datt. Mím. 108-26, noticing our author's objection. Datt. Chand. 191.

2—Datt. Mím. 27 and note q. v. 106.

3—Datt. Mím. 199 note, where our author is again noticed and the text attributed to Devala.

and to the seventh [from the father] : but to three degrees in the family of the adopter, by reason that there is a want of the state of begetting, and of investiture, to the author of the secondary paternal relation, the adopter. However, if the adopted son be [so] initiated in the general family of the adopter, his [sapiṇḍa relationship] with the adopter and the rest [of his family, will continue] even to seven generations, and to five [as above:"] its foundation is not known.

Conclusion drawn.

35. Again: If the paternal relation exists not, by reason of the absence of the acts of begetting, of investiture, and the like, in what manner arises the adopted son's sapiṇḍa, relationship to either [even,] as far as three degrees or his performance of Çrá́ddha and other ceremonies for the adopter and the rest of his family? Neither can it be said, 'the paternal relation and sapiṇḍa relation are [necessarily] connected,' because by this, on the absence of the first, the want of the sapiṇḍa relationship would ensue. The result of it is this: Sapiṇḍa relationship even [of the adopted son], with the adopter and the rest of his family, has been already pronounced from the text of Gautama and others [para. 29:] "With the kinsmen on the side of the procreator beyond the seventh degree." And this is conclusive.

Summary in conclusion.

CXVII.

36. [1] Now this is the rite for gift and acceptance of a son. In this matter, the power of giving [in adoption], where there are more sons than one, allows even of any one of them, not being the eldest; and that of acceptance, attaches to one who has not had a son born, or whose sons are dead. The right of married women [to adopt, is good] with the orders of the husband; in default of him, of their [own] fathers, and the rest. Of Çúdras [adopting] the daughter's son, or the sister's son, are to be taken, and no other. By the other [superior classes] however, the nearest sapiṇḍa relation; in default of them, the remote [kindred], but not one of another caste.

The gift inceptive.

37. Then the giver, on the day [fixed] for the acceptance, having duly called to mind the [proper] time, and the other [considerations], and having thus vowed: 'I am about to make a gift of my son for the cessation,[2] between myself and the rest [of my family], and this son, of the several duties arising from the reciprocal connexion, at present existing between [us, as] father, son, and the like,' shall perform the Ganeça **pujá**, svasti **váchan**,[3] **mátreká** pujá, Vriddhi çráddha, and the other rites.

1—The remainder of this section, though not found in any Gujarát copies, was introduced from one obtained at Puná. It appears to be an extract from some other work, or, a summary of the doctrine of the Mayúkha, by some more modern authors.

2—In the original, it is "continuation" pravritti, for nivritti, which the sense requiring, was adopted.

3—A religious rite preparatory to any important observance [Wilson], where the mode of it is described.

38. The accepter too, having fasted on the day preceding that for the acceptance, and on the next day having summoned his kinsmen, and made known his taking a son to the king; having called to mind the time, and other [considerations], and having thus vowed: 'I am about to take (this person) as a son, to the cessation of the mutual connexion' of father, son, or the like, at present subsisting between him, and his procreator and the rest (of that family,) and for the accession between him and me, and the rest (of my family), of the duties mutually arising from the respective connexion of father, son, and the like (by this adoption),' and having performed, the Ganeça pujá, Svasti váchan, Matreká pujá, Vriddhi Çráddha, Áchárya varan, and the various reverences to be made, after a special vow to the áchárya, with the ear-rings, ring, suit of clothes, turban, madhuparka and the rest, let him give a feast to three Bráhmans, and to his kindred.

The acceptance inceptive.

39. And the Áchárya, having thus vowed: 'I am about to do my proper duties,' and having performed the marking out of the altar, and the other [acts] as far as the consecration of the fire, inclusive, shall celebrate the rites enjoined in the words of the Vedas[1] and the rest, as far as the straining of the clarified butter inclusive.

Officiating priest's duties. CXVIII.

40. Then let the accepter, having gone near the giver, thus beg, 'Give me this son';[2] and the giver, with relation of the five prayers [the initial words of the first of which are] Ye yajñena, having called to mind the time, and the rest, having repeated his motives as above detailed, shall declare, 'I give you this son, adorned with ornaments, according to my ability.' This is the gift of his son, commencing with the words of the Vedas.[3]

Gift completed.

41. Then the accepter, having accepted him with the prayer devasya tva, and the others, and having repeated the Káma stuti in the form enjoined by his own çákhá, having inaudibly repeated the mystical invocation angád angát, &c. having kissed the forehead of the child, let him carry him within his own house, adorned with clothes and so forth, accompanied with rejoicings.

Acceptance completed.

42. Next, the Áchárya, having performed the setting up of the clarified butter, and the rest, as far as the portioning of it, inclusive, having performed a burnt-offering even with the clarified butter, with the Vyáhriti incantation, both backwards and in due order, having dressed the oblations, let him offer a burnt offering. He then

Priests' duties, continued and concluded.

1—From 'anvadháne chakshu,' line 1st, to 'kratam,' line 3d.

2—Datt. Mím. 97. For this and the following passages, turn to para. 8, and the references there.

3—From 'Ye yajñena,' line 5, to 'Gati.'

commences the principal burnt-offering of dressed oblations, for acceptance of a son, with the words of the Veda.[1] Having commenced with the words, "Tubhyam agne," &c. let him conclude with those commencing "Prágvadattaḥ." Thus ends the rite of adoption.

SECTION VI.

Partition of debts, and of concealed effects.

1. This settled, I return [to my subject].[2] Kátyáyana states a distinction in partition of debts:[3] "The debt of the father, one incurred by a parcener himself on account of the debts of the father, and one specially his own; debts so incurred, must be examined on a partition with the kinsmen." *On account of the debts of the father*, incurred for the sake of discharging the father's debts. *Specially his own*, [contradicted by other] than himself, for the maintenance of his family. The same author says:[4] "A debt contracted by a brother, a paternal uncle, or a mother, for the [support of the] family, must be fully discharged by the coheirs, when partition is made."

The debts, to be considered at a partition are of three kinds:

2. The same author also says, in case the debt be less than the property:[5] "But having given the debt [to the creditors], and what was bestowed through affection, let them divide the balance." *Bestowed*, promised, Nárada:[6] "What remains, after discharging the father's donation, and after payment of his debts, may be divided by the brethren, so that their father continue not a debtor." *The father's donation*, what had been promised by the father. The same author says:[7] "What has been given for religious purposes, and through affection, and the debt which has been added by himself, that [and] the visible [estate], let them divide; [any other debt] is not to be given, out of the paternal estate." The meaning is this: 'What has been given for religious purposes, as well as through affection; [that is] what it has been added by the father himself, [that is] what has been made by himself; such debts [and the visible estate] they shall divide. Payment [dána] is not [allowable], out of the paternal estate, of debts other than these.'

Such debts, when covered by the estate to be first paid, and the residue to be divided.

Payment out of the paternal estate restricted to particular obligations. CXX.

1—In the last line of the page.

2—From section 4th, para. 40th. 3—Digest 3d, 390. 4—Digest 3d, 389.

5—Digest 3d, 388, where a different turn is given to the text.

6—Digest 3rd, 73, Jím. Vá. 21, where the same difference is observable between these two translations, as in that of the foregoing text and our author, whose version is altogether different from both.

7—Digest 3d, 391.

3. The same author also says, in suspicion of effects undiscovered :[1] " A house, arable land, or quadrupeds, discovered [after partition, as the property of the deceased], must be [equally] divided; if it be justly suspected that effects are concealed, a discovery by ordeal is prescribed by law." " Thus Manu declared, that household utensils, beasts of burthen, and milch cattle, ornaments, and workmen, must be divided, when discovered [among the heirs]: if effects are [suspected to be] hidden, a discovery must be obtained by the Kosha mode of ordeal."[2] *Workmen*: slaves, and the like. Here even, the Kosha ordeal itself has been fixed in such matters, in the chapter on ordeals, by this very authority: " In sustaining the truth of doubts in partition among heirs, at all times, [and] in settling a multitude of proofs [kriyâ], let them even undergo the Kosha ordeal."

Partition of effects concealed and discovered after partition; with the mode prescribed for their discovery.

SECTION VII.

On property not liable to division, (Avibhájyam.)

1. Manu says :[3] " Wealth, however, acquired by learning, belongs exclusively to any one of them who acquired it; so does any thing given by a friend, received [at or] on account of marriage, or presented as a mark of respect to a guest." Vyása :[4] " Wealth gained by science, or earned by valour, or received from affectionate kindred, belongs, at the time of partition, to him [who acquired it], and shall not be claimed by the coheirs." *Received from affectionate kindred;* [Saudáyakam; this term] will be hereafter explained.[5]

Certain property not subject to partition.

CXXI.

2. This [wealth] must be understood to be acquired, without loss to the father's estate. Thus also Yájñavalkya :[6] " Whatever else is acquired by the coparcener himself, without detriment to the father's estate, as, a present from a friend, or a gift at nuptials, does not appertain to the coheirs; nor shall he who recovers hereditary property, which had been taken away, give it up to the parceners: nor what has been gained by science."

If gained without assistance from the common stock

1—Digest 3d, 395, where the text is attributed to Kátyáyana; at page 90 of that vol. the last stanza is read differently, and attributed to Bŕhaspati.

2—See Chap. 3d, Reports 1st, 64, 2d, 57.

3—Chap. 9th, 206. Jím. Vá. 110-116. Digest 3d, 332.

4—Jím. Vá. 110-17, Digest 3d, 333.

5—At para. 13; and in section 10th, para. 8th.

6—Mit. 268. Jím. Vá. 109-117. Digest 3d, 348. Reports 1st, 64-244.

3. But Çankha declares a special rule, relating to the recovery of land, derived from ancestors but long lost:[1] "Land [inherited] in regular succession, but which had been formerly lost, and which a single [heir] shall recover solely by his own labour, the rest may divide, according to their due allotments; having first given him a fourth part." That is, 'having given to the recoverer a *fourth part*, of the recovered property, they shall divide the balance equally, with the recoverer.'

Special rule regarding land recovered,

4. Manu says:[2] "What a brother has acquired by his labour without using the patrimony, he need not give up to the coheirs; nor what has been gained by science." Vyása:[3] "What a man gains by his own ability, without relying on the patrimony, he shall not give up to the coheirs, nor what he acquired by learning." Acquisition by *learning* is explained by Kátyáyana: "Wealth gained through science, which was acquired from a stranger, while receiving a foreign maintenance, is termed acquisition through learning."

Other text adduced.

5. The same author elucidates this term:[5] "What is gained by the solution [of a difficulty], after a prize has been offered, must be considered as acquired through science, and is not included in partition [among coheirs."] What has been obtained from a pupil, or by officiating as a priest, or for [answering] a question, or for determining a doubtful point, or through display of knowledge, or by [success in] disputation, or for superior [skill in] reading, the sages have declared to be the gains of science, and not subject to distribution." "The law is the same in regard also to artizans [çilpí], and to increase of price:"[6] "A prize which has been offered for the display of superior learning, and a gift received from a votary for whom a sacrifice was formerly performed; or a present from a pupil formerly instructed, sages have declared to be the acquisition of science: what is otherwise acquired, is [the] joint property [of the co-heirs]." Even what is won by surpassing another in learning, after a stake has been deposited, Bṛhaspati pronounces the acquisition of science, and impartible. What is obtained by the boast of learning, what is received from a pupil, or for the performance of a sacrifice, Bhṛgu calls the acquisition of *science*.'

Acquisitions through learning enumerated.

CXXII.

6. *Solution*, according to the Madana Ratna, means, the reading of [passages of the Vedas] having the order [of construction, krama], and the sentences [jatá], and the like,[7] duly linked together. Some, again, say it is the interpretation, in a public assembly, of concealed [meanings] required

And defined.

1—Mit. 268. Jím. Vá. 135. Digest 3d, 365.

2—Chap. 9th, 208. Mit. 271. Jím. Vá. 109-117. Digest 3d, 339. Of the two readings of this text, our author adopts that of the Mitákshará.

3—Jím. Vá. 109, Digest 3d, 311. 4—Mit. 271. Digest 3d, 332.

5—Jím. Vá. 127. Digest 3d, 333.

6—Digest 3d, 334. The quotation in Jím. Vá. breaks off after this.

7—See Asiatic Researches 8th, 390.

to be made known. The construction is, 'solved after a prize [has been offered].' *Display*, public exhibition. *Superior reading*, pre-eminent reading. *In regard also to artizans*, meaning, that this law, respecting science, is to be applied also among artizans. *Increase of price* caused by great satisfaction [with the work]. *Performance of a sacrifice* is merely an example.

All such liable to partition if made with assistance from the common stock. CXXIII.

7. Here also, in all these cases, indivisibility applies, only when no detriment has fallen on the paternal estate, in acquiring, as well superior knowledge, as wealth; for, in case of detriment [to the estate, the acquisition] is even divisible. Even so, Kátyáyana says:[1] "Yet Bṛihaspati has ordained, that wealth shall be partible, if it was gained by learned brothers who were instructed in the family by their father, or paternal grandfather, [or uncles]; and it is the same, if the wealth were acquired by valour, [with assistance from the family estate."]

The acquirer getting a double share

8. Also in case of loss to the paternal estate even, the acquirer gets a double share, from this text of Vasishtha:[2] "He amongst them, who has made an acquisition, may take a double portion of it."

An exception with regard to acquisition by learning.

9. Nárada states a distinction in some cases, in acquisition of wealth through learning:[3] "He who maintains the family of a brother studying science, shall take, even though not told, [açruta] a share of the wealth gained by science. The word açruta means unlearned, according to the Madana Ratna.[4] But the proper sense is, not promised, thus: 'I will give a share.'

Distinction in wealth acquired without detriment to the paternal estate.

10. Gautama[5] declares a distinction also, with regard to wealth acquired without detriment to the father's estate: "His own acquired wealth, a learned man may, if he please, give up to unlearned co-heirs." He who is versed in knowledge, is a *learned man*. The meaning is, that, with his own pleasure, he may give it to his unlearned brethren. Kátyáyana:[6] "No part of the wealth, which is gained by science, need be given, by a learned man, to his unlearned co-heirs; but such property must be yielded by him, to those who are equal, or superior, in learning:" "A learned man need not give a share of his own acquired wealth, without his assent to an unlearned co-heir: provided it were not gained by him, using the

1—Digest 3d, 340. 2—Jím. Vá. 39. Digest 3d, 109-356.

3—Mit. 270. Jím. Vá. 111. Digest 3, 361.

4—The commentators are here differing about the sense to be given to Çruti, whether it is to mean the Vedas, [and thence the *knowledge* of them] or hearing, [and thence telling, *promise*, which last our author prefers.

5—Jím. Vá. 112. Digest 3d, 349, but our author adopts a different reading.

6—Jím. Vá. 112. Digest 3d, 342.

7—The following text is one of Nárada, Jím. Vá. 112. Digest 3d, 342.

paternal estate." According to Madana, this prohibition applies, only where there exists other property for those brothers who are present: but on failure of other property, [a share of it] even must be given to them.

Gifts from the father &c., impartable, as well as acquisition by valour.

CXXIV.

11. Bṛihaspati declares that to be impartible, which has been given by the father or other [person]: "That which may have been given, either by the paternal grandfather, or the father, as well as by the mother, is not to be taken back; any more than that acquired by valour, or the wealth of a wife." Nárada: "Excepting what is gained by valour, the wealth of a wife, and what is acquired by science, which are three sorts of property exempt from partition; and any favour conferred by a father." Kátyáyana:[2] "That which is taken under a standard, is declared not to be subject to distribution. And also, what is seized [by a soldier] in war, after routing the forces of the enemy, and after risking his life for his lord, is named spoil taken under a standard." The same author says:[3] When [a soldier] performs a gallant action, despising danger; and favour is shewn to him by his lord, pleased with that action; whatever property is then received by him, shall be considered as gained by valour."

Acquisitions by valour partible, if assisted by the common stock

12. Here Vyása states a distinction:[4] "The brethren participate in that wealth, which one of them gains by valour or the like, using any common property, either a vehicle [or weapon] or the like; to him, two shares should be given: but the rest should share alike.

Gift of affectionate kindred.

Wealth received with a maiden defined.

CXXV.

13. Vyása defines the gifts of affectionate kindred, [saudáyakam]: "That which is received, by a married woman or by a maiden, in the house of her husband or of her father, from her husband or from her parents, is termed the gift of affectionate kindred." Kátyáyana:[6] "What is received with a damsel equal in class, at the time of accepting her [in marriage], let a man consider as wealth received with the maiden; it is deemed pure, and promotes increase [of prosperity]: But let him know that to be received on account of marriage, which is accepted by him with his bride: all such wealth is considered as vindicating the solemn rite."

1—Mit. 253, Jím. Vá. 110-117. Digest 3d, 343.

2-3—Jím. Vá. 131. In the Digest 3d, 367, these texts are attributed to Manu, but not found in his Institutes.

4—Jím. Vá, 111. Digest 3d, 71.

5—The text is afterwards, in sect. 10th, para 8th, attributed to Kátyáyana, and read differently "*with* a maiden."

6—In the Digest 3d, 363, this text is attributed to Manu, but is not found.

What is acquired in this, or a similar manner: "The rite again [consists in giving his daughter] after having received a pair of kine,"[1] is denominated, *wealth received with the maiden*. Here even, like wealth acquired by learning, such acquisition also is impartible, if it be acquired without detriment to the father's estate: But, if gained by any other means, except learning or the other [specified modes], it is even liable to partition. And so Manu:[2] "And if all of them, being unlearned, acquire property [before partition] by their own labour, there shall be an equal division of that property [without regard to the first born]; for it was not the wealth of their father: this rule is clearly settled." Labour, employment in agriculture, &c. *Not of their father*, is to be taken, as without assistance from the father's wealth.

Partition of wealth received, with a maiden governed by like rules as acquisitions by learning.

15. Other things exempt from partition, have been enumerated by Manu:[3] "Clothes, vehicles, ornaments; prepared food, water: women; sacrifices and pious acts; as well as the common way, are declared not liable to distribution." *Vehicles*, conveyances. The *clothes*, *conveyances*, and *ornaments*, belong respectively to the possessor, if they are of equal value. If the value of one article be more or less than that of another, then let them be divided.

Other things exempted from partition.

16. But the clothes, &c. and other [things] worn by the father, must be given to the person who partakes of food at his obsequies; as directed by Bṛhaspati:[4] "The clothes and ornaments, the bed, and similar furniture, appertaining to the father, as well as his vehicle and the like, should be given, after perfuming them with fragrant drugs and wreaths of flowers, to the persons who partakes of the funeral repast."

17. If the goats, &c. be unequal in number, a distinct mode of disposal is ordained by Manu:[5] "Let them never divide a single goat or sheep, or a single beast with uncloven hoofs: a single goat or sheep belongs to the first born."

Special rule for certain animals. CXXVI.

18. Both the *prepared food* and *water*, are to be enjoyed [by all] according to their occasions. *Women*, female slaves. If they be of an odd number, they are to be caused to work [for all] according to their occasions. But if of an even number, they are to be distributed.

Explanation of the former text continued.

19. However, if they were set apart by the father, they are not to be distributed, even if of an equal number, by reason of this text of Gautama:[6] No partition is allowed, in the case of women connected [with the father or with one of the co-heirs]."

The father's women reserved.

1—Mitácharádhyáya leaf 8. page 1st. See Manu, chap. 3d, v. 29. Digest 3d, 604.

2—Chap. 9th, v. 205. Digest 2d, 584. Reports 2d, 57.

3—Chap. 9th, 219. Mit. 272. Jím. Vá. 132. Digest 3d, 373. 4—Mit. 272.

5—Chap. 9th, 119. Mit. 273. Digest 2d, 581. 6—Mit. 274 Jím. Vá. 132-3, notes.

Explanation of the terms of the Text continued.

20. According to the Kalpataru: 'By the term sacrifices and pious acts, [Yoga-kshema] holy councillors, family priests, and the like, are denoted.' But Laugakshi says:[1] "The learned have named a conservatory act, kshema; and a sacrificial one, yoga: both are pronounced indivisible: and so are the bed and the chair." In this place, a conservatory act, means [construction of] tanks, gardens, and the like: a sacrificial one, a grand sacrifice, a feast to Brâhmans, and the like. The meaning is this: Whatever property is, with consent of all whilst in a state of unity, set apart for this purpose, and kept by one individual, with that very property that act of religion shall be executed, by that same individual, and by no other: Neither shall all join for the purpose. *The common way*, the way to the house or the like, also land for a cattle pasture, and the like.

A text of Çankha and Likhita and of Vyâsa, explained.

21. As for this text of Çankha and Likhita:[2] No division of a dwelling takes place; nor of water-pots, ornaments, and things not of general use:" and this of Vyâsa:[3] "A place of sacrifice, a field, a vehicle, dressed food, water, and women, are not divisible among kinsmen, though [transmitted] for a thousand generations," whereby they declare the impartible nature, both of a *dwelling* and a *field*, they have reference to a religious foundation, and land for cattle pasture, and the like; [or else] to the prohibition of the partition, by the Kshatriya or other [son of a Brâhman by women of the other tribes,] of these two things, obtained [by the Brâhman] by acceptance of donation; because it has been already noticed as forbidden.[4] Or [thirdly], it may refer to a partition of even these two things, when of little price, at a valuation, and not by actual division of them.

CXXVII.

Rules for appropriating certain things of an impartible nature.

22. Bṛihaspati declares a distinction, in regard to clothes and other matters:[5] "They by whom it is affirmed, that clothes and the like are indivisible, have not proved that the collected wealth of opulent men, their vehicles and ornaments, shall not be divided; property held in common [would be] unemployed, for it cannot be given to one [in exclusion of another]: therefore it must be divided by [some mode deduced from] reasoning; else it would be useless. By the sale of clothes, and ornaments; on the recovery of a written debt; by compensating the dressed food with [an equal allotment of] undressed grain; an [equitable] partition is made." "Water drawn from a [single] well or pool, shall be taken by turns: Let a [single] female slave be successively employed by co-heirs in their respective houses, according to their several shares; if numerous, the slave shall be distributed in equal allotments: such is the law in respect of female servants. A bridge and a field shall be shared [by co-heirs] in due proportion: and the pasture ground for cattle shall be used by the co-heirs in

1—Mit. 374, Jím. Váh. 132-3, notes.

2—Jím. Vá. 133. Digest 3d, 372.

3—Jím. Vá. 133. Digest 3d, 375.

4—Ante section 4th, para. 28.

5—Digest 3d, 378-9.

proportion to their allotments." *On the recovery,* meaning, by levying it from the debtor.

Other articles of a like nature noticed.

23. Kátyáyana :[1] "Wealth which has been fixedly assigned for the purpose of religion, and entered in a deed; and likewise water; slaves also, and such fixed property [or a corody, nibandha] as has gone in order of descent; clothes that have been worn, and ornaments, do nŏt resemble [divisible effects]. According to the time they have been enjoyed, even so let them be made use of [in turns] by the brothers." *Wealth,* means such as has been set apart as the share [to be expended for] religion, and so entered in a deed. *Water*, contained in wells or the like. *Fixed property,* a means of livelihood [vritti.] *Do not resemble,* [that is, are] unfit for partition.

CXXVIII.

Division of common property fraudulently concealed or withheld.

24. The division of property, concealed by deceit from the other brethren, is thus explained by Yájñavalkya :[2] "Effects, which have been withheld by one co-heir from another, and which are discovered after the separation, let them again divide in equal shares: this is a settled rule." *Effects, withheld,* whether by the eldest, younger, or other brother, among the co-heirs; for thus says Manu ;[3] "An eldest brother, who from avarice shall defraud his younger brothers, shall forfeit the honours of his primogeniture, be deprived of his [additional] share, and be chastised by the king."

By any of the co-heirs whomsoever.

25. In this place, also, the term *eldest brother,* is used merely to denote the heirs generally, by the argument exemplified in the loaf and staff;[4] and the meaning is: 'If blame attaches even to the eldest, how much more to the younger ones?' Even so Gautama :[5] "Him indeed, who deprives an heir of his right share, he does certainly destroy; or, if he destroy not him, he destroys his son, or else his grandson." Whoever debars, or excludes from participation, an heir, or person entitled to a share; he, being thus debarred of his share, destroys that person, who so debars him of his right; or if he do not destroy him, he destroys his son, or his grandson.

A fresh partition of it ordained.

CXXIX.

26. Nárada: "That wealth, which has been acquired by a man after separation, belongs to himself alone: what has been recovered, after being seized or lost, and the before mentioned, [property] may be afterwards [divided]." *Before mentioned,* as [property] concealed by any one, among the co-heirs. *May be afterwards,*—divided; is wanting [to complete the sense.] **Manu** :[6]

1—Digest 3d, 375. The translation is altered to suit the gloss.

2—Cole. Mit. 293. Jím. Vá. 230. Digest 3d, 397.

3—Chap. 9th, 213. Mit. 294. Digest 2d, 564. 4—Mit note to page 294.

5—Mit. 294, [from which this appears to be a passage of the Vedas:] The subsequent gloss is all, except a few words, a transcript from the Mitákshará.

6—This text is not found in the Institutes.

"When any common property whatever, is brought to light after partition has been effected, that is not considered a [fair] partition: it must even be made over again."

Means for ascertaining a disputed partition.

27. Yájñavalkya[2] states the modes of decision in case of denial of partition made by any one: "When partition is denied, the fact of it may be ascertained by the evidence of kinsmen, relatives, and witnesses; and by written proof, or by house or field separately possessed." From the term, *separately possessed*, we must understand it of house or land separately given [to each,] from the connexion between the adjective, and the thing denoted by it. Nárada also says:[3] "If a question arise among co-heirs in regard to the fact of partition, it must be ascertained by the evidence of kinsmen, by the record of the distribution, or by separate transaction of affairs."

The exercise of religious duties another mode of

28. The same author says:[4] "The religious duty of unseparated brethren is single. When partition has indeed been made, religious duties become separate for each of them." Here the term *unseparated*, is intended even to denote the condition, whilst the substantive, *brethren*, is [merely] a general term, of which the condition is so denoted. By this [reasoning,] in every unseparated family, of whomsoever it may consist, father, grandfather; son, son's son; paternal uncle, brother, brother's son, or other [member], the religious duty is even single.[5]

The performance of religious duties in a family explained.

29. Here again, as, in the unity of place, time, agent, and the like, one agent is by reasoning obtained for several causes, as supporting several parts of one act; so even, we may understand from the text, that there may be distinct acts, of agents [otherwise] unseparated. Hence all those religious acts required for performance of sacred, as well as of more common rites, even of unseparated brethren, are separate for each, in manner of the distinctions in the nature of a consecrated and a common fire, and the like, though mutually connected. Even so the Çráddha also, of the paternal uncle, brother, son, or other [dying without a son] at the Amávásya, and other [seasons], is even separate, by reason of the separation of the deified [person from the párvana rite]: But the çráddha &c. of brothers [dying] without [maintenance of] a sacred fire, is to be executed by one instrument [or agent] only, because all the deified persons are conjoined. In case of separation of place, by residence abroad, the çráddhas are even separate. The [extra] acts with the fire, requisite for the rites of those who maintained a sacred fire, also, are even separate; but the worship of the household deities, the Vaisvadeva and other rites, are to be done by one agent only. Even so Çákala says:[6] "Residing with one dressing of food, worship of a single house-

CXXX.

2—3—Cole. Mit. 376. Jím. Vá. 236. Digest 3d, 407-414. Reports 1st, 161-211-213.

4—Mit. 377. Digest 3d, 417. Reports 1st, 161-211.

5—Reports 2d, 57

6—Reports 1st,

hold deity, and moreover one single sacrifice at meals to the viçvadevas, or manes, shew unity. In a family of divided brethren, these acts are performed in each house separately."

Two texts of Açvaláyana quoted.

30. As for the text of Açvaláyana, as quoted in the **Párijáta**: "Of those who reside with one dressing of food, even if [previously] separated, O my lord, one alone shall perform those four sacrifices, which follow the Vákyagnya; if men of the twice-born classes, unseparated as well as separated, have their meal dressed separate, let them each celebrate these sacrifices distinct, previous to taking their food, day by day:" it has reference to persons reunited [after separation], because this conclusion is clearly ascertained, from the one phrase, "of separated persons also, residing with one dressing of food," and the other: "of separated, and unseparated [coparceners," in the text].

And examined, though of doubtful authority. CXXXI.

31. Therefore, in case there be a separate dressing of food, among reunited [coparceners], the great sacrifices [Mahá yagnya] are separate. The Vákyagnya, is the Brahma yagnya. The phrase, *those which follow it*, is here the atadguṇa form of a Bahuvrihi compound, [not being a component part of that which it denotes]; or if it were of the other form, [being a component part], the phrase, 'the Vákyagnya, and the rest,' would be void of meaning; for the ascertainment of all the four is certain, even from the fact that: In giving up the first of the five ceremonies, there would be no attainment of the end. Hence, the Brahma yagnya is to be even separately done. But [after all], these two texts are not respected by venerable authors.

The same objection applied to some texts quoted in other books.

32. And these texts also, recorded in the Dharma Pravṛtti: "Sons unseparated must celebrate one anniversary Çráddha for both parents: if they be in different countries, they may perform separately [it, with] the Darsha [or Amávásya] and monthly Çráddhas: If they be abroad in other towns, unseparated brethren are, even at all times, to celebrate the Darsha and monthly Çráddha for both parents, each separately: When unseparated, but resident in different towns, each living upon the wealth acquired by himself, those brothers should celebrate the Çráddha and Párvaṇa, each separately," with the following one in the Smṛti Samuchchaya; The Viçvadeva sacrifice, and the anniversary Çráddha, as well as the Mahálaya [or Pitra paksha] rite, are, in case the family be spread abroad, to be celebrated separately, and the Darsha Çráddha in like manner:" are by a certain author, said to have reference to reunited brethren, residing in different countries. The correct opinion however is, that these even are all unauthentic.

Conclusion drawn.

33. Or else, if there be unity of place, time, agent, and the rest, the instrumentality of one only, is found by reasoning. But where the agents are different, and the same results by the text itself; for, in a difference of place, there is a want of concurrence both of the text and reasoning too; and therefore, the separate performance of Çráddhas and

other rites, by any one of them whomsoever, is founded in reason: which is my conclusion.

Other signs of partition enumerated.

CXXXII.

34. Nárada declares other signs also, of partition:[1] "Separated but not unseparated, brethren, may reciprocally bear testimony, become sureties, bestow gifts, and accept presents." "Gift and acceptance; cattle, grain, houses, land, and attendants, must be considered as distinct among separated brethren, as also the rules of gift; income, and expenditure." Those by whom such matters are publicly transacted with their coheirs, may be known to be separate, even without written evidence." *Gift and acceptance* have reference to borrowing transactions. These very terms, 'gift and acceptance,' are repeated in the second text[2] for the sake of clearness. Acceptance of cattle and the rest among separated persons, accomplished by each apart, is even the means of generating [sole] ownership but among unseparated brethren, acceptance by one alone is the origin of the [joint] ownership of the others also. *The rules of gift*, written deeds, and the like. *Income*, entry [or accumulation] of principal and interest, or the like. Bṛhaspati:[3] "They who have their income, expenditure, and wealth distinct, and have mutual transactions of money lending, and traffic, are undoubtedly separate." Yájñavalkya:[4] "It is declared, that brethren, husband and wife, father and son, cannot become sureties for each other before partition; nor reciprocally lend, nor give evidence for each other.

In default of any marks, ordeal permitted.

CXXXIII.

35. In default of all these signs of partition, ordeal [must be resorted to], since the very same author has declared:[5] "In the absence of all these, a divine test is prescribed." As for the text of Vṛddha Yájñavalkya: "In doubts upon the subject of partition, the division must be proved by the kinsmen, witnesses, and written deeds: proof by ordeal is not to be:" it has reference to the existence of other signs.

A fresh partition to be made on failure of all attempts to discover the fact.

36. In case also of total failure in ascertaining whether they were separated or united, a fresh partition is enjoined by Manu:[6] "When there is a doubt of partition among the co-heirs, a partition must be again made, even though they have taken separate places of abode." Nárada states the duties of separated coheirs:[7] "When there are many persons, sprung from one man, who have their [religious] duties [dharmá] apart, and transactions [kṛyá]

1—Ante Chap. 2d, Sect. 3d. Reports 1st, 105-211. Mit. page 377. Jím. Vá. 237. Digest 3d, 497-417.

2—Or the first, as here transposed, evidently by the fault of the transcribers. The reading of the last text is different, the 'rules of gift,' for 'diet.'

3—Jím. Vá. 238. Digest 3d, 427. Reports 1st, 161. 4—Digest 1st, 228.

5—Ante Chap. 1st. Sec 2d, para. 1st. 6—Not found in the Institutes.

7—Jím. Vá. 333. and notes. Digest 3d, 430.

apart, and are separate in the materials of work [karma gunáli], if they be not accordant in affairs, should they give or sell their own shares, they do all that as they please: for they are masters of their own wealth." *Duties;* ceremonials, that is, the five great sacrifices, [para. 31,] and the like. *Transactions*, commerce, and the like worldly acts. *The materials of work*, household necessaries, and the like, as the means of performing the acts [of the householder]. By the separate existence of these, a partition is manifested. The sense is, that they, so separated, may [each], even without the consent of the others, make the gift, sale, or other alienation [of their respective shares].

37. As for the text of Bṛihaspati:[1] "Separated heirs, as those who are unseparated, are equal in respect of immovables; for one has not power over the whole, to give, mortgage, or sell it;" according to Madana, it is for putting a stop to the right, among coheirs, even separated as to their shares of [moveable] effects, [though unseparated in other respects], to dispose, by gift or other mode, without [general] consent, of grain, or the like, the produce of undivided fields, or other [fixed property]. According to Vijñáneçvara and others, it is for the sake of obviating any future doubt, whether they be separated or united; for, by the consent of those unseparated, the facility of the transaction is ensured.

A Text of Bṛihaspati explained in two ways.

CXXXIV.

38. The same author,[2] with reference to one separated by his own wish, and afterwards disputing, says: "If he subsequently dispute a distribution, which was made with his own consent, he shall be compelled by the king to abide by his share, or be amerced if he persist in contention." *Contention*, pertinacious pursuit.

Punishment for disputing an amicable division.

SECTION VIII.

On Obstructed Heritage, or Succession,—[*Sapratibandha Dáya.*]

1. Now, of the degrees of succession to obstructed heritage. ñavalkya thus relates the order of succession to the wealth of one [dying] separated, and not re-united:[3] "The wife*(a)* and the daughters*(b)* also; both parents; brothers likewise, and their sons; gentiles, cognates, a pupil, and a fellow student: on failure of the first among these, the next in order is indeed heir to the estate of one, who departed for heaven leaving no male issue. This rule extends to all [persons and] classes."

Order of succession to one dying finally separated, without male issue.

1—Mit. 257, Jím. Vá. 31. The text is, in the first anonymous, and in the second, assigned to Vyása.

2—Digest 3d, 399.

3—Mit. 324. Jím. Vá. 160. Digest 3d, 457, Reports 1st, 160-292—2d, 427-670. et. al.

(*a*) See *Ruvee Bhudr Sheo Bhudr* v. *Roopshunker Shunkerjee* 2 Borr. 657.—*Ed.*

(*b*) See cases digested in 1 Morl. Dig. 319, and *Perammáḷ* v. *Venkatammáḷ* 1 Mad. H. C. Rep. 292.—*Ed.*

2. The wife, if faithful to her husband, takes his wealth; not if she be unfaithful(c); for it is declared by Kátyáyana: "Let the widow succeed to her husband's wealth, provided she be chaste." So Hárita says:[1] "If a woman becoming a widow in her youth, be headstrong, [suspected of incontinence] a maintenance must in that case be given to her, for the support of life." Prajápati:[2] "Dying before her husband, a virtuous wife partakes of his consecrated fire; or if her husband die [before her, she shares] his wealth; this is a primeval law." *Consecrated fire*, all the [five sacred] fires. The same author says:[3] "Having taken his movable and immovable property, the base and the precious metals, the liquids, and the clothes; let her duly offer his monthly, half-yearly, and yearly funeral repasts; with presents offered to his manes, and by pious liberality, let her honour the paternal uncle of her husband, his spiritual parents, and daughter's sons, the children of his sisters, his maternal uncles, and also ancient and unprotected persons, guests, and females, [of the family]." *Base metals*, namely, tin, lead, and the like.

First, the wife if faithful.

CXXXV.

3. As for this text of Bṛihaspati:[4] "Whatever property a man possesses, of every kind, after division, whether mortgaged, or other, that the wife, [in whatever form married, jáyá] shall enjoy after the death of her husband, with the exception of fixed property. Even if virtuous and if partition have been made, a woman is not fit to enjoy real property," it, according to the Smṛiti Chandriká, refers to a wife who has not [even] a daughter; for a woman having a daughter obtains the fixed property also. Mádhava, again, considers it to relate to the prohibition of sale, or other transfer, of real property, by a widow, without concurrence of the heirs.

A text of Bṛihaspati as excepting fixed property explained away.

4. As for this text of Kátyáyana: "After the death of the husband, the widow, preserving [the honor of] the family, shall obtain the shares of her husband, so long as she lives: but she has not property [therein, to the extent of] gift, mortgage, or sale:" it is a prohibition of gift of money, or the like, to the Bandí, Chárana, and the like [swindlers]. But gift for religious objects [not visible], and mortgage of the like, suitable to those objects, may even be made,(d) since fixed and moveable property are

A text of Kátyáyana limiting the widow's power, prohibits only improper alienations.

1—See post para. 9, and references. 2—Bṛihaspati, Jím. Vá. 158-9, Digest 3d 458.

3—Our author varies the reading, omitting mention of grains, after metals, and reading "ábdikam yearly," for "ádikam, other."

4—Reports 1st, 58—2d, 666.

(c) See *Doe d. Radamoney Raur* v. *Nielmoney Doss* 1 Morl. Dig. 279; Montr. 314.—*Ed.*

(d) It has accordingly been held at Bombay that the widow of a Hindú, who died without male issue, might give away her husband's property in *Kṛishṇárpaṇa* (grant of lands in propitiation of Kṛshṇa) notwithstanding the existence of her sister's son, provided she herself have no son, or other near heir of her own, whose rights would be affected by such gift of their inheritance to another. *Kupoor Bhuwanee* v. *Seeukram Seoshunkur* 1 Borr. 405: 1 Morl. Dig 265.—*Ed.*

both noticed, in the above quoted text: "Having taken," &c. [para: 2d] and from this of Kátyáyana himself: "A widow, actively engaged in meritorious observances and fasts, constant in the duties of her widowhood, intent upon restraining [her passions], and making holy gifts, even if wanting a son, shall reach the heavenly abodes."

Two other texts referred to kept women.

5. Moreover, the text of the same author[1] "Heirless property goes to the king, deducting however a subsistence for the females, as well as the funeral charges: but the goods belonging to a venerable priest [Çrotriya] let him bestow on venerable priests:" and further that of Nárada:[2] Except the wealth of a Bráhmaṇa [property goes to the king on failure of heirs*(e)*]. A king, who is attentive to the obligations of duty, should give something as maintenance to the women of such persons. The law of inheritance is thus declared:" have both reference to women set apart,[3] because the term, 'lawful wife' [Patní], is not mentioned.

CXXXVI.

And a third, to the widows of united or re-united persons.

6. But as for this of Nárada:[4] "Among brothers, if any one die without issue, or enter a religious order, let the rest of the brethren divide his wealth, except the wife's separate property. Let them allow a maintenance to his women for life, provided these preserve unsullied the bed of their lord. But if they behave otherwise, the brethren may resume that allowance," it relates to the women of one dying unseparated, [or] re-united, because the reading [of the text] is upon that very subject, according to Madana.

A text of Kátyáyana examined.

7. Kátyáyana: "But if her husband have departed for heaven, the wife obtains food and raiment: Or [too], if unseparated, she will receive a share of the wealth, so long as she lives*(f)*" The term *unseparated* is also an illustration of a re-united family. The word 'but [too]' has here the sense of 'or.' From this results a double object of the text, according to Madana: the last [hemistich] referring to a wife lawfully married; the first, to a woman set apart. The foundation of this exposition is to be considered. But [indeed] the same author clearly explains the real meaning: "She who is intent upon her service to her venerable Guru, is fit to enjoy the share assigned: should she not perform her proper duty, he shall order her [only] clothes [already] worn, and a morsel of food." *Her Guru,* her father in law, and other [venerable relatives]. At his pleasure, she may receive a share: otherwise, merely food and raiment. This is the meaning.

1—Mit. 334. 2—Mit. 335 Jím. Vá. 177. Digest 3d, 540.

3—Ante Sec. 7th, para. 19. 4—Mit. 236. Jím. Vá. 177. Digest 3d, 474.

(*e*) And in Vénkaṭa Náraya̱ṇappá's case it has been held by the Privy Council that even in the case of a Bráhman property escheats to the Crown on failure of heirs. *Quære tamen* whether such property would not be subject in the hands of the crown to a trust in favour of Bráhmans?—*Ed.*

(*f*) See cases digested 1 Morl. Dig. 438.—*Ed.*

8. The same author says:[1] "But a wife, who does malicious acts injurious to her husband, who has no sense of shame, who destroys his effects, or who takes delight in being faithless to his bed, is held unworthy of separate property [*stridhana*]." As for this text: "Let them follow this very same rule also, with females degraded [by crime]: but clothes and grain are to be given to her, and let her be caused to reside within the house," it has reference to a husband [living], says a certain modern compiler. This very rule that is, regarding the divorce of a degraded [wife].

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9. Even a mere maintenance is for a woman suspected of incontinence, from this text of **Hárita**: "If a woman, becoming a widow in her youth, be headstrong [suspected of incontinence], a maintenance must in that case be given to her for the support of life." *Headstrong*, according to the Mitákshará,[2] means 'suspected of incontinence.' This establishes our argument [The wife, if faithful, &c., para. 2nd], that a lawfully married wife, restrained [in her conduct], takes the wealth. But if there be more than one, they will divide it, and take shares.*(g)*

A widow suspected of incontinence gets only a mainteuance.

But a faithful one gets the estate. If more than one, they divide it.

10. In default of the wife, the daughter succeeds. Even as Manu says:[3] "The son of a man is even as himself, and the daughter is equal to the son: how then can any other inherit his property, but a daughter, who is as it were himself." If there be more daughters than one, they are to divide [the estate], and take [each a share.]

The daughter, or daughters.

11. In a case also, where some of them are married, and some unmarried, the unmarried ones alone [succeed], by reason of this text of **Kátyáyana**:[4] "Let the widow succeed to her husband's estate, provided she be chaste; and in default of her, the daughter inherits, if unmarried."

Unmarried before married ones.

12. Among the married ones, when some are possessed of [other] wealth, and others are destitute of any, these [last] even will obtain [the estate], from this text of Gautama:[5] "A woman's property goes to her daughters, unmarried, or unprovided for." *Unprovided*, destitute of wealth. Those accquainted with traditional law, hold, that the word, '*woman's*' [wife's] includes the father's also.

If married, the poorest of them.

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1—Digest 3d, 585, see post Sec. 10th, para. 12.

2—Cole Mit. page 340. Digest 3d 479. Reports 2d, 457.

3—Chapter 9th, 130, Jím. Vá. 184. Digest 3d, 166. Reports 1st, 31.

4—Mit. 326. 341. Ante para. 2. 5—Mit. 267-342-69. Jím. Vá. 82. Digest 2d, 588.

Equal shares, vide supra chap. iv. sec. iv. § 19.—*Ed.*

13. In default of daughters, the daughter's son [succeeds], by the text of Vishṇu:[1] "If a man leave neither son, nor son's son, nor [wife, nor female] issue the daughter's son shall take his wealth. For in regard to the obsequies of ancestors, daughter's sons are considered as son's sons*(h)*"

The daughter's

14. In default of the daughter's son, comes the father; in default of him, the mother*(i)*; even as Kátyáyana says:[2] "The widow, being a woman of honest family, or the daughters, or on failure of them, the father, or the mother, or the brother, or his sons, are pronounced to be the heirs of one who leaves no male issue:" and likewise Vishṇu:[3] "The wealth of him who leaves no male issue, goes to his wife; on failure of her, it devolves on daughters; in default of daughters, it devolves on the daughters' sons; if there be none, it belongs to the father; if he be dead, it appertains to the mother; on failure of her, it goes to the brothers; after them it descends to the brother's sons; if none exist, it goes to the relations [sakulya]."

The father, and, after him only, the mother.

15. As for the opinion of Vijñáneçvara:[4] 'that in the complex term parents,' the omission of one term and retention of the other [ekasheça] constitutes an exception to the regular compound [dvandva], and although the order [of construction] be not certainly defined, yet the meaning [in favour of the mother's priority] may be understood, because the word 'mother' stands first in the proper form of the compound; also, from the consecutive order of the particular compound ['mother and father'] being the rule, of which the omission of one term and retention of the other ['parents'] is the exception, and since the father is a common parent to many sons, whilst the mother is not so; therefore, of the two, the mother in the first instance takes the estate, and on failure of her the father',[5] it must be set aside, as contrary to those texts: for the word 'mother' being placed first, in the proper form of the compound, is an exception to the general rule, in regard to the option allowed for the omission of one term and retention of the other; and further, there is a want of proof, in fixing the proper order according to the diffusion or condensation [of the parental power].

The doctrine of the Mitákshará disputed.

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1—Mit. 343. Jím. Vá. 191. 2—Mit. 320.

(*h*) And it has been held that a grandson through a deceased daughter is entitled to perform religious ceremonies for the benefit of the soul of his deceased grandfather, on the failure of a trustee, in preference to a daughter who is a childless widow, these two being the only issue of the deceased *Sibchunder Mullick* v. *Sreemutty Treepoorah Soondry Dossee* Fult. 98.—*Ed.*

(*i*) This is the doctrine of the Dáya Bhága, c. xi. s. i. 5: s. iii. s. iv: 1 Morl. Dig. 321. According to the Mitákshará the mother succeeds *before* the father, Mit. c. ii. s. iii. 1—5.—*Ed.*

3—Mit. 326-350 note. Jím. Vá. 160-194-196. Digest 3d, 489. The mention of 'daughter's sons,' is omitted in the Mit. and even in some copies of Jím. Vá.; and our author leaves out the name of "kinsmen" before relations. 4—Mit. 343.

5—The remarks on this intricate and contested subject in the notes to the Mitákshará, page 345, are too valuable and apposite to be omitted here. "The commentator [on the Mitákshará] Bálambhatta, is of opinion, that the father should inherit first

16. In default of the mother, the uterine brother; in default of him, his son. As for the declaration of Vijñáneçvara and others,[1] 'that in default of the uterine brother,' those by different mothers succeed; on failure of them, the sons of the uterine brother,' it is wrong: since the term 'brother' has the force of 'whole brother,' and a secondary quality is implied by the term, brother by another mother;' and hence an exposition in favor of both, is contrary [to reason]. Some however say,[2] upon the term 'brothers:' That since: "Brothers and sisters, with sons and daughters," is one of the maxims [of Páṇini], and the term 'brothers and sisters,' resolves into [the complex term] 'brothers,' by the omission of one term and retention of the other, in a compound of two species: therefore, in default of brothers, the sister [succeeds]:' But it is not so, because there is a want of proof [of the correctness] of omitting one term, and retaining the other, in a compound of two species.

The uterine brother; then his son. The doctrine of the Mitákshará, in favour of the half-brothers, disputed.

17. The sons of a brother, also, if themselves fatherless at the time of the paternal uncle's death, provided they are capable of understanding [the use of] property, will divide the father's share with their father's other brothers, after the example:[3] "Among grandsons by different fathers, the allotment of shares is according to the fathers."

The brother's sons share with the other brothers.

18. In default, of brother's sons succeed the gentile relations, [Gotraja] within the seventh degree, being connected by funeral oblations, [sapiṇḍa]. The first among these is the paternal grandmother, from this text of Manu:[4] "The mother also being dead, the father's mother shall take the heritage, [on failure of brothers and nephews.]" Even though she is [here] mentioned immediately next to the mother, still she is to be entered at the end, after the brother's sons, after the manner of the

The gentile relations; of whom, the father's mother is first, coming in this place, and not next to the mother.

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and afterwards the mother; upon the analogy of more distant kindred, where the paternal line has invariably the preference, before the maternal kindred; and upon the authority of several express passages of law. Nanda Pandita, author of commentaries on the Mitákshará, and on the institutes of Vishṇu, had before maintained the same opinion. But the elder commentator of the Mitákshará, Visveçvara Bhatta, has in this instance followed the text of his author, in his own treatise entitled Madana Párijáta, and has supported Vijñáneçvara's argument, both there and in his commentary named Subodhini. Much diversity of opinion does indeed prevail on this question. Çríkara maintains, that the father and mother inherit together: and the great majority of writers of eminence [as Aparárka and Kamalákara, and the authors of the Smṛti Chandriká, Madana Ratna, Vyavahára Mayúkha, &c.] gives the father the preference before the mother. Jímúta Váhana and Raghunandana have adopted this doctrine. But Vachespati Misra, on the contrary, concurs with the Mitákshará in placing the mother before the father; being guided by an erroneous reading of the text of Vishṇu, as is remarked in the Víramirodáya. The author of the latter work proposes to reconcile these contradictions by a personal distinction: If the mother be individually more venerable than the father, she inherits; if she be less so, the father takes the inheritance." In practice however, the question can never occur, unless the deceased had separated from his father, which is seldom if ever done.

1—Mit. 347. 2—Mit. 346 note. 3—Ante Section 4th, para 20th, See Mit. 348, Reports 2d, 29.

4—Chapter 9th, 217. Mit. 326-346-49, Jím. Vá. 194, Digest 3d, 503, Reports 1st, 190-292.

entry of [the çráddha for] incidental persons at the end, [as deceased acquaintances, &c.], because the placing her in the middle [is in violation] of the rank fixed for each, as far as brother's sons. [para. 1.]

Then the sister. CXL.

19. In default of her, comes the sister*(j)*; under this text of Manu[1] "To the nearest sapiṇḍa, [male or female], after him in the third degree, the inheritance next belongs:" and this of Bṛihaspati:[2] "Where many claim the inheritance of a childless man, whether they be paternal or maternal relations, [sakulyá], or more distant kinsmen [bándhava], he who is the nearest of them shall take the estate." And [the next rank is] her's, both from her being begotten under the brother's family name, and there being no further reservation with respect to the gentile relationship [Gotrajatva]: it does not particularly specify the same gentile kindred. Neither is she mentioned in the text as the occasion of taking the wealth; [but as next of kin, she succeeds].

The father's father, and the half-brother share between them; after them, the paternal great-grandfather, the father's brother, and the sons of the half brother, share alike.

20. On failure of her, the paternal grandfather, and-half brother are both to share and take it, their propinquity being equal, since the [deceased person's] own father was begotten by the former of those two, and was himself the begetter, of the latter, as well as of the deceased. The propinquity being similar, and there being a want of any other notice, however slight, beyond the order of the text, or the like, therefore, in other cases also, we must act even thus. For this reason, in default of these two, the paternal great-grandfather, the father's brother, and the sons of the half-brother, shall take and share it.

The Sapiṇḍás and Samánodakas.

21. All the sapiṇḍás and the samánodakas follow, in the order of propinquity, as enumerated by Manu:[3] "Now the relation of the Sapiṇḍás, [or men connected by the funeral cake], ceases with the seventh person, [or in the sixth degree of ascent or descent,] and that of Samánodakas, or those connected by an equal oblation of water, ends only when their births and family names are no longer known." *The seventh*, must be understood as of him passed away.

The cognate kindred, of the deceased, of his father, and of his mother.

22. If no distant kinsmen [Sodaka] exist, then come the cognate kindred [Bandhu], who are thus specified in another Smṛiti:[4] "The sons of his own father's sister, the sons of his own mother's sister, and the sons of his own mother's brother, must be considered as *his own* cognate kindred." The sons of his father's paternal aunt,

1—Chapter 9th, 187, Mit. 345-7-51, noticing our author. Jím. Vâ. 215-17. 3d, 525. Reports 1st, 70-72.

2—Digest 3d, 532.

3—Chap. 5th, 60, Jím. Vá. 173-217. Reports 1st, 190-293.

4—Mit. 352. Digest 3d, 535. Reports 1st, 107-293.

(*j*) Held accordingly in Bombay that when a Hindú died leaving property which had descended to him from his maternal grandfather, his sister *and her son* succeeded to such property in preference to his paternal aunt *Laroo* v. *Sheo* 1 Borr. 71. In Madras a sister's son does not inherit, *Doe d. Kullamál* v, *Kuppu Pillai* 1. Mad. H. C. Rep. 85.

CXLI. the sons of his father's maternal aunt, and the sons of his father's maternal uncle, must be deemed his *father's* cognate kindred." "The sons of his mother's paternal aunt, the sons of his mother's maternal aunt, and the sons of his mother's maternal uncles, must be reckoned *his mother's* cognate kindred." Here also, the order [of succession] is even the order of the text.

23. If on the other hand [it be said]: 'As the right of the wife and all the others, in succession to the wealth, is derived from the deceased himself alone, even so that of the cognate kindred is derived in like manner from him: What title then can the cognates of the father or of the mother [of the deceased] have to the wealth? The term 'sons of the sister of the father's father,' and the like, is only for the sake of shewing the connexion between the name and person, and does not mean a connexion with the wealth.' [I answer]: Even without that text, if, after the example of 'the father's maternal uncle, his paternal uncle,' and the rest, in like manner also, the continuous application of that term [cognate among the father's and the mother's cognates be held to exist, by conjunction [of kin through some intermediate person], we should have the absurdity of rendering unintelligible, the connexion between name and persons. Hence, the text is intelligible only by the acceptation of paternal and maternal cognates, in considering that subject in the rules of succession to property. The conclusion is, that the very same applies, by the declaration of the cognate affinity, in the rules for impurity and other [mutual obligagations].[1]

An argument against their equal right over-ruled.

24. In default of cognate kindred, the preceptor; on failure of him, the pupil; by this text of Âpastamba:[2] "If there [illegible]o male issue, the nearest kinsman inherits: or, in [illegible]ault of kindred, the preceptor; or, failing him, the disciple."

The preceptor, [illegible]

25. In default of the pupil, the fellow-student is the successor; in default of him, a Çrotriya; from the text of Gautama:[3] "Venerable priests [Çrotriya] should share the wealth of a Brâhmaṇa, who leaves no issue."

And fellow student, a Çrotriya, CXLII.

26. In default of such an one, any other Brâhmaṇa, by reason of this text of Kâtyâyana:[4] "But in default of all those the lawful heirs are such Brâhmans, as have read the three Vedas, as are pure [in body and mind], as have subdued their passions. Thus virtue is not lost." And Nârada says the same:[5] "In every case, the king may take the wealth of a subject dying without an heir, except the estate of a Brâhmaṇa: for the property of a Brâhmaṇa dying without an heir, must be given to [illegible]

or any Bráhmaṇa, if the deceased were a Bráhman.

1—See, Mit, 352. note. where our author's doctrine is quoted, 2—3—Mit. 353.

4—Manu, Chap. 9th, 183. Mit. 353. 5—Digest 3d, 538. where it is assigned to Devala.

But now see the case above cited.—*Ed.*

In all other cases, the king.

27. Bṛihaspati:[1] "If Kshatriyas, Váiçyas, or Çudras, die childless, leaving neither wife nor brother, let the king take the property; for he is indeed lord of all.

The heirs of hermits, ascetics, and perpetual students specified.

28. Yájñavalkya[2] states a distinction with regard to the estates of ascetics, and the like: "The heirs of a hermit, of an ascetic, and of a student [Brahmachári] are, in their order, the preceptor, the virtuous pupil, and the spiritual brother, and associate in holiness." *The student*, a perpetual one, for the father and the rest even are [the natural heirs] of a temporary student. *The spiritual brother*, one who has agreed to bear the appellation of 'brother.' *An associate in holiness*, one appertaining to the same hermitage. 'Being a spiritual companion, and belonging to the same hermitage' is a compound of nouns designating the same person,[3] [Karmmadhárya samása]. According to Vijñáneçvara, [the succession] of preceptors and the rest, is in the inverse order. But Madana prefers the direct order, from this text of Vishṇu:[4] "The spiritual preceptor shall take the property of a deceased hermit."

Whoever takes the estate, as heir under this above order, is bound to perform the CXLIII. funeral rites of the deceased.

29. The funeral rites of the deceased, as far as the tenth day's rites inclusive, must be performed by that person [among the heirs] who takes the estate, whoever it may be, [from the wife, downwards] even as far as the king himself*(l)*. Even thus Vishṇu says:[5] "He who is heir to the estate, is the giver of the funeral oblations." This same matter has been fully explained by me in the Çráddha Mayúkha, in determining the order of [illegible] to perform them.

SECTION IX.

Of Re-union after Partition,—[Saṁsrishṭa.]

Re-union after separation, defined.

A restriction by the Mitákshará to three persons, over-ruled.

1.—Now we proceed to expound the doctrine of re-united coparceners. On this subject, Bṛihaspati defines re-union:[6] "He who, being once separated, dwells again, through affection, with his father, brother, or paternal uncle, is termed re-united." This re-union, according to the Mitákshará and others, can only take place with a father, brother, or paternal uncle, not with others, because no others are included in the text. But the proper sense is, that this [re-union] arises even from the joint location of the makers of the [first] partition. For the words

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1—Jím. Vá. 177. Digest 3d, 538. 2—Mit. 354. Jím. Vá. 223. Digest 3d, 456.

3—See note to Datt. Mím. page 102. 4—Digest 3d, 548. 5—Digest 3d, 545. Smṛti.

6—Mit. 357. Jím. Vá. 228-168. Digest 3d, 512. Our author differs from all, in his doctrine.

(*l*) In Bombay the eldest son of a deceased Hindú defrays all expenses consequent on his father's death and deducts the amount from the estate, dividing the balance equally among the other sons. *Rookhminee* v. *Tooeram* 1 Borr. 124.—*Ed.*

father, and the rest, are merely as a part to denote the whole, of the persons who make the partition, after the example: "He measures the altar, half within, and half without:" otherwise, there would be a division of the text itself [into three]. Hence, re-union may take place with a wife, a paternal grandfather, a brother's grandson, a paternal uncle's son, and the rest also. "He who, being once separated [from the co-heirs] dwells again [in common, is termed] re-united:" from joint location [of such an one], the sense of separated brothers, [one's own] sons, and the like, does not result. [When two settle thus]: 'The present, of future, wealth of us two, is common property, until we make a partition a second time,' when there exists such a sign, either by an understanding or expressed wish, it is an union.

Re-union permitted, with any former co-parcener.

2. In this place, Manu states a distinction:[1] "If brethren, once divided and living again together as parceners, make a second partition, the shares must in that case be equal: there is not in this instance any right of primogeniture [Jyeshṭyam]." Here, some say: 'that, the unequal distribution being set aside by the phrase, the shares must in that case be equal, the prohibition of the 'eldest son's right' is repeated [though contrary to rules of composition] for the sake of making it clearly understood, that although there is to be no inequality in making up the share of the eldest, yet in the distribution the shares may be even unequal, when made up of greater and lesser shares, at the time of re-uniting the property.'

But the shares at a second partition must be equal. CXLIV. Though the contributions were unequal.

3. But since the term, 'eldest son's right' [Jyeshṭyam] and the like, is merely a declaration of the general meaning; therefore, if [the contributions to] the wealth were greater and less, still the share of each must be equal. And the same is the popular practice. Hence, as the foundation of the practice is derived from this text, any supposition of a declaration contrary thereto, is at variance with reason; for another author has said: "The body of the law, like Grammar, furnishes, for the most part, the foundations of popular customs."

Still the shares at a second partition must be alike.

4. Bṛihaspati:[2] "If any one of the re-united brethren acquire wealth by science, valour, or the like [with the use of the joint stock], two shares of it must be given to him, and the rest shall have each a share." According to

In certain gains made even with aid from the com-

two

fath

1—Chap. 9th, 210. Mit. 369. Jím. Vá. 227. Digest 3d, 475.

2—Jím. Vá. 165. Digest 3d, 551. 3—See Sec 7th, para. 6.

he gets two shares of what was acquired by him, even if at the detriment of the re-united property.

The order of succession to one dying after re-union, is an exception to that of obstructed heritage [See 8th.]

5. Yájñavalkya[1] enumerates the order of those entitled to succeed to the wealth or one re-united: "As of a re-united [coheir], the reunited [coheir], so, of the uterine brother, the uterine brother," which is an exception to the regular succession [failing male issue], of. "The wife, the daughters," and the rest.[2] Hence, this meaning results, that it is the re-united parcenership, and not the condition of the wife [the daughter], and the rest, which causes a preponderance of the right of inheriting the property of a re-united parcener.

The doctrine of the Mitákshará and others, against the wife, &c., controverted.

6. As for the doctrine of Vijñáneçvara, Madana, and others 'That this also refers to one devoid of son, grandson, or great grandson, both from the maxim 'that the subject forming an exception be of a nature similar to that [of the rule] which is rejected,' and from the want of connexion between the terms of the former text:[3] "Of one who departed for heaven leaving no male issue," and the present one: therefore, even though there exist a wife, or other un-reunited near heir, of such any one dying after re-union, still, the others alone who had re-united with him, will take his estate,' it must be considered. Since, [in the second case], there is a want of proof, in the connexion, if the text is to be carried on even without that rule: nor [in the first case], is the complete similarity [of the rule and exception] to be looked for, in all cases of share, but only in a few points; [as may be instanced] from the nature of a 'deceased Sapiṇḍa,' where, in default of connexion between the term, 'leaving no male issue,' and that of, 'one who departed for heaven,' they would not find the term, 'of one deceased.' Yet it cannot be so, for that very term is found in the text of Manu, to be presently adduced [para. 13]: "be deprived of his allotment at the distribution, or should any one of them die:" But if connexion [of the terms] be allowed, we should, in the case of sons, some re-united with the father, and some not re-united, or of grandsons so situated with sons, have them shares sharing equally, which is a contradiction: and in the case of one having male issue, this text does not apply.[4]

7. And here again, [such connexion] is at variance with that practice, the origin of which may be demonstrated to be in the general code of Law, [para. 3]. But [should it be said], 'though the text be inapplicable, in the case of one having male issue, in default of such connexion; yet if there be an assemblage of sons not re-united, with

1—Mit. 356. Jím. Vá 200. Digest 3d, 507. A literal and connected version of this text, is required in this place, to understand clearly the succeeding argument: "Of the re-united [coheir], the re-united [coheir]; so, of the uterine brother, the uterine brother: shall either give up, or shall retain the share," [giving it up] if a son were born of him, or [retaining it] if he died [without one]."

2—3—Section 8th, para. 1st.

some of the copies, this sentence is not to be found in this place.

brothers re-united, or the like, then the brothers and others [re-united] would obtain the wealth, not the sons or others [not re-united],' it is not so; because in the last hemistich of the [above] text, it will be shewn to be unworthy of respect.

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8. The sense of the first quarter [of the whole text]: "Of a re-united [coheir], the re-united [coheir]," has an exception in the second quarter], of the uterine brother," with which the other is connected. The meaning therefore is, that, in a case embracing both whole and half brothers, all re-united together, only the re-united whole brother will take the wealth of the re-united brother deceased. The last hemistich[1] is as follows:

One part of the text explained by the other, to define the rights of the whole with half brothers,

"Shall give up the share, to [a son at any time] born; or shall retain it, if he died [without issue]:" and the sense of it is this: 'If the pregnancy of the wife of a deceased re-united coheir, be unascertained at the time of dividing the [re-united] property, and a son be afterwards born, the paternal uncle or other re-united [parcener] shall give the share to that son; but on failure of him, he [the uncle, &c.] himself shall take it.'

and those of a posthumous son with his uncles.

9. Here, the filial relation alone affords the right of taking the father's share; not the fact of production posterior to the partition, since this cannot cause such a result besides, it creates [unnecessary] prolixity [to specify: 'subsequently' born], and [thirdly], would have the absurdity of denying the [known] right to a share, in the case of a son produced in another part of the country previous to partition, but unknown [at the time]. Therefore, to the son previously born even, though not re-united, the uncle, or other [parcener] though re-united, shall give his share[2]

The son, though not re-united, succeeds, in preference even to the re-united uncle.

10. The same author[3] propounds the right, of an uterine brother not re-united, and a half-brother re-united, in taking shares of the wealth: One of a different womb, being again associated, may take the succession; not one of a different womb, if not reunited: but [a whole brother, if] reunited, obtains the property; and not [exclusively] the son of a different mother." Here, from the terms, *one of a different womb; son of a different mother*, the half brother alone is not designated, but the paternal uncle, and others likewise, because there is nothing to distinguish such association: for, if otherwise, we should have the absurdity of rendering senseless the union with uncles, and the rest, already established [by the

The rights of the whole and half brother severally discussed.

CXLVII.

1—Of the text with which para. 5, commenced. Mit. 357, Jím. Vá.

2—This seems likewise to be the doctrine of the Subodhini. Cole. Mit. 358. note.

3—Yájñavalkya Mit. 358. Jím. Vá. 201. Of the readings mentioned there, our author adopts. 'Nányodaryo dhanam haret, and Saṁsrishṭo nányamátrajah.' The translation of some of the terms is here altered, to suit the gloss.

text at para. 1.] And there is a want of any other acts suitable to a state of re-union.

11. *If not re-united;* this term applies to those both preceding and following it as a lamp upon a threshhold [gives light both within and without]. So, the word re-united, by varying the application of it, is to be understood of the whole brother, as entitled by union, both of the wealth and also of the womb. The word *if*, occurring in the former phrase, is to be understood immediately after this, as well as at the end of the text. The word exclusively [even, *eva*] should be supplied.

12. The following are the meanings of the terms of this text: 'One of a different womb,' that is, one of a separate womb; [such], the wife, the father, the father's father, the half brother, the paternal uncle, and others, if they be re-united, may take the wealth. If not re-united, those of a different womb do not [succeed]. Hence, by reason of the rule respecting fitness and dissimilitude,[1] the re-union of one of a different womb, is declared as the reason for his taking the wealth. A whole brother, termed 're-united,' [by union of the womb], even if not re-united [by union of the wealth], will take the property. By this reasoning, the community of womb alone even, is declared a sufficient reason. So, one re-united, as possessing union of wealth; but if only born of a different mother, he will not take any thing whatever.

Exposition of the text.

13. From the above this results, that, the one from his re-union, the other from his community of womb, both jointly share and take it [between them]. Manu [2] specially determines this very principle, in the right of succession among re-united persons: "Should the eldest, or youngest, of several brothers, be deprived of his allotment at the distribution, or should any one of them die, his share shall not be lost: but the uterine brothers and sisters, and such as were re-united after a separation, shall assemble together and divide his share equally." *Be deprived of*, by entering another order, by degradation from sin, or the like. *Uterine*, must be joined with brothers, in construction. *And such as were re-united*, that is, the wife, the father, the paternal grandfather, the half brother, the paternal uncle, and the rest, [para. 1].

Therefore the whole, and half brother, or any other re-united persons, share it equally.

CXLVIII.

14. On this point, Prajápati states a distinction: "Whatever concealed wealth is brought to light, becomes the property of the re-united parceners: but lands and houses, those not re-united shall entirely take, according to their shares." *Concealed wealth*, what is capable of being hidden, by depositing in the ground, or otherwise, as as gold, silver, or the like. Such, those *re-united*, that is, of a different womb, shall take: but landed property, the uterine brother [takes]. Kine, horses, and other [animals],

Fixed property, the uterine brother takes, concealed wealth and animals, he shares with those re-united.

1—Cole. Digest 1st. 9 note. "In Logic, Anvya, and Vyatireka; the first is the relation of events, of which whenever one occurs, the other also occurs; the second is the connexion of circumstances, of which when one occurs not, the other also does not occur."

2—Chapter 9th, 211-12, Mit. 359. Jín. Vá. 210. Digest 3rd, 475.

the uterine and he of a different womb [shall share]. According to Madana, he of a different womb alone, if re-united, will take the houses, horses, and the like; but it is not so noted in the text.

15. According to the Smṛti Chandriká: 'But if there exist only one species of property, out of the [above sources, as] concealed wealth, land, kine, and the rest, the uterine brother alone, even not re-united, takes it.' The proof of this must be considered. Among uterine brothers, if some of them are re-united, but other brothers not, nevertheless, those reunited alone will take the wealth, because community of womb, and re-union, exist as a double cause [of succession]. Even so Gautama: "When a re-united [parcener] dies, his re-united coheir shares his estate," and Bṛihaspati: "Two brothers, who become re-united through affection, [after being separated] share mutually."

A case in the Smṛti chandriká explained as between uterine brothers.

CXLIX.

16. Here, this is the refined sense: 'A son, whether re-united with his father, or not re-united, shall obtain the entire paternal share, since the power of intercepting the right to take a share, lies in the filial relation. Among [several] sons also, when one is re-united, and the other is not, the re-united one alone [succeeds], by the text [para. 5th]: "Of a re-united [coheir,] the re-united [coheir]."

The son, succeeded, in all cases.

Those re-united, before others not re-united.

17. In a case of reunion, between a father, son, and any other, not being his son, the son alone [succeeds], because the same has already been declared [para. 8th], by the terms: "shall either give up, or shall

And the son of one reunited, succeeds before other reunited persons.

18. In an assemblage of father, brothers, paternal uncles, and others, not being sons, re-united, the parents alone [take it]. Of them again, the mother is first, and then the father, according to Madana.

In other cases, the parents; and first of them the mother.

19. But [after them] the brother, paternal uncle and the rest, shall even take and share it [equally]: for among them all, the state of union exists, as the cause whence their right of taking [shares] is derived.

Then the brother, paternal uncle, &c., equally.

20. So likewise, in an assemblage of un-reunited brothers, re-united paternal uncles, half-brothers and others, they even share it [in common], by reason of the two phrases [the one, para 10]: "If not re-united; but [a whole brother, if] re-united, obtains the property: and not [exclusively], the son of a different mother:" (the other para. 5): "As of a re-united [coheir] the re-united [coheir], so of the uterine brother, the uterine brother."

The brothers not reunited share with re-united uncles, &c.,

21. In case of the re-union of the wife alone, she alone takes it, from the same text; "of a re-united [coheir] the re-united [coheir]."

The wife, if alone re-united.

22. In an assemblage of the other persons, reunited together with her also reunited, they alone [succeed]; she does not. Moreover, in commencing the topic of reunion, both Çankha and Nárada have declared:[1] "Among brothers, if any one die without issue, or enter a religious order, let the rest of the brethren divide his wealth, except the wife's separate property. Let them allow a maintenance to his women for life, provided these preserve unsullied the bed of their lord: but if they behave otherwise the brethren may resume that allowance." "The maintenance of the daughter of such an one, is enjoined, to be made out of her father's share: if still uninitiated, she will take a share [for the purpose]; if [he died] after that, her husband shall support her."

If others were reunited she does not succeed, but must be maintained.

CL.

As must the daughter, who gets also a share, if uninitiated.

23. And here, like as no necessity exists for gifts in honour of the deceased at the Abhyudayeshti sacrifice, because there can be no doubt of the existence of materials for it,[2] even so, the term, *among brothers*, is not [necessarily] required, since from the very commencement, there is a certainty of the agency of reunited persons, in the shares, or like [succession], by death, or entry into religious order.

Argument to prove that the text is not confined to a case of brothers only.

As for what Çankha,[3] in proceeding to expound reunion, says: "Of those also, departed for heaven without male issue, the property goes to the brothers: In default of them, both parents will take it, or the eldest wife," it, according to Madana, is intended to fix the order of the un-reunited brothers, and the others, upon the death of one dying reunited, subsequent to the death of his paternal uncle, brother's son, or half brother, with whom he had previously made a reunion. And, according to the same authority, in this case also, first is the mother, and next the father [para. 18]. *The eldest* that is, she who [best] preserves her duty.

Among un-reunited persons, succeeding to one re-united with other members of the family, the mother is first, then the father the eldest wife.

25. In default of a wife, the sister; according as Bṛihaspati says:[4] "His *sister* also, is entitled to take a share of it. This law concerns one who leaves no issue, nor wife, nor parent." Some read, his *daughter*. In default [therefore] both of daughter and sister, the nearest sapiṇḍa succeeds.

The sister, and daughter; after them the nearest Sapiṇḍa.

1—Mit. 326. Jím. Vá. 177. Digest 3d, 477. Reports 2d, 129. Ante section 8th para. 6th.

2—This passage, from the Vedas, is left imperfect, the Çástrís professing not to understand it themselves.

3—Mit. 327-339. Jím. Vá. 163. Digest 3d, 473

4—Jím. Vá. 164. Digest 3d, 476.

SECTION X.

Of a Woman's Peculiar Property.—(Stridhana.)

The sources of a woman's property are six.

CLI.

1. Manu :[1] "What was given before the nuptial fire [Adhyagni] what was presented in the bridal procession [Adhyáváhanika] what was given in token of love [Prítidatta] and what was received by her from her brother, her mother, or her father, are denominated the six-fold property of a woman."

And not less; but may be more.

2. *Six-fold,* is here used in order to prevent [its reduction to] a smaller number, a [position] which borne out by the word *other* in the following text of Yájñavalkya :[2] "What was given to a woman by the father, the mother, the husband or a brother; or received by her at the nuptial fire [Adhyagni], or presented on her supersession [adhivedanika(a)], as also any other [separate acquisition], is denominated a woman's property."

Others specified.

Vishṇu[3] likewise specifies more [than those six]: "What has been given to a woman by her father, her mother, her son, or her brother; what has been received by her before the nuptial fire, [Adhyagnyupagata], what has been presented to her on her husband's espousal of another wife [adhivedanika], what has been given to her by kindred, as well as her perquisite [Çulka], and a gift subsequent [Anvádheyika], are a woman's separate property."

gift defin-

efore the nuptial fire.

2d, in the bridal procession.

3d, through affection.

4th, gift sub-

5th, the perquisite.

3. In explanation of property *given before the nuptial fire* [Adhyagni] and the other kinds, Kátyáyana[4] says: "What is given to women at the time of their marriage, near the nuptial fire, is celebrated by the wise as woman's property bestowed before the nuptial fire [Adhyagnika]." "That again, which a woman receives whilst she is conducted from her father's house [to her husband's dwelling] is instanced as the property of a woman, under the name of gift presented in the bridal procession [Adhyáváhanika]." What has been given to her through affection by her mother-in-law, or by her father-in-law; or has been offered to her as a token of respect, is denominated an affectionate present [Prítidatta]."[5] "What has been received by a woman at time subsequent to her marriage, from

1—Chapter 9th, 194. Mit. 300-365. Jím. Vá. 70. Digest 3d, 557.

2—Mit. 364. Jím. Vá. 73. Digest 3d, 558.

(*a*) See Montriou note ix. Morl. Dig. 596. She may sue her husband for it.—*Ed.*

3—Jím. Vá. 68. Digest 3d, 562. where for 'son', is read 'friend.'

4—Mit. 336. Jím. Vá. 70. Digest 3d, 558. Reports 1st, 64.

5—Mit. 366. note.

the family of her husband, is called a gift subsequent [Anvádheyika], and so is that which has been similarly received from her own family"[1.—2] : Whatever is received by a woman as the value of household utensils, of beasts of burden, of milch cattle, or ornaments of dress, or for works, is called her perquisite [Çulka]." The meaning is, when the bride does not [as usual] obtain household utensils and the rest, then, whatever is given to her at the time of her marriage as the price of them, is termed her perquisite. What she receives on her supersession [adhivedanika] is explained by Yájñavalkya :[3] "To a woman, whose husband marries a second wife, let him give an equal sum [as a compensation] for the supersession, provided no separate property have been bestowed on her : but if any have been assigned, let him allot half." *Half,* here means only so much as will [when added to her own property, make it] equal to the [prescribed] amount of supersession.

CLII.

6th, for supersession.

4. Devala : "That which a husband has promised for separate property [stridhana] must be made good by his sons, even as a debt." *Promised,* to his wife [striyai].

Promise of dower is a debt.

5. On the subject of giving property to women, Kátyáyana further declares : "Separate property, excepting immoveables, is to be given to women by their father, mother, husband, brother, and kindred, according to their means, as far as two thousand." The wealth to be given excludes immoveable property, and must not exceed two thousand paṇas, according to Madana. So Vyása :[4] "A present, amounting to two thousand [paṇas] "at the most, may be given to a woman, out of the wealth." And this sum, of two thousand [paṇas] at the outside, is to be given every year, so that in a period of many years, more would by this [means be given]. If they are able, even immoveable property may be given, according to the same, [Madana.]

Nature and of a woseparate

6. But, in property given to a woman with a view of cheating the heirs out of it, as well as ornaments or the like, given to her merely for the purpose of wearing, a woman has no ownership [or property] ; for thus says Kátyáyana : "But whatever has been given to women with a fraudulent design, as well as entrusted to them for use, by their father, brother, or their husband, is declared not to be women's property, [Stridhana]."

Property fraudulently given or things lent for use not included.

1—Mit. 367. Jím. Vá. 69. and note. The Mayúkha follows the reading of the Ratnákara, " Svakulát tathá."

2—Digest 3d, 563. Jím. Vá. 92. and note. The reading of the Digest, as far as it agrees with the gloss of our author, is retained.

3.—Mit. 375, and note. Jím. Vá. 63. Digest 3rd, 17. The Mayúkha agrees with the Mitákshará.

4—See Chap. 22nd, for the value of the pana. Of the various readings of this text noticed in Jím. Vá. 72., our author adopts : "Dvisáhasraḥ paro dáyaḥ." 53rd, 83.

7. In what they have earned by the arts, or obtained from friends or those distinct from parents or the rest, women have no property; for thus says the same author:[1] "The wealth, which is earned by mechanical arts, or which is received through affection from any other [but the kindred], is always subject to her husband's dominion. The rest is pronounced to be the woman's property." However, though a text[2] says: "A wife, a son, and a slave, are [in general] incapable of property [Nirdhana]: the wealth which they may earn, is [regularly] acquired for the man to whom they belong:" it also relates [only] to wealth earned by mechanical arts and the like. It is moreover agreeable to reason, to refer this also to their not having absolute dominion in wealth received on their supersession [Adhivedanika] and the rest.

Women, have ... property earned ... any but the first six kinds.

CLIII.

8. Again, though Manu says:[3] "A woman should never make expenditure from the goods of her kindred [which are] common to [her and] many; or even from the property of her lord without his assent." (*Expenditure*, is disbursement,) yet, in some kinds of wealth, they are declared to possess sole property, by Kátyáyana:[4] "That which is received by a married woman, or with a maiden, in the house of her husband, or of her father, from her brother or from her parents, is termed the gift of affectionate kindred [Saudáyakam]. The independence of women, who have received such gifts, is recognised in regard to that property, for it was given by their kindred to soothe them, and for their maintenance." "The power of women over the gifts of their affectionate kindred is ever celebrated, both in respect of donation and of sale, according to their pleasure, even in the case of immoveables."

In some kinds, they possess absolute property.

9. But over immoveable property given them by their husbands, they do not possess full power, from this text of Nárada:[5] "What has been given by an affectionate husband to his wife, she may consume as she pleases, when he is dead, or may give it away, excepting immoveable property."*(a)*

But not in immoveable property ... husband.

CLIV.

10. The non-existence of absolute power, in husbands and the rest, over women's property, is declared by the same author:[6] "Neither the husband, nor the son, nor the father, nor the brothers, can assume the power over a woman's property, to take it or bestow it: If any of these persons by force consume the woman's property, he shall be compelled to make it good with interest,

Husbands and others do not possess absolute power, over women's property.

1—Jím. Vá. 75. Digest 3rd, 566. 2—Of Manu. Chap. 8-416. Cole. on oblig. p. 232. Digest 2nd, 190-249.

3—Chap. 9th, 190. 4—Mit. 366. Cole. on Oblig. p. 26-28. Jím. Vá. 75. Digest 3rd, 573, Reports 1st, 64. Of the readings noticed, our author reads 'bhrátuḥ' and 'Kanyayá sárdham;' in the last following the Mitákshará, in the first, the other school. See Section 7th, para. 13.

5—Cole. on Oblig. 28-233, Digest 3rd, 575. Jím. Vá. p. 76. Mit. p. 254., where it is attributed to Vishṇu.

6—Jím. Vá 77- Digest 3rd, 574., where it is attributed to Kátyáyana.

(a) See *Doe* d. *Kullammá* v. *Kuppu Pillai*, 1 Mad. H. C. Rep. 85, 88, 90.—*Ed.*

and shall also incur a fine. If such person, having obtained her consent, use the property amicably, he shall be required to pay the principal when he becomes rich." Manu:[1] "Such kinsmen, as [by any pretence] appropriate the fortunes of women during their lives, a just king must punish with the severity due to thieves:"[2] "Such ornamental apparel, as women wear during the life of their husbands, the heirs of the husband shall not divide among themselves: they who do so, are degraded from their tribe." *Wear*, meaning, things worn by them, which have been given to them for the purpose by their husbands or the others. Devala:[3] "Her maintenance, ornaments, perquisite, and gain, are the separate property of a woman; she herself exclusively enjoys it, and her husband has no right to it unless in distress:"[4] "If he let it go on a false consideration, or consume it, he must repay the value to the woman with interest; but he may use the property of his wife, to relieve a distressed son." *Maintenance*, wealth given her by her father, or the others, for the purpose of subsistence. *Gain*, interest [or profit]. *To let go*, get rid of, and give away, have all the same meaning in this place. The word *son* is here used in its general sense, for [any member of] the family. Yájñavalkya[5] "A husband is not liable to make good the property of his wife, taken by him in a famine, or for the performance of some religious duty, or during illness, or while under restraint." Here, by using the word *husband* alone, it is virtually declared, that woman's private property must not be taken by any other but him, even when distressed by a famine or other calamity. *Religious duties*, such as are indispensable. *Under restraint*, in prison.

Though a husband [but none else] may take it under certain circumstances,

CLV.

without being compelled to restore it.

11. In some cases a husband, though unwilling, may be forced to restore it; for, says Devala:[6] "But if the husband have a second wife, and do not show honour to his first wife, he shall be compelled by force to restore her property, though amicably lent to him. If suitable food, raiment, and dwelling, be withheld from the woman, she may exact her own [property,] and take a share [of the estate] *with* the co-heirs." That is, *at their hands*.

A husband in some cases may be compelled, to restore it.

1—Chapter 8th, 29.

2—Chapter 9th, 200. Mit. 375-273. Digest 3d, 571. Reports 2nd, 407.

3—Jím. Va. 74, and the note there. Cole. on Oblig. 233, Digest 3rd, 577. At the present day, where the woman's dower is high, it is put out at interest, which is the meaning given to gain, by Jím. Vá. and his commentators.

4—Digest 3d, 577.

5—Cole. Mit. 374. Jím. Vá. 77. Cole. on Oblig. 233. Digest 3d, 578. q. v. Reports 1st, 371.

6—Jím. Vá. 77. Digest 3d, 581, but by both it is attributed to Kátyáyana, and joined to the foregoing texts of that author.

12. This however, relates to a virtuous wife, for a wicked one should receive no portion; and accordingly, the same author says :[1] "But a wife, who does malicious acts injurious to her husband, who acts improperly, who destroys his effects, or who takes delight in being faithless to his bed, is held unworthy of separate property." And again :[2] "Wealth was conferred for the purpose of defraying sacrifices; therefore distribute wealth among honest persons, not among women, ignorant men, or such as neglect their duties."

A wicked wife gets no separate property or portion.

13. The right of succession after a woman's decease, that [part of her] private property which is entitled a gift subsequent, [Anvádheya(*b*)] is thus settled by Manu:[3] "What she received after marriage [Anvádheya] from the family of her husband, and what her lord may have given her through affection [prítena] shall be inherited, even if she die in his life-time, by her children [Prajá]." The term *children* is thus explained by the same author :[4] "On the death of the mother, let all the uterine brothers, and the uterine sisters, equally divide the maternal estate."

The successors to a woman's property are her CLVI.

14. When, from non-existence of daughters and the rest, the right of inheritance devolves even to the sons, from their connexion, then it becomes reciprocal. When this right is taken up by unmarried daughters, then [the son's succession arising from] that connexion, is at end: but, according to the Mitákshará,[5] 'it is not declared that the succession pertains [equally or] reciprocally to the brothers and unmarried sisters,' yet, it has been said by others: 'It is declared, that there is no original connexion of sons and daughters, in property received by their mother after marriage [Anvádheya], or given by her husband through affection [Prítidatta.]

Argument against the reciprocal rights, of the sons and the daughters.

15. The distinctions in succession among daughters, are pointed out by Manu:[6] "A woman's property goes to her children, and the daughter is a sharer with them, provided she be not given away; but if married, she receives a mere token of respect." *Is a sharer*, shares equally with the sons. *Not given away*, unmarried. It means, that if there be one [unmarried], then the

Among daughters, the unmarried are first, sharing with sons.

1—Digest 3d, 585. Ante sec. 8th, para. 8th, but the reading there is somewhat different.

(*b*) From *anu* 'after' and *ádheya* 'to be received.'—*Ed.*

2—Mit. 329. Digest 3d, 586.

3—Chap. 9th, 195. 4—Chap. 9th, 192. Mit. 370. Jím. Vá. 78. Digest 3d, 587.

5—Page 371. not quite in the words of our author.

6—It is not a text of Manu, but of Bŕhaspati, quoted by Kulluka in his gloss on the above text of Manu, and likewise in Jím. Vá. 78. and Digest 3d, 588. Of the readings noticed, our author follows that of "labhate mána mátrakam," and himself, in para. refers it to Bŕhaspati.

married [daughter] receives a mere token of respect, that is, only something very small. If there be no unmarried daughter, the share of the married daughter is equal to that of the brothers, according to the text of Kátyáyana :[1] "Married sisters shall share with [brothers or] kinsmen."

If none unmarried, the married ones share with sons.

16. Some trifle also must be given to the daughters of those daughters, according to the text of Manu :[2] "Even to the daughters of those daughters something should be given, as may be fit, from the assets of their maternal grandmother, on the score of natural affection."

The daughter's daughters get something. CLVII.

17. But all acquired by marriage [Yautaka] goes to the unmarried daughter alone, not to the son. So a prior text of the same :[3] "Property given to the mother on her marriage [Yautaka] is inherited by her [unmarried] daughter." *Property given on her marriage,* whatever is received by her at the time of marriage or other [ceremony] whilst seated together with her husband; for, according to Madana: 'The word Yautaka, is, in the Nighantu, derived from their being then joined together [Yuta].'

all property acquired by marriage, the daughter, and not the son takes.

18. In respect to woman's property, before enumerated in the texts of other sages, distinct from that acquired subsequent to marriage [Anvádheya] or through their husband's affection [Prítidatta], these distinctions are declared by Gautama :[4] "A woman's property goes to her daughters, unmarried or unprovided." *Unprovided,* such as are destitute of wealth.

All the property, except two kinds, goes to daughters, unmarried or unprovided.

19. The daughter of a Bráhmaṇi wife, however, shall take the wealth of her step mother; thus Manu :[5] "The wealth of a woman, which has been in any manner given to her by her father, let the Bráhmaṇi damsel take; or let it belong to her offspring." By giving the particle *or* the sense of '*and*,' we have it, 'and shall be shared by [her issue].' Some say, that the word Bráhmaṇi is used to denote any girl of equal or superior caste, but the proof of this must be well examined.

A distinction when wives of different class exist.

20. If there be no daughters, then the issue of those daughters succeeds, according to the text of Nárada :[6] "Let daughters divide their mother's "wealth; or, on failure of daughters, their male issue [tad anvaya."]

In default of daughters, their issue succeeds.

1—Digest 3d, 594. 2—Chap. 9th, 193. Mit. 270. Digest 3d, 600.

3—Chap. 9th, 131, Jím. Vá. 82, and notes. 4—Ante, Sec. 8th, para, 12. Reports , 448.

5—Chap. 9th, 198. Mit. 372. Jím. Va. 83.

6—Mit. 370 and note. Jím. Vá. 82. In the former, it is translated "their male issue," in the latter, "her male issue," our author prefers the former: see para. 28.

21. A distribution among daughters by different mothers, as well as among the different daughter's sons, to be just, must be apportioned after the example of that prescribed for the sons of different fathers, where the partition is according to their father's shares [not to the number of the sons of each father.][1]

Distribution among daughters, and among their sons, is according to mothers.

22. However, Yájñavalkya says:[2] "The daughters share the residue of their mother's property, after payment of her debts, and the issue succeeds in their default." And here again, some say, the word *issue* [anvaya,] has reference to the offspring of the daughters; whilst others hold, that if she leave no daughter, even her sons may take it, since the word tad[3] in the text of Nárada above, distinctly points out the mother alone; and this [first] doctrine agrees with custom. *The residue after payment of her debts;* on this subject those acquainted with the ancient law have declared, that the sons alone must take the property, [if only] equal to, or less than, the amount of debt.

The issue of the daughters, succeeds on their default.

CLVIII.

Sons take the property, if the debts are equal to it, or more.

23. If daughters or the rest do not exist, the sons, grandsons, and the rest must take it, for thus it is declared by Kátyáyana:[4] "But on failure of daughters, the inheritance belongs to the son."

On failure of daughters and their issue, sons, and their issue.

24. This right of inheritance, of daughters and the rest, in the mother's property, exists only in wealth given before the nuptial fire [adhyagni,] and in the bridal procession, [adhyáváhanika,] and the other [kinds] above recorded in the texts [paras. 1—2—3,] specifying woman's property; for, if relating to all wealth in which their mother has any property, it would go to set aside those texts [limiting it to

The right of the daughters and their issue, confined to the six kinds of property.

25. From this we must understand, that the often repeated term 'woman's property,' which Bṛihaspati, Gautama, and the rest, have adopted; for example: "A woman's property goes to her children:" [para. 15,] "A woman's property goes to her daughters," [para. 18,] and the like, relates even to the texts above delivered. As many again as, even without actually keeping the phrase, 'woman's property,' have parallel expressions, such as, 'divide the maternal estate,' [Manu, para. 13,] or the like, all those in like manner have reference to the same texts, by a combination of objects having the same origin.

The term 'woman's property' confined to the preceding texts.

1—See Section 4th, para. 20. 2—Mit. 266-7-368. Jím. Vá. 82.

3—Our compilers read tadá, following the modern Benares copy, but it is evidently wrong, the whole argument running on the word tad as a pronoun.

4—Jím. Vâ. 82, Digest 3d, 594.

26. However, the text of Yájñavalkya:[1] "Let sons divide both the effects and the debts, after [the demise of] their two parents:" relates to [what is] acquired by the act of partition and the like, with the exception of that declared in the above texts [as woman's property.] From this it is clear that, if there be daughters, the sons or other heirs even succeed to the mother's estate, distinct from that part before described [as woman's property.]

Woman's property is an exception, to the general right of sons.

CLIX.

27. Again, if there be no offspring of either sex, the further [succession] is declared by Yájñavalkya,[2] referring to the abovementioned woman's property: "Her kinsmen [Bándhavá] take it, if she die without issue."

On default of offspring, the kinsmen succeed.

28. The same author expounds the succession of kindred [Bándhava] to be according to the different kinds of marriage:[3] "The property of a childless woman married in the form denominated Bráhma, or in any of the other four [unblamed modes of marriage,] goes to her husband: but if she leave progeny, it will go to her daughters; and in other forms of marriage [as the Ásura, &c.] it goes to her father, and mother, on failure of her own issue."] [In the one case,] if there be no husband, then the nearest to her in his [tat] own family takes it; and [in the other case], if her father do not exist, the nearest to her in [her] father's family succeeds, [for the law that:] "To the nearest sapiṇḍa, the inheritance next belongs," as declared by Manu[4] denotes, that the right of inheriting her wealth, is derived even from nearness of kin to the deceased [female] under discussion—and, though the Mitákshará[5] holds, 'that on failure of the husband, it goes to his [tat] nearest kinsmen [sapiṇḍa] allied by funeral oblations;' and, 'on failure of the father, then to his [tat] nearest sapiṇḍas;' yet, from the context it may be demonstrated, that her nearest relations are his nearest relations; and [the pronoun *tat* being used in the common gender,] it allows of our expounding the passage 'those nearest to him, through her, in his own family:' for the expressions are of similar import.

Their right depends on the particular form by which the woman was married.

29. In the Bráhma or in any of the other four, relates to the Bráhmanical class, on account of these [rites] being the only ones lawful in respect to them. But as the Gándharva rite is also lawful to the Kshatriya class and the rest, so also, the wealth of her who has been married ac-

The effect of these rites is different in the different classes.

1—Mit. 263. Jím. Vá. 55. The last hemistich of this text was quoted above, para. 22. See section 4th, para. 17.

2—Mit. 367. Jím. Vá. 91. Digest 3rd, 613.

3—Mit. 368. Jím. Vá. 86. Digest 3rd, 606. These rites are explained, Digest 3rd, 604.

4—Chap. 9th, 187. Mit. 347. Jím. Vá. 217. Ante section 8th, para. 19.

5—Page 368. The correctness of this version is doubtful.

cording to that form devolves to her husband alone,

CLX. And so Manu :[1] "It is ordained, that the property of a woman, married by the ceremonies called Bráhma, Daiva, Ársha, Gándharva, or Prájápatya, shall go to her husband, if, she die without issue." "But her wealth, given on the marriage called Ásura, or on either of the two others Paiçácha and Rákshasa] is ordained, on her death without issue, to become the property of her mother and her father."

Heirs of a woman on failure of her husband, and parents, defined.

30. On failure of the husband of a deceased woman, if married according to the Bráhma or other [four] forms; or of her parents, if married according to the Ásura or other two forms, the heirs to the woman's property, as expounded above, are thus pointed out by Bṛihaspati :[2] "The mother's sister; the maternal uncle's wife; the paternal uncle's wife; the father's sister; the mother-in-law, and the wife of an elder brother, are pronounced similar to mothers. If they leave no son born in lawful wedlock, nor daughter's son, nor his son, then the sister's son and the rest shall take their property." Here must be understood, 'on failure both of the daughter, and also of her daughter,' because only on failure of them does the right of inheritance pertain to the son born in wedlock, or to the daughter's son.

The son in that case inherits presents from kindred.

31. In respect of property given by the kindred [Bandhu] at an Ásura marriage or the like, Kátyáyana says :[3] "That which has been given to her by her kindred, goes, on failure of kindred, to her son."

And the brothers get the perquisite.

32. But on the subject of the perquisite, Gautama holds :[4] "The sister's perquisite belongs to the uterine brothers; after [the death of] the mother."

Gifts to be restored to the bridegroom.

33. But what Çankha says: [5] "The lover [may take back] his nuptial present [on the death of his betrothed mistress]," must be understood of one, dying previous to the celebration of the marriage. Here it is further remarked by Yájñavalkya :[6] "If she die [after troth

CLXI. When the bride dies before marriage deducting

plighted], let the bridegroom take back the gifts which he had presented; paying however, the charges on both sides." The meaning is, that the husband may take back, if his bride be dead, what remains of the perquisite previously given, after calculating the expences, incurred by himself and by her father.

1—Chapter 9th, 106-7. Jím. Vá. 87. Digest 3rd, 607-8.

2—Jím. Vá. 96. Digest 3-617. In the translation of Jím. Vá. the maternal uncle is put for his wife, and the paternal uncle's wife is not noticed. The present version will be found in the Digest 3d, 618, except that *his* son *is* there explained, the son's son.

3—Jím. Vá. 96. Digest 3d, 594-615. In both, it is '*husband*,' instead of son.

4—Mit. 369, Jím. Vá. 94. Digest 3d, 614. All the authorities seem in favor of this version against Jímúta Váhana.

5—Digest 3d, 614. 6—Mit. 373.

34. On some points Bauddhâyana records a distinction :[1] "The wealth of a deceased damsel, let the uterine brothers themselves take. On failure of them, it shall belong to the mother; or if she be dead, to the father." Those skilled in the ancient law have declared, that this relates to ornaments or the like, presented by the maternal grandfather and the rest, at the time of betrothal, to a girl [who afterwards] dies before completion of the marriage. Here ends the subject of woman's property.

Presents by the maternal kindred, belong to the brothers of a deceased damsel.

SECTION XI.

Of exclusion from inheritance,—(Anaṁça).

1. Yajñavalkya says :[2] "An impotent person, an outcast and his issue; one lame, a madman, an idiot, a blind man, and a person afflicted with an incurable disease, as well as others [similarly disqualified], must be maintained, excluding them, however, from participation." *His issue,* means the offspring of an outcast.

Persons excluded from inheritance; must be maintained.

2. If, after division, virility or the other [absent qualification] be regained, by medicine or other means, the person will then receive his share, like as a son born after partition [does].[3]

but may recover their rights.

3. Manu says :[4] "Impotent persons and outcasts; persons born blind or deaf; madmen, idiots,*(a)* the dumb, and such as have lost a sense [or limb, nirindriya], are excluded from a share of the heritage." *Have lost a sense,* deprived of the nose [or smell,] or the like. Nárada also declares :[5] "An enemy to his father, an outcast, an impotent person, and one formally expelled (Apayátrita), take no shares of the inheritance, even though they be legitimate: much less if they be sons of the wife by an appointed kinsman."[6] "One afflicted with an obstinate or an agonizing disease, an idiot; one insane, blind, or lame, must be maintained by the family, but their sons take the shares [of their parents."]

Disinherited persons enumerated.

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1—Mit. 374. Jím. Vá. 90. Digest 3d, 612.

2—Mit 360. Jím. Vá. 103. Digest 3d, 321. Reports 1st, 412.

3—Ante Sec. 4th, para 35. 4—Chap. 9th, 201. Mit. 361. The term Nirindriya is explained, in Jím. Vá. 103 note 7. Reports 1st, 78.

5—Mit. 361, Jím. Vá. 104. Digest 3d, 303. Reports 1st, 78. Our author adopts none of the readings noticed by Jím. Vá. but takes that of Çankha's text below.

6—Digest 3d, 303.

(a) The mental incapacity which disqualifies a Hindû from inheriting on the ground of idiocy is not necessarily utter mental darkness. A person of unsound mind who has been so from birth is in point of law an idiot. The reason for disqualifying a Hindû idiot is his unfitness for the ordinary intercourse of life. *Tirumamagáḷ Ammáḷ* v. *Ramasvámi Ayyangár*, 1 Mad. H. C. Rep. 214. Cf. Co. Litt. 247 a.—*Ed.*

4. Formally expelled, one turned out by his kinsmen with the ceremony of kicking down a waterpot or the like, for high treason [Rájadroha] or a similar crime, according to Madana. It properly applies to one who goes across the sea in a vessel or the like, to another quarter of the globe, for the sake of a livelihood; [for][1]: "Communion is not permitted with a Bráhman [Dvija] who has passed the sea in a ship, even though he has performed penance for it;" therefore, connexion with such an one in this age of the world, is reprehended. And no form is laid down for performing the ceremony of kicking down the waterpot, or for expulsion for high treason. Çankha and Likhita:[2] "The heritable right of him who has been formally degraded [Apayátrita], and his competence to offer oblations of food and libations of water, are extinct."

Explanation of the term 'formally expelled.'

Another result of degradation.

5. Vasishṭha:[3] "They who have entered into another order, are debarred from shares." Here are meant the perpetual student, the hermit, and the ascetic. Kátyáyana[4] "But *the son of a woman married in irregular order*, as well as he who is produced through a kinsman [Sagotra], and an apostate from a religious order, never obtain the inheritance."

Persons entering another order debarred from shares and sons of women married in irregular order.

6. [Produced] *through a kinsman*, means one born of a woman married to one of her own [Sagotra] relations. *The son of a woman* married in irregular order, means, according to some, the Kshetraja, Kánína, and other sons. But, when the marriage of a younger daughter has been celebrated whilst her eldest sister is still unmarried, they are then both said to be 'out of their order;' and this is the proper application of the term [Akrama.] If he be of the same class as his father, his qualification for inheriting is declared by the same author[5]: "But the son of a woman married in irregular order may be heir, provided he belong to the same tribe with his father: and so may the son of a man, belonging to a different [but superior] tribe, by a woman espoused in the regular gradation.

Explanation of that term.

CLXIII.

If of the same class as the father, the son may inherit.

7. Also, if sons be begotten by a husband on a wife sprung from a higher class, they shall not take the inheritance, for thus says the same author:[6] "The son of a woman married to a man of inferior tribe, is not heir to the estate. Food and raiment for life are considered to be due to him by his kinsmen."

Sons by a woman of higher class do not inherit.

1—General note to Manu, Smṛiti (3).

2—Digest 3rd, 300. Jím. Vá. 101, which attributes it to A'pastamba.

3—Mit. 355-361. Digest 3rd, 327. 4—Jím. Vá. 104, and notes. Digest 3d, 325-6.

5—6—Digest 3d, 326, Jím. Vá. 105. Of the readings mentioned, our author has, 'grassachhadanam atyantam.'

A vicious son does not inherit, if other sons exist.

8. If there be other sons endowed with good qualities, the inheritance is not to be taken by a vicious one; for says Manu:[1] "All those brothers, who are addicted to any vice, lose their title to the inheritance." Bṛhaspati:[2] "Though born of a woman equal in class, a son destitute of virtue is unworthy of the paternal wealth; it is declared to belong to those kinsmen who offer funeral oblations to the deceased, and are of virtuous conduct." "A son redeems his father from debt to superior or inferior beings; consequently there is no use for one who acts otherwise."

Persons excluded from inheritance, must be maintained, as long as they live.

9. But all those excluded from participation must be maintained during the rest of their lives, by those who get the estate, from this text of Manu[3]: "But it is fit, that a wise man should give all of them food and raiment, without stint, to the best of his power: for he who gives it not, shall be deemed an outcast." (*Without stint,* signifies 'as long as they live,') as well as from the foregoing one of Yájñavalkya [para. 1:] "Those excluded from inheritance, must still be maintained."

Except those entering another order, outcasts,

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10. Those who have entered into another order, and outcasts, as well as their respective sons, are not to be maintained. Thus Vasishṭha says: "They who have entered into another order, are debarred from shares [para. 5]: as also an impotent man, a madman, and an outcast; but let the impotent and madman (receive) a maintenance." Here, the maintenance of two only being mentioned, is meant as an indication that the others are excluded. Devala:[4] "When the father is dead [as well as in his life-time,] an impotent man, a leper, a madman, and idiot; a blind man, an outcast, the offspring of an outcast, and a person fraudulently wearing the token [of religious mendicity,] are not competent to share the heritage: food and raiment should be given to them, excepting the outcast." *Wearing the token,* assuming a prohibited mark [liṅga]. Bauddhâyana:[5] "Let the co-heirs support with food and apparel those who are incapable of business, as well as the blind, idiots, impotent persons, those afflicted with disease and calamity, and others who are incompetent to the performance of duties, excepting however the outcast and his issue." Even those degraded from the life of an ascetic, as well as their sons, are neither of them to be maintained, according to Madana and others.

1—Chap. 9th, 214. Jím. Vá. 102. Digest 3d, 299.

2—Jím. Vá. 102, Digest 3d, 301-2, where the term Çrotriyá is applied to the kinsmen themselves, as an illustration merely.

3—Chapter 9th, 202. Mit. 362. Reports 1st,

4—Jím. Vá. 103. Digest 3rd, 304. 5—Jím. Vá. 104. Digest 3rd, 316.

11. But the blameless sons, even, of one from these causes disinherited, shall take a share, according to the text of Vishṇu:[1] "The legitimate sons, even of these, [are sharers of the patrimony;] but not the sons born to a degraded man after the commission of the act which caused his degradation, nor those who are procreated [on a woman of a higher class, that is] in the inverse order of the classes: their sons do not participate, even in the property left by the paternal grandfather:" and this of Yájñavalkya:[2] "But their sons, whether legitimate, or the offspring of the wife by a kinsman, [Kshetraja] are entitled to allotments, if free from similar defects."

The qualified sons of a disinherited man, may inherit; with certain exceptions.

12. Yájñavalkya[3] delivers a special rule concerning the daughters and wives of these: "Their daughters must be maintained likewise, until they are provided with husbands." "Their childless wives, conducting themselves aright, must be supported; but such as are unchaste, should be expelled: and so indeed should those who are perverse," If she be *unchaste*, a woman must be turned out of doors, and without a maintenance.*(a)* A *perverse* woman also should be turned out of doors, but a maintenance must be provided for her, according to Madana, and others.

Special rule for their wives and daughters.

CLXV.

CHAPTER V.

NON-PAYMENT OF DEBTS,—[ṚṆA'DA'NAM*(b)*.]

SECTION I.

Of Loans in General.

1. Bṛihaspati:[4] explains, on this subject, the rules for regulating a creditor's conduct, or transactions: "A prudent lender should always deliver the thing lent, on receiving a pledge [Bandhaka] of adequate value, either to be used by him, or merely kept in his hands; or with a sufficient surety [Lagnaka], and either with a written agreement, or before credible witnesses." A *pledge*, such as this, when the pawnee

Loans.

CLXVI.

1—Digest, 3rd, 316.

2—Mit. 363. Jím. Vá. 107. Digest 3rd, 322. Reports 2nd, 669, properly applying to paras. 1-2, but omitted.

3—Mit. 308. Jím. Vá. 107. Digest 3rd, 342. Reports, 1st, 412.

(*a*) See Yájñavalkya. ii. 283—286: *Case No.* 2 *of* 1823. 1 Mad. Sel. Dec. 366. M. S. D. 1857. p. 139. *S. A.* No. 369 of 1862, 1 Mad. H. C. Rep.—*Ed.*

(*b*) *Ṛṇálánam* (from *iṇa* 'debt' and *ádánam* 'taking') means 'Recovery of debts by legal process.'—*Ed.*

4—Digest 1st, 10. Strange's Elements 1st, 276-306. Dhanika, Uttamarṇika—a lender, obligor, creditor. Ṛṇíka, Udhamarnik,—the borrower, obligee, debtor.

promises, 'As long as I fail to clear off thy debt, so long will I not alienate, either in gift, sale, mortgage or other mode, this house, field, or other [pledge.'] *Surety*, one standing in the debtor's room. The same author says:[1] "That loan [ṛiṇa] which, increased to four times or eight times the principal, is [thus] received back, without apprehension of sin, from an abject or distressed person, is called a loan on interest [kusída."]

Interest on them.

2. Kátyáyana:[2] "'Stipulated interest [karita] is that which has been specially [and freely] promised by the debtor, in a time of extreme distress, above the allowed rate." "When any one pays interest from time to time, it is recorded as Çikhávṛiddhi or hair-interest(*c*)." *From time to time*, means interest is to be paid by the day, month, or year.

The rates of it.

3. Yájñavalkya:[3] "An eightieth part [of the principal] is the monthly interest, when a pledge has been delivered: otherwise, it may be, in the direct order of the classes, two, three, four, or five in the hundred." *Otherwise:* if there be no pledge; for Vyása[4] says: "Monthly interest is declared to be an eightieth part of the principal, if a pledge be given; a sixtieth part is to be paid, if there be [only] a surety; and if there be neither pledge nor surety, two in the hundred [may be taken from a debtor of the sacerdotal class.]" Yájñavalkya[5] ordains: "All borrowers, who travel through vast forests, may pay ten, and such as traverse the ocean, twenty in the hundred:" They must pay it, as shewn by the last half of the couplet: "To lenders of all classes [according to circumstances;] or whatever interest has been stipulated by them [as the price of the risk to the lender."]

CLXVII.

When due without stipulation.

4. Vishṇu says: "In all the classes, if a person borrow money under agreement, as, 'I will repay it to-morrow,' but should for his own profit not pay it, the lender shall receive interest from after [the term fixed."] The interest on a thing lent for use [Yáchita,] is thus declared by Kátyáyana:[6] "He who, having received a chattel lent for use, goes to a foreign country without restoring it, must pay, interest, according to the value of it, after one year."—[7]: "Though a loan be made [expressly] without interest [Uddhára,] yet, if the debtor pay not the sum lent after demand, but [fraudulently] go to another country, that sum shall carry interest after a lapse of three months."—[8]: "A debtor, who even residing in his own country, pays

1—Digest 1st, 11. 2—Digest 1st, 50. Colebrooke on Oblig. 34. For interest, see Strange, 1st, 295-6.

(*c*) Growing like the çikhá or single lock of hair left at tonsure.—*Ed.*

3—Digest 1st, 99. 4—Digest 1st, 101.

5—Digest 1st, 42.

6—Digest 1st, page 36 and 37, for the different readings.

7—Digest 1st, page 46. Strange 1st, 286

8—Digest 1st, page 104, where it is 'three seasons.'

not [the debt] after more demands than one, shall be forced, however unwilling, to pay interest on it, though not stipulated, [after the lapse of one year."] And Nárada[1] says: "There shall be no interest, without a special agreement, on valuable things lent through friendship. [for use, not for consumption]; but, even without agreement, property so lent bears interest after half a year." Kátyáyana[2]: "What has been amicably lent for use, shall bear no interest until it be demanded back; but if, on demand, it be not restored, it shall bear interest [on its true value] at the rate of five in the hundred."—[3]: "Should a man, having bought a marketable commodity, [fraudulently] go to another country, without paying the price of it, that price shall bear interest after three seasons [or six months]." "[Even] without a journey to a foreign country], a deposit, the balance of interest, a commodity sold, and the price of a commodity purchased, not being paid [or delivered] after demand, shall bear interest, at the rate of five in the hundred [if the debtor be a Çúdra]."

Stipulation of it when necessary.

5. Nárada[4] says: "A commodity, the price [of a commodity], wages, a deposit, and [the like]; a fine [to the king], a thing clandestinely taken [without a design to steal it], a thing idly promised, and a stake played for, carry no interest [before demand], without a special agreement." *A stake played for,* the object played for with dice. *Without special agreement,* not positively declared. Yájñyavalkya:[5] "Property lent, which the creditor will not receive back, when tendered, must be deposited with a third person, and bears no interest afterwards."

CLXVIII.

Accumulation by interest specified.

6. Bṛihaspati:[6] "On the precious metals [or gems], the interest may make the debt double; on clothes and inferior metals, treble; on grain, quadruple; so on fruit, beasts of burden, and wool or hair." *Fruit,* flowers, roots, fruits, &c. *Beasts of burden,* bullocks, &c. *Wool,* that of sheep; and the hair of the Chamara [Bos Grunniens] and other [animals of that species.] But, this of Manu:[7] "Interest on grain, on fruit, on wool or hair, on beasts of burden, [lent to be paid in the same kind of equal value,] must not be more than enough to make the debt quintuple," must be understood as a prohibition of sixfold, or higher increase. Kátyáyana says:[8] "For gems, pearls and coral; for gold and silver, for cloth made of [cotton] the produce of fruit, or made of silk, or made of wool or hair, the interest stops when it doubles the debt." Of silk, that is, made from the produce of insects, and clothes made from the hair of the chamara and other animals. Vasishṭha: "Interest on copper, iron, queen's metal, prince's metal, tin, and also on lead, makes the debt threefold, only if much time have elapsed." Vyása: "Interest increasing the debt sixfold, is declared allowable on vegetables, cotton, and seeds." Kátyáyana:[9] "For all sorts of oil and

1st, 97. 2—Digest 1st, 99-100. 3—Digest 1st, 104.
4—Digest 1st, 134. 5—Digest 1st, 133.
6—Digest 1st, 109. 7—Digest 1st, 112.
8—Digest 1st, 121. 9—Chap. 8th, v. 151. Digest 1st, 110.

spirituous liquors, for the different kinds of clarified butter, for molasses, and salt, the interest is held legal, though [with the principal], the debt be made octuple." Vishṇu:[1] "On precious metals, [or gems], the highest interest shall make the debt double; on cloth, treble; on grain, quadruple; [on fluids, octuple]; on female slaves or cattle, the offspring shall be taken as interest." So:[2] "[Rare] flowers, roots, and fruit; what is sold by weight [except gold and the like], may make the debt eightfold."

Explanation.

7. Nárada:[3] "Of interest on loans, this is the universal [and highest rule]; but the rate customary in the country where the debt was contracted may be different." *Universal* every where current; and this relates only to a debt doubled, or more than doubled, by interest, by the first transaction; for if at a different time a fresh speculation be entered into, with a different person, or even with the same, under a chance of profit or loss, in such case, even higher interest may accrue. So also Manu[4]: "Interest on money received at once, [not month by month, or day by day, as it ought,] must never be more than enough to double the debt, [that is, more than the amount of the principal paid at the same time."] But in any one case where it is realized [by degrees,] or at various times also, more than this legal or allowable interest may be levied, according to Vijñáneçvara and other authorities.[5]

SECTION II.

Of Pledges,—[A'dhi.]

Pledges.

1. Bṛihaspati:[6] "A pledge [A'dhi] is called bandha, and is declared to be divisible into four parts: Moveable [or personal;] and fixed, [or real;] for custody only [gopya;] and for use [bhogya]." Nárada:[7] "That to which a [secondary] title is given, is a pledge. It has two forms, to be released at a fixed time, or to be retained until payment be tendered."

Rules for their custody.

CLXX.

2. Háríta: "In the same state as the pledge has been deposited, even so let the pawnee take care of it: otherwise he shall lose his interest; or in case of its being damaged, he shall pay the value of it." *Damaged*, that is, if the pledge be destroyed. Yájñavalkya:[8] "If a pledge for custody [gopya] be used, there shall be no interest, nor, if a pledge for use [bhogya] be damaged:" meaning, *damaged* so as to be unfit for use. Kátyáyana:[9] "He who employs on work an unwilling [slave or other living] pledge, without the assent [of the owner,] shall be compelled to pay the value of the work,

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1—Digest 1st, 113. 2—Digest 1st, 115. Vasishṭha.

3—Digest 1st, 53.

4—Chap. 8th, v. 151. The last hemistich was quoted above.

5—Cole. on Oblig. 80. 6—Digest 1st, 140, q. v. 7—Digest 1st,

8—Digest 1st, 145 Strange's Elem. 1st, 288. 9—Digest 1st, 151.

or shall receive no interest on his loan." *Employs on work*, makes use of him. *Value of the work*, the hire [of the person, &c. employed.]

Damage by the pawnee.

3. Yájñavalkya :[1] "A pledge spoiled, [lost,] or destroyed, unless by the act of God or the king, shall be made good [by the creditor." *Spoiled*, which has incurred damage. *Made good*, by being restored equal to its former state. Bṛihaspati :[2] "Any pledge, being used, and wholly spoiled [by the fault of the pledgee,] the principal debt shall be lost." In case of a pledge being damaged, its value must be paid for, as Vyása says :[3] If gold, or other (precious) thing, shall be pledged, and lost by the negligence of the receiver, that creditor, on the principal and interest of his loan being paid, shall be forced to pay the price of the pledge." Nárada :[4] If a pledge be lost [and the creditor do not replace it,] the principal itself shall be forfeited ; unless the loss was caused [without his fault] by the act of God or of the king." Mánu :[5] "[The pawnee] must satisfy the pawner, [if the pledge be spoiled or worn out,] by paying him the original price of it ; otherwise, he commits a theft of the pawn."

When to be removed or made good by the pawner.

CLXXI.

4. Bṛihaspati :[6] "If a pledge be destroyed by the act of God or the king, creditor shall either obtain another pledge, or receive the sum [lent] together with interest." Vyása [7] says : "If the pledge be destroyed by the act of God or the king, no fault is by any means imputable to the creditor." Kátyáyana :[8] "When a pledge becomes unfit for use, or perishes, without any fault on the part of the creditor, the debtor shall be compelled to deliver another pledge ; [for,] he is not exonerated from the debt." Yájñavalkya[9] also declares : "By the acceptance [or actual possession] of a pledge, [the] validity [of the contract] is maintained]. If it be spoiled, when carefully kept, another chattel must be pledged, or the creditor must receive the amount [of principal and interest."]

Rules in cases of re-bailment.

5. Nárada[10] says : "Pledges [ádhi] are declared to be of two sorts, immoveable and moveable ; both are valid when there is actual enjoyment, and not otherwise." Vasishṭha also says : "When more deeds than one have been drawn up, at the very same time, in a case of pledge, he who has first got possession must be held to have the strongest pledge." The same author adds : "If two creditors should, on the very same day, come with a view to take possession of their pledge, it must then be equally divided, and possessed by them ; this is certain." Kátyáyana :[11] "Should

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1—Digest 1st, 145, See post. Chap. 6th, paras. 5—7. 2—Digest 1st, 149. Strange 1st, 283-288.

3—Digest 1st, 146,

4—Digest 1st, 145. 5—Chap. 8th, v. 144. Digest 1st, 150. Strange 1st, 288.

6—Digest 1st, 159. 7—Digest 1st, 160.

8—9—Digest 1st, 161. Strange's Elem. 1st, 291.

10—It is attributed to Vyása in the Digest 1st, 205. Reports 1st, 304. 2d, 134. Strange 1st, 287-289.

11—Digest 1st, 209. For hypothecation, see Strange's Elem. 1st, 288 89. Essay on s, p 83 4.

a man hypothecate the same thing to two creditors, what must be decided? The first hypothecation shall be established, and the debtor shall be punished as for theft."

of the CLXXII.

6. Yájñavalkya[1] says: "That pledge is totally lost, which the pawner fails to redeem when the principal is doubled. That fixed with a term for redemption, is lost on the expiration of the term: but an usufructuary pledge is never destroyed."*(a)* But Bṛihaspati[2] declares: "Gold being doubled, and the stipulated period having expired, the creditor becomes owner of the pledge, after the lapse of fourteen days." Vyása:[3] "After giving notice to the debtor's family, a pledge for custody may be used when the principal is doubled, and so may a pledge for a limited period, when that period is expired.

7. Bṛihaspati[4]: "When the debt is doubled by the interest, and the debtor is either dead, or has absconded, the creditor may attach his [pledge or the debtor's] chattel, and sell it before witnesses." Yájñavalkya:[5] "A debtor shall be compelled to pay, with interest, a debt contracted on a peculiar pledge, [Charitram] and he shall be compelled to re-pay twofold, a debt contracted on a chattel [of small value] delivered as an earnest [of purchase or sale.]*(b)* When a borrower, from his confidence in the lender, deposits with him a valuable pledge for a small consideration, or where the lender, entertaining a like confidence in the borrower, advances a large sum on a pledge of small value, this will be a peculiar pledge; or the word Charitram may signify, the pledge of good actions, as, of the reward for ablution in the Ganges, or the like. And in both these species, denominated peculiar pledge, even if the thing be doubled by interest, it is not forfeited. Even if the debt be doubled, it must be paid, but the pledge is not forfeited. *Delivered as an earnest*, means that when a debt contracted on such grounds is doubled with interest, the earnest so pledged is not forfeited.

Redemption of mortgage.

8. The same author[6] says: "To the debtor who comes to redeem his pledge, the creditor shall restore it, or be punished as a thief; and if the creditor be [dead, or] absent, the debtor may pay the debt to his kinsmen, and shall take back his pledge".[7]: "Or appraised at the value it then bears, it may

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1—Digest 1st, 183. Reports 1st, 303.

(a) So held in *Rajah Burrodicaunt Roy* v. *Bisnosoondery Dabee*, Mor. 91: 1 Morl. Dig 453, and See 1 Macn. P. H. L. 200. It has been held in Bombay that after 75 years a mortgagor's heirs are not barred their right to redeem. *Parvuttee* v. *Sooruj*, 2 Borr. 516: 1 Morl. Dig. 453.—*Ed.*

2—Digest 1st, 186, where the text is attributed to Vyása. Reports 1st, 303.

3—Digest 1st, 197.

4—Digest 1st, 199. Strange's Elem. 1st, 288.

5—Digest 1st, 203, from which the present translation deviates to suit the gloss.

(b) It has been held by the Madras High Court that by Hindu law a purchaser may recover in an action for breach of a contract to deliver goods not only double the earnest-money but also damages for the non-delivery, *Alvár Chetti* v. *Vaidilinga Chetti*. 1 Mad. H. C. Rep. 9.—*Ed.*

6—Digest 1st, 169. 7—Digest 1st, 171.

remain there [with the creditor], exempt from interest." If the creditor [Uttamarṇa] be not present, [the debtor] may place the amount of his debt, with its interest, in the hands of some other person of his creditor's family, and take back his pledge. Or if he wish to sell the pledge, from desire of realizing its value, let him have it valued at the time, and leave it in deposit [with his creditor but] without interest [considering it a debt discharged]. This is the meaning. Bṛihaspati : [1] "When land or other [immoveable property] has been enjoyed, and more [than the principal debt] has accrued therefrom, then, the principal and interest having been realized, the debtor shall obtain his pledge." Yájñavalkya : "Whenever a debt under mortgage has become doubled by interest, then the pledge shall certainly be returned, whenever double the sum lent has been received."

CLXXIII.

SECTION III.

Of Sureties,—[Pratibhú].

Sureties.

1. Now surety is of three kinds, according to Yájñavalkya,[2] who says: "Suretiships is ordained for appearance, for trust, and for payment(*a*)." *Trust* here means,—Raising of confidence, by saying 'this man is true.' Bṛihaspati [3] again, enumerates four kinds of sureties, [of whom]: "The first says, 'I will point him out;' the second, 'this man is trust-worthy;' the third, 'I am the payer of this money;' the fourth, 'I will cause to give it." Which last means, 'I will hereafter make [the debtor] pay this debt' Kátyáyana says: "Let three full Paksha, or lunar half-months, be allowed to the surety, for the purpose of seeking an absconded principal, and if he point out the principal, then let the surety be held worthy of being absolved" The three *half-months*, are to be understood only as an example, meaning, that so much time must be allowed as is required for the search.

When liable themselves,

2. Kátyáyana :[4] "If a surety for the appearance of a debtor produce him not at the time, and in the place agreed on, he shall discharge what he is bound for, unless he was prevented by the act of God or the king." *Discharge what he is bound for*; shall pay the sum due to the creditor. Bṛihaspati[5] : "The two first [kind of sureties] on failure of their engagement, must pay the sum lent, at the time stipulated: the two last, or in

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(*a*) These three kinds are, 1. *Darçana-pratibhú* a surety for appearance. 2. *Pratyaya-pratibhú*, a surety for confidence, one who engages for the general honesty and responsibility of another. 3. *Dána-pratibhú* a surety for the repayment of a loan or the fulfilment of an engagement; a fourth is *Dravyarpaṇa-pratibhú* one who engages to deliver up property belonging to the debtor, if he fails to pay the debt. The two first are liable for any loan or advance made upon their credit if not paid by the borrower: the responsibility of the two last extends to their sons. WILSON, Gloss.—*Ed.*

1—Digest 1st, 177.

2—Digest 1st, 239. Report 1st, 95. Strange 1st, 298-9.

3—Digest 1st, 233. 4—Digest 1st, 233.

5—Digest 1st, 241.

default of them, their issue, when the debt is sued for." Kátyáyana[1]: "Money due by a surety need not on any account be paid by his grandsons, but in every instance such a debt incurred by his father must be made good by a son, without interest." Vyása:[2] "The son of a son shall [in general] pay the debt of his grandfather, but the son [only] shall pay the debt of his father incurred by his becoming a surety, [and both of them] without interest; but it is clearly settled, that their sons, [the great-grandson and grandson respectively] are not [morally] bound to pay." The grandsons need only pay the principal amount of their grandfather's debts—A son need only pay the principal of a debt incurred by his father as a surety, and devolving on him.

and their son's CLXXIV.

but not grandsons.

3. This however, supposing the security to have been undertaken by him without receipt of property [or consideration] in return; for if he received [any] property as an inducement to become surety, in that case, the sum for which he was bound shall be paid with interest, by his sons or grandsons. And accordingly Kátyáyana[3] declares: "Should a man become surety for the appearance of a debtor, from whom he had received a pledge [as his own security], the creditor, [if that surety die], may compel his son to pay the debt, even without assets left by his father."

Exception.

4. Yájñavalkya:[4] "When there are two or more sureties jointly bound, they shall pay their proportionate shares of the debt; but when they are bound severally [Ekachchháyá], the payment shall be made [by any of them], as the creditor pleases." Severally, is when each of them makes this agreement, 'I alone will pay the whole.' This [agreement] being obtained as the creditor's guarantee, any one of the sureties, from whom he may please to demand the debt, must pay it. If the compact of each be thus, 'I will pay my share;' then payment must be made accordingly. Thus must it be understood. Kátyáyana: "When two or more are severally bound, any one of them may be made to pay, whenever he is found. If absent in a foreign country, his son shall pay the whole; if the father be dead, his son shall be forced to pay, according his father's share." *Father's share*, that is, in proportion to the father's share [of the whole debt guaranteed.]

Law of "jointly and severally."

CLXXV.

5. Yájñavalkya:[5] "When the surety is compelled to pay a notorious debt to the creditor, the debtor shall be forced to repay double the sum to the surety." Bṛihaspati:[6] "Should a surety, being harassed, pay the debt for which he was bound, he shall receive twice the sum from the debtor, after the lapse of a month and half."

Surety's remuneration by the principal.

1—Digest 1st, 255. 2—Digest 1st, 254.

3—Digest 1st, 248-49, the second reading is followed.

4—Digest 1st, 257. Colebrooke on Obligations, 158-61.

5—6—Digest 1st, 258. Cole. on Obligations, 158 61.

SECTION IV.

Of Recovery of Debts.

Recovery of debts.

1. Now these are the rules for recovery of debt by a creditor. Bṛihaspati:[1] "From a debtor who promises payment, the debt may be recovered by mild remonstrance and the like; and by other resources; by the mode of moral duty; by legal deceit; by violent compulsion; and by confinement at home." *Promises*, engaged for by the debtor.

Means of recovery enumerated.

2. By other resources, that is, by the means [upáya,] which are thus enumerated by the same author:[2] "By the interposition of friends and kinsmen, by mild remonstrance, by importunate following, or by staying constantly at the house of the debtor, he may be compelled to pay the debt: this mode of recovery is called a mode consonant to moral duty, [dharma."][3]: "When a creditor, with an artful design, borrows any thing of his debtor, or withholds a thing deposited by him, or the like, and thus compels payment of the debt, this is called legal deceit [upádhi."][4] "When, having tied the debtor, he carries him to his own house, and by beating or other means compels him to pay, this is called violent compulsion [balátkára."][5] "When he forces the debtor to pay, by confining his son, his wife, or his cattle, or by watching constantly at his door, this is called lawful confinement [ácharitam."] *Following*, claiming his attention. *Staying at the house*, begging the money of him. *Deposited*, [anvádhitam] ornaments or other things, given as if for delivery to another.[6]

Rules for enforcing them.

CLXXVI.

3. The rules for putting such means in force, are thus declared by Kátyáyana:[7] "By mild expostulation let a creditor procure payment from a king, from his master, and from a priest; but from a friend, or an heir, by some artful contrivance." "Bhṛigu ordained, that merchants, cultivators of land, and artists, must be made to pay their debts according to the custom of the country; but that a creditor might enforce payment from dishonest debtors, by violent measures." The same author adds,[8]: "A debtor, being arrested [and freely acknowledging the debt,] may be openly dragged before the public assembly, and

1—Digest 1st, 349. 2—Digest 1st, 339.

3—Digest 1st, 341. Colebrooke on Obligations, 203 Strange's Elem 1st, 283.

4—Digest 1st, 343.

5—Digest 1st, 342. Strange 1st, 307. 6—Chapter 6th, para. 6.

7—Digest 1st, 344, q. v. 8—Digest 1st. 339.

confined until he pay what is due, according to the immemorial usage of the country [deçáchára."] Preventing the prisoner from performing natural evacuations, is thus prohibited by the same author :[1] "When a prisoner has need of ejecting urine or fæces, he should either be followed [at a distance,] or dismissed on security." *Security*, by leaving his son or other relative, to be a prisoner in his stead.

Security to be

4. Taking security, for a prisoner's appearance, he may be set at liberty for meals; for the same author says :[2] "Should he have given a surety, he must be released each day, at the hour of meals; and at night, if a surety have been given to such effect: But if he do not tender a surety for appearance, nor avail himself of such a surety, he must be confined in jail, or delivered to the custody of keepers." "A venerable, trustworthy, and virtuous man, shall not be confined in jail; unrestrained, he must be released, [or dismissed] under the obligation of an oath." *Nor avail himself*, if he should not give [security], having the opportunity. *Jail*, a prison. *Keepers;* that is, he must be put in confinement duly made over to the officers. *Trust-worthy*, creditable.

Compound interest allowed. CLVII.

5. Bṛihaspati :[3] "After the time for payment has past, and when the interest ceases [on becoming equal to the principal], the creditor may either recover his debt, or require a new writing in the form of wheel-interest [chakravṛiddhi]." *After the time for payment has past*, and that is, when the debt having by interest become double, or more than that [where higher interest is legal], the interest on that event reaches its legal boundary. *The creditor may recover his debt*, may exact it. Charging interest on a debt, of which the interest has been [from time to time] added to the principal, is called chakravṛiddhi, wheel or compound interest.[4]

Mode of exacting payment acknowledged debts.

6. Nárada :[5] "Should a debtor be disabled, by [famine or other] calamity of the time, from paying the whole debt, he shall be only compelled to pay it [in small sums], from time to time, according to his ability, as he happens to gain property." Manu :[6] "Even by personal labour shall the debtor pay what is adjudged, if he be of the same class with the creditors or of a lower; but a debtor of a higher class must pay it [according to his income], by little and little." And though Yáj-ñavalkya[7] says: "He may compel a poor debtor of a low class to do work, by way of paying his debt: but a Bráhmaṇa, if indigent, must be made to pay gradually according to his income [or casual gains :]" yet the word *Bráhmaṇa* here refers to any man of high caste. The same author[8] adds: "He who recovers an acknowledged debt

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1—Digest 1st, 346, where it reads, 'in fetters.'

2—Digest 1st, 346-7. Strange's Elem. 1st, 307.

3—Digest 1st, 357. Strange 1st, 297. 4—Cole. on Oblig. p. 80. "Compound Interest."

5—Digest 1st, 353. 6—Chapter 8th, v. 177.

7—Digest 1st, 351. Strange's Elem. 1st, 308. See Chap. 16th, Sect. 1st, para. 3 note.

8—Digest 1st, 356.

by his own act, [in any of the legal modes to which the debtor has tacitly consented] shall not be blamed by the king; and if the debtor shall complain of such an act before the king, he shall be fined, and compelled to pay the debt."

Debtor's appeal to justice.

7. Bṛhaspati[1]: "This rule concerns an acknowledged debt; but he who contests the demand, shall be compelled to pay, on proof in court by written evidence or oral testimony." "When the debtor appeals to judicature, or when the demand is unliquidated [or doubtful, sandigdha] he shall never be constrained by the mere act of the creditor; and he who constrains a debtor thus exempted from such constraint, shall be fined according to law." *Constraint* [ásedha];[2] imprisonment not against the king's order. He adds(*a*):[3] A debtor is considered as appealing to judicature, when he says, 'I will pay whatever shall by law be declared to be due.'" Kátyáyana:[4] "Any creditor who harasses a debtor appealing to judicature, shall forfeit that claim, and pay an equal fine." Bṛhaspati: "Should any person take upon himself to act in a disputed matter, without having first made known his case to the prince, he shall be seized and sentenced to punishment; neither shall his claim be awarded."

CLXXVIII.

Costs of suit.

8. Yama:[5] If a rich debtor, through dishonest perverseness, pay not his debt, the king shall compel him to discharge it, and may take from him twice the sum [as a fine]." Yájñavalkya:[6] "A debtor shall be forced to pay to the king ten in the hundred, of the sum proved against him; and the creditor, having received the sum due, must pay five in the hundred [towards defraying the charges of judicature]." *Ten in the hundred,* that is, ten besides [or over] every hundred [awarded to his creditor.] A tenth share [from the debtor cast], and a twentieth, [from the creditor] is here meant. The result is, that these two shares belong to the king, and the balance goes to the creditor. Taking a tenth share, relates to a poor debtor; for in respect to a rich one, Nárada[7] records this distinction: "But if a rich debtor, though dishonest perverseness, pay not his debt, and the king be forced to cause payment, he may then take twenty as his share." meaning, *twenty* on the hundred.

1—Digest 1st, 363-4. 2—See Chap. 1st, Sec. 1st, para. 16. 3—Digest 1st, 364.

4—Digest 1st, 368.

(*a*) There are four kinds of *ásedha*: *kálásedha*, confinement for a time by the end of which the affair must be settled: *karmásedha*, restraint from any particular act, restriction from religious rites: *pravásedha* prohibition of removal, a writ of *ne exeat*, and *sthánásedha*, confinement in any given place.—Wilson, Gloss.—*Ed.*

5—Digest 1st, 368. Strange's Elem. 1st, 307.

6—Digest 1st, 372-8. Strange's Elem. 307. This was the practice under the Mahratta Government, which levied a tax upon both parties, that from the winner being termed Harkí, that of the loser Gunhegárí.

7—Digest 1st, 371 and 375.

9. When more creditors than one are collected together against one debtor, the order of payment is [to be as] thus laid down by Yájñavalkya :[1] "A debtor shall be forced to pay his creditors in the order in which the debts were contracted, after first discharging those of a Bráhman, we find these words of Kátyáyana :[2] "If there be many debts at once, that which was first contracted shall first be paid, after those of a king, or of a Bráhman learned in the Veda" :[3] "If all the contracts were written in one day, the debts, payment, subsisting demand, and interest, shall be equal; otherwise, in order of time." :[4] "That capital on which it is proved that the assets were gained, and no other debt, must be paid by the debtor [out of those assets."]

Priority among many claims.

10. Yájñavalkya,[5] "If the debtor pay by little and little, let him write the sums paid on the back of his written contract, or let the creditor give a receipt signed by his own hand." Nárada :[6] "Let the creditor give a writing after the debt has been acquitted; or if that cannot be, let him make a [public] acknowledgement: this shall be a mutual acquittance of the creditor and debtor." *Acknowledgement*, some deed of settlement, for the purpose of making known repayment of the debt.

Receipts and acquittances.

11. The bad consequences that will ensue to a debtor, neglecting to pay his debts, are now described. Kátyáyana says: "He who shall not pay to his creditor what he has received from him in loan [Uddhára] or other way, shall most certainly be born again, either his slave, servant, wife, or beast of burthen." *Loan*, debt [of all kinds, ṛna.] To *other*, must be supplied, loan for use, and deposit. *Slave*, one by birth. *Servant*, a slave bought with a price. Nárada: "If a man do not repay what he has borrowed for use, and a debt, as well as what he has promised, that sum may be increased, even to ten million times its original amount. And after that, if it be allowed to increase still more, until by its own accumulation it have amounted to an hundred [times] ten million, it must then stop; the debtor shall become, in each successive birth, a horse, an ass, a bullock, and a slave." *Promised*, what he has agreed to give. Vyása also says: "When a person, being either an ascetic, or keeper of a perpetual fire, dies indebted to any one, the future rewards, of the austerities of the one, and the sacred duties of the other, shall all be transferred to the account of the creditor."

Moral effect of

CLXXX.

1—Digest 1st, 736 and note. In the 7th line, "uttamvarṇánám," is printed for uttamarṇánám, contrary to all the manuscripts.

2—3—Digest 1st, 377-8.

4—Digest 1st, 380

5—Digest 1st, 385.

6—Digest 1st, 384.

12. Bṛihaspati[1] declares: "The sons must pay the debt of their father, when proved, as if it were their own [that is, with interest;] the son's son must pay the debt of his grandfather [but] without interest; and his son [that is, the great-grandson,] shall not be compelled to discharge it, [unless he be heir, and have assets."] So Yájñavalkya:[2] The father being gone to a foreign country, or deceased [naturally or civilly,] or wholly immersed in vices [or difficulty,] the sons, or their sons, must pay the debt; but if disputed, it must be proved by witnesses."

Sons and grandsons when liable.

13. Debts must be paid by the sons, or other relatives, when they have reached their twentieth year, for Nárada says:[3] The father, or [if the family be undivided], the uncle, or the elder brother, having travelled to a foreign country, the son shall not be forced to discharge the debt until twenty years have elapsed. Kátyáyana:[4] If the father be at home, but afflicted with a chronic disorder, [though not without hope of recovery], or absent, his debt shall be paid by his sons, after a lapse of twenty years. The word *absent* includes the sense of 'dead,' as well; even as Vishṇu says:[5] "If he who contracted the debt should die, or become a religious anchoret, or remain abroad for twenty years, that debt shall be discharged by his sons or grandsons, but not by remoter descendants, against their will.

Only when twenty years old.

14. Nárada:[6] "A father being dead, his sons, whether after partition or before it, shall discharge his debt in proportion to their shares; or that son alone who has taken the burden upon himself. Kátyáyana: If any debts exist against the father, his son shall not take possession of his effects. They must be given to his creditors, and if he die *without wealth*, still his son must pay his debts." *Wealth*, must be connected to *without*; the meaning is '[if he die] without wealth.' Bṛihaspati:[7] "The father's debt must be first paid, and next a debt contracted by the man himself; but the debt of the paternal grandfather must even be paid before either of those."

Sons of debtors how to act.

CLXXXI.

15. Yájñavalkya:[8] "A son need not pay, in this world, money due by his father for spirituous liquors, for lustful pleasures, for losses at play; nor what remains unpaid of a fine, or toll [Çulka]; nor any thing idly promised." Bṛihaspati:[9] "The sons are not compellable to pay sums due by their father for spirituous liquors, for losses at play, for promises made with-

Debts not recoverable from sons.

1—Digest 1st, 265-6, and note. Reports 2nd, 9.

2—Digest 1st, 268. Reports 2nd, 200. Colebrooke on Obligations, p. 25, and Strange's Elements, 2nd, 414.

3—4—Digest 1st, 277. Reports 2d, 57.

5—Digest 1st, 266.

6—Digest 1st, 267. Colebrooke on Obligations, pages 25 and 152, particularly.

7—Digest 1st, 265.

8—Digest 1st, 31. Reports 2d, page 200.

9—Digest 1st, 305.

out any consideration, or under the influence of lust, or of wrath ; or sums for which he was a surety ;[1] or a fine, or a toll [Çulka], or the balance, of either." Uçanas declares :[2] "A fine, or the balance of a fine as also a bribe [or toll, Çulka] or the balance of it, are not to be paid by the son, neither shall he discharge debts improper, [not sanctioned, by law or custom."]

Order of those liable for a man's debts.

16. The order of those bound to pay the debts (of one deceased) is thus told by Yájñavalkya[3] : "He who has received the estate, must pay the debts of it ; and in like manner, he who takes the wife [of the deceased] ; or the son, whose [father's] assets are not held by another [ananyáshrita] : but of one having no son, the other heirs [Rikthinali, must pay the debts : or, may levy them, para. 18.]" He is said to *receive* the estate legally, who does so, even when there is a son of the deceased in existence, but disqualified by some disheriting defect, as if he be an eunuch, or the like ; but illegally, when he usurps the estate of a father, whose son is free from any disqualification. The same [responsibility attaches] to him who takes the wife of another. The term, *assets not held by another*, may be understood in both ways, [of one who has taken his father's assets, as well as one whose father had no assets], by reason of the absence of an opponent endowed with the quality of alienation, as well as from the absence of an opponent only pointing out the quality of property.

Responsibility defined.

CLXXXII. in each case.

17. And first of all, he who has received the estate ; on failure of him, the person who takes the wife ; and on failure of him, the son, possessed of unalienated wealth [ananyashrita]. If there be none, it must be paid by the grandsons, but the principal only. If they be not in existence, then the great grandson, the wife, daughter, or other heirs [rikthinali], if they have received the estate, must pay the debt—such is the meaning. It is not to be paid by the great-grandson, the wife, or the others, if they have not taken the estate. But receipt of ever so small a portion of the estate, imposes the liability of liquidating the debts, to whatever amount. For there is no such law, as [that payment shall follow only on receipt of property] equal or more than equal [to the debt to be paid(*a*).]

Heirs of a creditor can recover.

18. The wife, daughters, and other heirs to a creditor dying without male issue, being entitled to receive his estate, may levy his debts from his debtor. This is another meaning of the latter part [of the text, para. 16].

19. Vishṇu :[4] "He who takes the estate of one whether leaving a

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1—See Sec. 3d, paras. 2-3. 2—Reports 2d, 303, note.

3—Digest 1st, 270-71-75, and the readings there.

4—It would seem that some text of Vishṇu had been omitted here, and that the succeeding passage was the commentary, but all the copies read it in this way.

(*a*) It has, however, been held in Madras that a son is liable for his father's debts only to the extent of the property inherited by him from the latter, *S. A. No.* 12 *of* 1851, Mad. S. D. 1851, p. 13. And it would seem that the precept in the text is, like so many others, merely moral and directory and not imperative. Colebrooke cited 2 Strange H. L. 75.—

son or no male issue, must pay his debts." This is the meaning. Bṛihaspati :[1] "Even so, the person who takes the widow shall be liable for the debt, on failure of successors to the estate." Kátyáyana :[2] "The judge shall compel a son to pay the debt of his father, provided he be involved in no distress, be capable of property, and liable to bear the burden; but in no other case shall he compel the son to pay his father's debts." "First let him who takes the estate pay; after him, the son; if there be no son, or he be utterly destitute of means, then he who takes the wife." Nárada :[3] "But if a woman take the protection of another man, carrying her riches and her offspring, he must pay the debt of her husband, or abandon such a woman." Kátyáyana :[4] "A debt which has been contracted by indigent and childless vintners, and the rest must be paid by him, who has the care of their wives."

CLXXXIII. Nárada says :[5] Of the successor to the estate, the guardian of the widow, and the son, he who takes the assets becomes liable for the debts; the son, if there be no guardian of the widow, nor a successor to the estate; and the person who took the widow, if there be no successor to the estate, nor son." Or, the meaning of the last part is, 'that if there be no son possessed of wealth, then he who takes the widow must pay the debts of the deceased;' by reason of the former quoted text of Yájñavalkya, [para. 16].

20. Kátyáyana says :[6] "Debts incurred for domestic uses, by the slave, wife, mother, or disciple, of one gone to a far country, or deceased, and also by his son, must be paid, so says Bhṛgu." And Yájñavalkya holds : [7] "A woman shall not pay debts incurred by her husband or son; neither a father those of his son, nor a husband those of his wife, unless contracted on account of the family." Kátyáyana: That must be paid, which may have been verbally promised, as well as what has been engaged for to another." Nárada :[8] "A father must pay the debt of his son, contracted in a time of distress." Yájñavalkya:[9] "If the wife of a herdsman, a vintner, a dancer, a washerman, or a hunter, contract a debt, the husband shall pay it, because his livelihood chiefly depends on the labour of such a wife." The same author says :[10] "A debt acknowledged [by her husband], or contracted by her jointly with her husband or son, or contracted by the woman herself, must be paid by a wife [or mother;] no other debts shall a woman be compelled to pay." And even if not acknowledged, she shall still pay

Debts binding on the head of the family, when contracted for its use by others.

1—Digest 1st, 274.

2—Digest 1st, 273. 3—Digest 1st, 330.

4—Digest 1st, 325.

5—Digest 1st, 272. Reports 1st, p. 158, note 3.

6—Digest 1st, 17. Cole. on Oblig. 24-28-31-232. Strange's Elem. 1st, 275.

7—Digest 1st, 313. Reports 2d, 203. Cole. p. 28-9. 8—Digest 1st, 298.

—Digest 1st, 317. Cole. on Oblig. 29. Strange 1st, 276. 10—Digest 1st, 314.

it, if she have received his estate: for, thus says Kátyáyana:[1] "If a wife be thus addressed by her lord at the point of death, [or just before a long journey], 'Such a debt must be paid by thee,' she must pay it, however unwilling, if assets were left in her hands." Nárada:[2] "But if a woman who has male issue, [but no several property], desert her son, and recur to another man, her son alone must pay the whole debt." This however refers particularly to a son who has got possession of his father's wealth. Nárada:[3] "A debt contracted before partition by an uncle, or a brother, or a mother, for the support of the family, all the parceners or joint-tenants shall discharge."

CLXXXIV.

21. Should neither [the creditor, nor] his sons nor other relatives, be in existence, the modes of obtaining payment are as declared by Nárada:[4] If a creditor of the priestly class be not present but have issue, the king shall cause the debt to be paid [to them;] if he have no issue, to his near kinsman [Sakulya;] if he leave none who are near, to those who are distant [paternal and maternal, Bandhu:] If he leave no heirs, near or distant, [nor persons connected by sacred studies,] the king shall bestow it on worthy priests; but if none such are present, let him cast it into the waters: [the debts of other classes, in similar circumstances, he may seize for himself."] Prajápati also says: "If there be no distant kinsmen, let it be paid to some twice-born man, or be cast into the water: When cast into the water or into the fire, that money is carried to the account of [the deceased, or of] his ancestors in a future state." If however an owner should appear to claim money [which is to be so] thrown into the fire, or the like, he shall obtain it.

Heirs of creditors how to recover.

Appropriation of the debt, in default of them.

Reservation.

CHAPTER VI.

Of Deposits,—Nikshepa.

CLXXXV.

1. Nárada:[5] "Where a man bails any of his effects to another, in whom he has confidence, and from whom he has no doubt of receiving his property again, it is a deposit, which the wise call Nikshepa.":[6] When a thing is deposited, under seal, without mentioning its quantity; if its kind and form be unknown, it is considered as an Upanidhi: but the wise call a specified deposit Nikshepa."

Of two kinds, undefined, and specified.

1—Digest 1st, 315, where it is attributed to Nárada. 2—Digest 1st, 329.

3—Digest 1st, 284.

4—Digest 1st, 335.

5—Digest 1st, 401. Strange's Elem. 1st, 230.

6—Digest 1st, 403. For "deposits under seal," see Essay on Bailments, p. Strange 1st, 282. For a "deposit" see Essay on Bailments, p. 22, note 4.

2. Bṛihaspati :[1] "The merit of one who preserves a deposit, or protects a dependant, is the same with the merit of him who gives golden vessels or clothes."[2] : "The very thing bailed must be restored to the very man who bailed it, in the very manner in which it was bailed : it must not be delivered to his heir, apparent or presumptive." *Deposit*, a thing bailed. *Not to his heir*, but to the bailer, in his own person. Manu :[3] "He who restores not a thing really deposited, and he who demands what he never bailed, shall both be punished as thieves : or shall pay a fine equal to the value of the thing claimed."

Preservation and restoration of them.

3. Bṛihaspati :[4] "Should the bailee suffer the thing bailed to be destroyed by his negligence, while he keeps his own goods with very different care, or should he refuse to restore it on demand, he shall be compelled to pay [the value of] it with interest." *Different care*, preserving his own property. But if his own property should at the same time suffer injury, through that act of negligence, he is not to blame.

Rules in case of damage, or loss.

Yájñavalkya :[5] "If the depositary, of his own accord [without the consent of the owner,] use the thing deposited, he shall be amerced, and compelled to pay the price of the thing with profit." *Use*, make a livelihood by employing it in his worldly transactions for the sake of gain.

Or use of them.

4. *Profit*, interest ; of which a distinction is mentioned by Kátyáyana :[6] "A deposit, the balance of interest, a commodity sold, and the price of a commodity purchased, not being paid after demand, shall bear interest at the rate of five in the hundred." Manu :[7] ["For the first offence], the King should compel a fraudulent depositary, without any distinction between a deposit under seal or open, to pay a fine equal to its value."

Interest on them.

CLXXXVI.

And punishment for fraud.

5. Bṛihaspati :[8] "If it be destroyed by the act of God or of the king, together with the goods of the bailee, there is no fault in him." Yájñavalkya :[9] "But he shall not be compelled to replace that [deposit] lost by the act of God or the king, or seized by robbers." Manu :[10] But if a depositary, by his own free act, shall deliver a deposit to the heir of a deceased bailer, he must not be harassed, either by the king or by the kinsmen [of the deceased"]. *Heir*, a near relation. The sense is

Exemption for the act of God or the king.

[Redelivery to the heirs of the bailer.

1—Digest 1st, 416. Strange's Elem. 1st, 281.

2—Digest 1st, 415-16. Strange's Elem. 1st, 280.

3—Chap. 8th, v. 191. Digest 1st, 432. q. v.

4—Digest 1st, 420. Strange's Elem. 1st, 278 282. Essay on Bailments, p. 6-46.

5—Digest 1st, 428. Strange's Elem. 1st, 283.

6—Digest 1st, 427. 7—Chap. 8th, v. 192. Digest 1st, 432.

8—9—Digest 1st, 421-2. Essay on Bailments 104. b. note. Strange 1st, 278-81-294.

)—Chap. 8th, v. 186. Digest 1st, 420.

this, 'he must not be harassed, without proof, for the sake of more property [than was delivered.']

The above rules applied to all species of bailments.

6. The whole of the above laws relating to deposits, are also otherwise collectively applied to other bailments. Bṛhaspati :[1] "In the case of a deposit for delivery [anváhitam,] a loan for use [yáchitam,] a bailment with an artist .[çilpí nyásaj, and a pledge, [bándhaka] the same law is enacted, and likewise in the case of a person received under protection [or a dependant.]" A *deposit for delivery*, is, when a chattel is given into the hands of another, saying, 'Such an one deposited it with me, and I pray you give it to him.' *Loan for use*, ornaments or the like, borrowed for the sake of show at a marriage, or other ceremony. *A bailment with an artist*; what has been openly deposited with goldsmiths, or such persons, to be made into earrings or the like. Nárada :[2] "This very law is CLXXXVII. enacted in the case of loans for use [yáchitam,] deposits for delivery [anváhitam] and the like; bailments with an artist, [çilpí nyása][3] sealed deposits[4] [upanidhi,] bailments in the form called nyásа, and rebailments [pratinyásа."] *Rebailment*, that is, when the depositary rebails to another the very thing which had been bailed or deposited with him by the original owner.[5]

Compensation in certain cases of loss by the act of God.

7. Compensation must in some cases be made by the artist, even when the goods bailed have been destroyed by the act of God or the king; for Kátyáyana says :[6] "If the artist keep the thing bailed, after the time agreed on for working it [into ornaments and the like,] he shall be forced to pay its value, even though it be destroyed by the act of God."

Rate of valuation for clothes.

Punishment for unauthorized use of them.

8. Nárada : "An eighth share of the value is lost, of clothes once washed; when twice washed, a quarter; thrice, a third; and when four times washed, a half; but after more than half the value is gone, it shall be valued in order, according to the damage of each quarter share." Yájñavalkya : "The washerman who wears on his own person, the clothes of his employer, shall be fined three paṇas. But if they be sold, or let out to hire, or pledged, or lent out by him, [he shall be fined] ten paṇas." *Let out to hire*, what has been given to another for receipt of hire. *Pledged*, put out in pawn.

1—Digest 1st, 410.

2—Digest 1st, 408. Strange's Elem. 1st, 271, Essay on Bailments 36.

3—Essay on Bailments p. 22, note 7, and p. 90-91. "Hiring of work." Strange 1st, 293.

4—Strange's Elem. 1st. 282. Essay on Bailments p. 38. See Digest 1st, 402. Yájñavalkya.

5—Strange's Elem. 1st, 289-90. 6—Digest 1st, 446. Strange 1st, 293.

9. The rules respecting loss incurred in melting all metals, except gold, are thus expounded by the same author :[1] "Gold undergoing the action of fire is nothing diminished thereby; the loss on silver in a similar operation is two paṇas per centum; in tin and lead, eight; in copper, five; and ten in iron." Whenever the loss [in the weight] of [returned metal, whether] silver or other, is greater [than these rates,] a fine must be imposed on the goldsmith, or other [workman.]

Rate of valuation for metals.

10. A distinction as to the increase in weight of thread, furnished the workman for the purpose of making up certain clothes and the like, is laid down by the same author: "Ten palas[2] per centum shall be the increase in [weight of] cloths made of woollen or cotton thread. In cloths of middling quality, five palas per centum must be the increase, but in those of fine quality, three palas are declared to be the standard." In some kinds, decrease is allowable, by the same authority, who says: "In embroidered cloths, as well as those made of a hair, a thirtieth share is declared [to be admissible] as loss [in weight,] but there is to be neither loss nor gain, in the weight of those made of silk, or of the bark of a tree." *Embroidered*, by describing the Svastika, or other patterns on ready prepared cloths, or other material, with coloured thread or the like.

Farther remarks on valuation of manufactures.

CLXXXVIII.

11. In work, when a certain term is specified, and the workman fail to send home the article when demanded within the term, then, even if damage happen to the goods, the workman is not to blame;[3] for the same author says: "If, having fully considered the nature of the work, a certain time be fixed for its delivery; in that case, should the owner demand it when only half finished, and not obtain it, still it shall not be awarded to him." The exceptions are declared by the same author: If, when the term has elapsed, and the work is finished, the workman should not deliver it when demanded of him, and it be afterwards damaged, or stolen; the person who would have received the article, shall obtain the value of it." And again: "He who, having received a thing borrowed for his use, shall not restore it when demanded back, shall be seized, and by force compelled to give it up; and let a fine be imposed, if he do not then restore it.

Rules regarding contracts for work.

Exceptions.

Punishment of a fraudulent borrower.

1—The following rules are not unknown to the English law, which has several statutes to prevent fraud in similar cases. See Tomlins, tit. "Manufacturers." "Gold and silver," "Wire-drawers."

2—As. Res. 5th, 91. Wilson ad verb.

3—Essay on Bailments, 90-91. "Hiring of work."

CHAPTER VII.

Sale without Ownership,—(Asvámivikraya.)

Sale without ownership.

1. Vyása :[1] "When the goods of another are sold in the owner's absence, [whether they had been] borrowed for use, bailed for delivery, deposited under seal, or stolen, it is a sale without ownership." Kátyáyana :[2] "Let the judge declare void a sale, a gift, or a pledge, made without ownership." *Without ownership,* is here a past participle, and used separately, to denote the nature of each [act of sale, gift or pledge.]

CLXXXIX.

Unauthorized sale, gift, or pledge, void at law.

Circumstances invalidating a purchase.

2. Nárada :[3] "An open purchaser is clear of imputation, but a purchase in secret is a theft." :[4] "He who buys any thing, from a slave without authority from his master, from a man not of a good character, in private, at a very low price, and at an unfit hour, becomes the accomplice of him." *The accomplice of him,* that is, of the thief.

Proof, by the owners of lost property.

3. Yájñavalkya :[5] "The right to a thing lost [and then found,] must be proved, by the mode of acquisition, or by [evidence of] possession: otherwise, on failure of proof, a fine equal to a fifth part shall be paid to the king." *Fifth part,* a fifth share of the lost property. When the evidence given by the witnesses adduced by the loser, is contrary to his claim, he must be fined in double the amount of the lost property, for Vyása says, :[6] "If the plaintiff prove not his loss by witnesses, he shall in that case be compelled to pay double its value; and the purchaser is entitled to the thing."

Production of the seller indemnifies the purchaser.

4. He also lays down the course to be pursued by the buyer :[7] "But if the seller be produced, the purchaser shall by no means be condemned; for then the law suit must be continued between the owner of the thing lost and the seller. Bṛhaspati :[8] "When the seller has been made appear, and has been condemned in the law-suit, let the judge cause him to pay the price to the buyer, and a fine to the king; and restore the property to its owner." Kátyáyana :[9] "Let time be given to the buyer for the production of the seller, according to the length of the road."[10]: "If he cannot produce the seller, let him even justify the purchase; and if the purchase be justified, he shall in no wise be blamed by the king." "The claimant should first

CXC. Time for the purpose to be allowed, and proceedings in default.

1—Digest 1st, 453. Strange's Elem. 1st, 289-302-3.

2—Digest 1st, 474. 3—Digest 1st, 512. 4—Digest 1st, 491.

5—Digest 1st, 498.

6—Digest 1st, 499. 7—Digest 1st, 502.

8—Digest 1st, 479. 9—Digest 1st, 484. 10—Digest 1st, 501.

prove his property by evidence of kinsmen; next, to clear himself, the buyer should prove a fair purchase by [similar] witnesses, his own kinsmen."

The first owner recovers in all cases, under certain rules.

5. "Even if the purchaser clearly prove the sale, still the property must revert to the former owner who lost it." Moreover, Manu:[1] "But if the vendor be not producible, and the vendee prove the public sale, the latter must be dismissed by the king without punishment; and the former owner, who lost the chattel, may take it back, on paying the vendee half its value." *Not producible,* not to be pointed out. It alludes to the property being assayed [as it were by the buyer], by [the test of] a public sale.

Rules in respect to publicity of sales, and sellers' places of residence.

6. Kátyáyana:[2] "The defendant, not clearly proving an open sale to him, or not pointing out the seller, shall be made to deliver the thing claimed, and to pay a fine." Bṛihaspati:[3] If a purchase be made before a public assembly [of traders], with the knowledge of the king's officers, but from a seller whose dwelling-place is unknown; or if a claim be made after the death of the seller, [though known], the owner of the thing may recover his own property, on paying half the price given; half the value is lost to each of them: such must be the decision." Maríchi:[4] But if he cannot produce the seller, his dwelling place being unknown, the loss shall be borne equally by the buyer, and by the [former] owner who had lost the thing." *Dwelling place*, the spot where the seller resides.

Women, cattle, and land CXCI.

7. Nárada: "For the possession of women, or cattle, as well as land, leave must be distinctly granted. He who enjoys them without leave, shall be forced to pay the hire of such enjoyment." *Granted*, ordered. The *hire of enjoyment*, rent, similar to the hire.

Term for restoration of escheated property.

8. Yajñavalkya:[5] "The owner of a thing lost, or stolen, which had been seized by the officers of the police or revenue, whether by sea or land, shall take it, [if claimed] within one year; after that time, the prince [shall retain it]." As for this text of Manu[6]: "Three years let the king detain the property, of which no owner appears, [after a distinct proclamation]: the owner, appearing within the three years, may take it; but, after that term, the king may confiscate it," it is only with reference to property belonging to a Çrotriya, [one conversant in the Vedas].

With the share to be reserved by the king.

The same author says[7]: "The king may take a sixth part of the property so detained by him, or a tenth, or a twelfth, remembering the duty of good kings." Then, in the first year, he must give up the whole of the pro-

1—Chap. 8th, v. 202. Digest 1st, 502. 2—Digest 1st, 491.

3—Digest 1st, 508.

4—Digest 1st, 510. 5—Macnaghten, p. 425-6. 6—Chap. 8th, 30.

7—Chap. 8th, 33.

perty. In the second year, let him give it up, after deducting a twelfth share; in the third year, a tenth; in the fourth, a sixth. After that term, the king may confiscate it; this only in case of its owner not appearing after three years: and then it may be appropriated by him only for his expenses; but if the owner then make his appearance, it must be made good to him, even if expended: Thus says the Mitákshará. This however, only if the owner be unknown; for if it be known, 'that such an one 'went away, forgetfully leaving the said property behind,' then he shall get it back, even after three years. Even the prince possesses no right of disposing of it, though he may at the same time take some portion, however small, as his share.

Exception in the owner's favor.

9. Yájñavalkya propounds the remuneration for trouble of the finder, keeping during one day, the stray animals of another: "The owner of stray animals must pay four paṇas, if the animal be of the species with solid hoofs; five paṇas for a human creature; two for every buffalo, camel, cow, or animal with cloven hoofs; but only a fourth, for every goat, or sheep." But their food must be paid for besides.

The finder of strays CXCII.

10. On the subject of treasure trove, [Nidhi] Yájñavalkya says:[1] "Let the king obtaining unclaimed property [Nidhi] give half to Bráhmaṇas: but a learned Bráhmaṇa may keep the whole, for he is lord of all." "And the king shall receive a sixth part of unclaimed property occupied by any other person." "In case of its being discovered without information from the finder, he must be made to pay a fine as well [as the sovereign's share]." If however, any one prove by mark, measure, or the like, that the property found belongs to himself, in that case let the prince deliver it to him, after giving a twelfth share to the informer, and taking his own sixth. This is stated by Manu[2]: "When a man claims treasure trove, declaring truly, 'This is my own property,' the prince shall still retain his own sixth share, and also a twelfth." This *twelfth*, being that assigned for the informer*(a)*.

Law in regard to treasure trove.

11. On the subject of property carried off by thieves, the same author says:[3] "Let property carried off by thieves be restored by the prince to the owner, of whatever class he may be; if the prince take possession of it, he partakes of the crime with the thieves." In case he be unable to recover it from the thieves, Kṛishṇa Dvaipáyana [Vyása] says:[4] "Should the prince be unable to recover stolen property from thieves he shall make it good from his own treasury, provided he be powerless." Thus has been expounded the law of sale without ownership.

Restoration of stolen property to the owner.

CXCIII.

1—Macnaghten, 437. Digest 1st, 461.

2—Chap. 8th, v. 35.

3—Chap. 8th, v. 40. Macnaghten, 457.

4—Macnaghten, 437.

(a) As to treasure trove, see Mad. Reg. XI of 1838, Act XII of 1838, Mad. S. J. 1860, p. 88. Yájñavalkya by Roer and Montr. i. 34, 35.

CHAPTER VIII.

Concerns among Partners,—(Sambhaya Samutthánam.)

Concerns among partners.

1. Nárada :[1] "When traders, or others, jointly carry on business, it is called a 'concern among partners;' a title of judicial procedure."

2. Bṛhaspati :[2] "Whatever property a man lends, with the assent of many, or whatever business he so causes to be performed, is considered as the act of all the partners."[3] : "They are declared to be competent arbitrators, and witnesses for each other, in doubtful cases of deceit, provided they bear no enmity to either party." "Should one of the partners be justly suspected of fraud, in buying, selling, [and the like], he may be cleared by ordeal: such is the rule in all controversies."

Provision for reward and punishment, of partners.

3. Yájñavalkya :[4] "A man of crooked ways let the other partners expel without profit; and let a partner unable to act, appoint another man to act for him,"[5] : "If one partner does what the others forbid, or disapprove, or if he be negligent, [in doing what they allow], and the [common] property be injured, he shall make it good; but he who preserves it from [robbers or other] misfortune, shall receive a tenth part of it [as his r

in a partnership.

4. Kátyáyana[6] : "If four kinds of artisans be jointly employed; young apprentices, more experienced scholars, good artists, and teachers, they shall receive, in order, one share, two, three, and four shares, of the pay, or profit." *Young apprentices*, persons learning their trade. *More experienced scholars*, those who are well versed in it. *Good artists*, thoroughly skilled [in every branch]. *Teachers*, persons making new inventions. Bṛhaspati :[1] "Where several men jointly build a house or a temple, or dig a pool, or make sacred utensils, let the chief workman receive a double share of the pay." The same author adds[2] : "This has been ordained by wise legislators for a band of musicians: let him who marks the time skilfully, take a share and a half; and let the singers have equal shares."

1—Digest 2d, p. 1

2—Digest 2d, 66-7.

3—Digest 2d, 8-9.

4—Digest 2d, 17-34.

5—Digest 2d, 12.

6—Digest 2d, 78.

(a) Yájñavalkya (II. 259) also lays down that "traders who carry on business jointly, for profit, shall share the profits and losses, either in proportion to the capital brought in by each, or according to the contract between them."—*Ed.*

5. Kátyáyana: "If men, [who have joined together in any business], but are dispersed abroad, meet with imprisonment, then, whatever is paid for the sake of their liberation, shall be borne by them according to the share of each."[3] "The law [before] propounded relates to all partners, whether merchants, husbandmen, robbers, [commissioned in war time], or artizans, when they have made no special agreement for their shares."

to be common.

CHAPTER IX.

Subtraction of Gift.—(Dattápradánikam.)

1. Nárada:[4] "When a man desires to recover a thing which was not duly given, it is called subtraction of what has been given; [and this is] a title of administrative justice." *Not duly given*, is a past participle, to denote the quality of the transaction, and signifies 'prohibited.' The same author adds:[5] "In civil affairs, the law of gift is four-fold; what may, or may not, be given; and what is, or is not, a valid gift."

Subtraction of gift. CXCV.

2. Nárada:[6] "What is bailed for delivery, what is lent for use, a pledge, joint property, a deposit, a son, a wife, and the whole estate of a man who has issue living, the Sages have declared unalienable, even by a man oppressed with grievous calamities, and [of course], what has been promised to another." Now, as a man has no property in his wife or son, it is only a repetition of the prohibition against their alienation, in conformity to the Vedas. 'Neither between, nor in the heavens above.' From this, and from the law of Yájñavalkya:[7] "In distress for [the maintenance of] the family, [or, the family not opposing the gift, on account of poverty], property may be given away, except a wife and son," the purport of the above is confirmed by the reservation of a wife and son. The non-existence of property in a wife or son has been already examined in the discussions on property.

Unalienable property.

3. In case of their being alienated, not only will the act be untenable in law, but moreover penance also must be performed; for, in treating of this very subject, Daksha says:[8] "The man who gives them away is a fool, and must expiate the sin by penance." So Manu:[9] "He who receives what may not be given, and he who gives away the same,

Gifts of unalienable property are void.

1—Digest 2d, 80, where it is 'utensils of leather,' Chármika, for Dhármika; some of the manuscripts had the other word.

2—Digest 2d, 83. 3—Digest 2d, 92. 4—5—Digest 2d, 94-5.

6—Digest 2d, 97-8. Reports 1st, 293-4, 2nd, 428. See Chapter 6th, para. 6th.

7—Digest 2d, 128. Reports 1st, 69. 2d, 428. See Chap. 4th, Section 1st, para. 12.

8—Digest 2d, 110. 9—Not found in his Institutes.

shall both be punished like thieves, and be both caused to pay the fine of Uttama sáhasa."[1]

Alienable property. CXCVI.

4. What things may be given, is declared by Bṛhaspati :[2] "A man may give what remains, after the food and clothing of his family." What must without fail be given, is told by Kátyáyana :[3] "He who delivers not a present which he has promised to a Bráhman, shall be compelled to pay it as a debt, and incurs the first amercement."

Gift and sale in what cases prohibited.

5. Gautama :[4] "A man shall not give, even what he has promised, to a person whom the law declares incapable of receiving." Gift or sale of a livelihood [Vṛtti] are thus forbidden by Vyása :[5] "They who are born, or yet unbegotten, and they who are still in the womb, require the means of support : no gift or sale should therefore be made."

Gifts valid.

6. Nárada[6] thus propounds the distinctions, of gifts, valid and void : "Valid gifts are declared to be of seven sorts ; void gifts assume sixteen forms."[7] "They who know the law of gifts, declare, that things once delivered as the price of goods sold ; as wages ; for [the] pleasure [of hearing poets, musicians, or the like ;] from natural affection ; as an acknowledgment to a benefactor ; as a nuptial gift to a bride [or her family ;] and through regard, cannot be resumed." *Regard,* religious purposes :[8]

Gifts void.

"What has been given by men agitated with fear, anger, lust, grief, or [the pain of] an incurable disease ; or as a bribe, or in jest, or by mistake, or through any fraudulent practice, must be considered as ungiven : So must any thing given by a minor,[9] an idiot, a [slave or other] person not his own master ; a diseased man, one insane, or intoxicated, or in consideration of work unperformed."[10] "But what shall be given ignorantly, to a bad man, called a good one, or for an illegal act, must be considered as ungiven*(a)*."

Terms of the text defined.

7. *Grief* ; pain, misfortune ; the interpretation is, afflicted with pain created by fear or other impulse : Whatever has been given by one excited by *fear,* of beating or the like, or by other causes ; and in the same manner, what is given with the intention that it may be expended, from *anger* against

1—See Chap. 18th, para 2d. 2—Digest 2d, 131.

3—Digest 2d, 170. 4—Digest 2d, 172.

5—Digest 2d, 113. Jím. Vá. 21. Mit. 257. Reports 2d, 428.

6—Digest 2nd, 95. 7—Digest 2nd, 175.

8—Digest 2nd, 181. Reports 1st, 31. Colebrooke on Obligations. 26—45—48—56—232—243.

9—For "Minority," see Digest 1st, 293, 2nd, 115. Cole. on Oblig. 26. Reports 2d, 57—117—147. An idiot, and an insane person, seem incapable also by English law. Cole. on Oblig. 227-28.

10—Digest 2nd, 200. Cole. on Oblig. 58.

(*a*) See S. A. 168 of 1863, Mad. H. C.

brothers or other persons [the rightful heirs: by *mistake*, as, when gold is given by mistake, when the intention was to give silver; *through fraudulent practice*, as if, 'The king were about to give a cow to Devadatta, and it be given to some other man, supposed to be the right person by his assuming the dress of Devadatta:' *by a diseased man*, one whose mind is unsettled by disease; by one intoxicated with any substance or liquor which produces drunkenness; or insane, by the effects of the air, or from any other cause. *Given*, bestowed; what is given to a person who fails afterwards in the performance of any act, the donor [at the time of giving it] thinking, 'This person will do my work:'[1] what has been given to those practising unlawful arts, under an idea that they will perform a lawful act: All these gifts may be reversed.

CXCVII.

8. Kátyáyana:[2] "What has been given by men under the impulse of lust, or anger, or by such as are not their own masters, or by one diseased, or deprived of virility, or inebriated, or of unsound mind, or through mistake, or in jest, may be taken back." *Through lust*, for the sake of seducing another man's wife. *Deprived of virility*, [womanishly] timid. *Given through mistake or in jest*, means as a bribe [utkocha.]

Such gifts may be re-sumed.

9. [3] "If a bribe be promised for any purpose, it shall by no means be given, although the consideration be performed." "But if it had at first been actually given, it shall be restored by forcible means; and a fine of eleven times as much is ordained by the son of Gárga and by the son of Manu." The nature of a bribe is thus exhibited by the same author:[4] "Whatever is received for giving information of an [improper] acquaintance; of a criminal, of a man violating the rules of his class, or of an adulterer; for producing a man of depraved manners [ready to commit thefts or other crimes,] or for procuring a man to give false testimony. That is all denominated [utkocha] given on an illegal consideration."

Recovery prohibited, of a bribe once given.

Bribes defined.

10. Manu:[5] "When the Judge discovers a fraudulent pledge, or sale; a fraudulent gift, and acceptance, or in whatever other case he detects fraud, let him annul the whole transaction." *Fraud*, circumvention. *Or in whatever other case*, that is, in whosever business. The meaning is, the whole of that business in which fraud is

CXCVIII.

Fraudulent acts to be annulled.

1—This is better explained in the Mit. leaf 19th, page 2nd, line 10th, "Further, what is given thus, 'This man will do this my work,' that is, from hope of a profitable return."

2—Digest 2nd, 197. Reports 2nd, 117.

3—Digest 2nd, 195, Kátyayána. Cole. on Oblig. 58. Strange's Elem. 1st, 274.

4—Digest 2nd, 194. 5—Chap. 8th, v. 165. Strange's Elem. 1st 285.

detected shall be reversed. Kátyáyana:[1] "What a man has promised, in health or in sickness, for a religious purpose, must be given; and if he die without giving it, his son shall doubtless be compelled to deliver it." For a continuation of this subject, the Dvaita Nirṇaya, written by Guru, must be referred to.

Legal promises binding, even on heirs.

CHAPTER X.

Of Service,—[Abhyupetya Çuçrushu].

1. Nárada:[2] "When a man yields not the obedience he has promised, it is called a breach of promised obedience; which is a title of law." Servants are of three ranks, says Bṛihaspati:[3] "The soldier is the highest of servants; the ploughman is the middlemost; the porter is declared the lowest, and so is a servant employed in the business of the household." Nárada:[4] "He who shall be commissioned for affairs, or for the superintendence of the family, should be considered as a commissioned servant; and he is also called a family-servant [in some instances]."

Service.

CXCIX

Servants of three degrees.

2. Kátyáyana:[5] "Bhṛigu admits the servitude of one who, being his own master, gives himself, as [the marriage of] a wife [self-given is acknowledged:] slavery should be limited to three classes; never can a Bráhmaṇa become a slave." The servitude of men of the military, commercial, and servile classes, who have forfeited their independence, may be in the direct, not in the inverse order of the classes." Nárada:[6] "In the inverse order of the classes, slavery is not legal." Kátyáyana:[7] "Where men of the three twice-born classes forsake religious mendicity, let the king banish a man of the sacerdotal class, and reduce to slavery a man of the Kshatriya or military tribe, says Bhṛigu." The taking the word Kshatriya or military class, intends the commercial and servile classes also, a part being put for the whole. The mode of banishing a Bráhmaṇa is thus explained by Daksha and Nárada:[8] "If a man, after assuming religious mendicity, abide not by his duty, let the king cause him to be lacerated by the feet of dogs, and immediately banish him."

Slavery of all classes admitted, with exception of Bráhmans(*a*).

3. Kátyáyana:[9] "But even a man of equal class must not reduce a Bráhmaṇa to slavery; yet a mild and learned man may employ in labour one inferior to himself in those qualities: still let not the highest twice-born man perform impure work." Manu:[10] "Both him of the military, and him of the commercial class, if distressed for

What kinds of labour allowed and what prohibited.

1—Digest 2d, 96. 2—Digest 2d, 204. 3—Digest 2d, 218.

4—Digest 2d, 220. See Bl. Com. 1st, 426. The English law admits four kinds.

5—Digest 2d, 254. See Bl. Com. 1st, 425, note 1.

6—Digest 2d, 253. 7—Digest 2d, 227. There is a variation in the reading of this text.

8—Digest 2d, 227. 9—Digest 2d, 254-5. 10—Chap. 8th, v. 411. Strange's Elem. 1st, 135.

(*a*) Act V of 1843, sec. 2 prohibits the enforcement of any rights arising out of an alleged property in the person and services of another as a slave. See cases cited 3 Morl. Dig. 377.—*Ed.*

a livelihood, let some wealthy Brâhmaṇa support, obliging them, without harshness, to discharge their appropriate duties." *Appropriate duties*, meaning respectable, and such as are suited to their class.

Illegal enslavement with the punishment awarded for it.

4. Kátyáyana[1] : "He who seizes a woman of the sacerdotal class, he who sells her, and he who enslaves a woman of family, impelled by lust, or causes her to be approached by another, shall be amerced, and that [enslavement] is null." "The man who treats as a slave the nurse of an infant child, or a free woman, or the wife of his dependent, incurs the first amercement." Vishṇu :[2] "He who employs a man of the most elevated class in servile duty, shall be fined in the highest amercement." Kátyáyana :[3] "And he who attempts to sell an obedient female slave [Bhakta][4], though she resist the sale, and though he be not distressed, but able to subsist, shall pay the first fine."

Slaves enumerated.

5. The distinctions in slaves are laid down by Nárada[5] : "One born [of a female slave] in the house [of her master] ; one bought ; one received [by donation] ; one inherited [from ancestors] ; one maintained in a famine ; and, like him, one pledged by a [former] master ; one relieved from great debt ; one made captive in war ; [a slave] won in a stake ; one [who has] offered [himself] in this form. 'I am thine ; an apostate from religious mendicity ; [a slave for a] stipulated [time] ; one maintained in consideration of service [Bhakta] ; a slave for the sake of his bride ; and one self-sold, are fifteen slaves declared by the law."

CCI.

Who of them are not capable of emancipation.

6. [6] : "Of those [slaves], the first four are not [of right] released from slavery : unless they be [emancipated] by the indulgence of their masters, their servitude is hereditary. That low man, who, being independent, sells himself, is the vilest of slaves ; he also cannot be released from slavery." [7] "Among those, whoever rescues his master from imminent danger of his life, shall be released from slavery, and shall receive the share of a son." Yájñavalkya : "He who, having become a Sanyási, falls from that state, shall remain the slave of the prince during the rest of his life."

Exception.

Slavery voidable, on what conditions.

7. Nárada :[8] "One maintained in a famine is released from servitude on giving a pair of oxen." "One pledged [is] also [released] when his masters redeems him, by discharging the debt"[9–10] : "Paying the debt with interest, a debtor is released from servitude."[11] : "One who

1—Digest 2d, 258. 2—Digest 2d, 257.
3—Digest 2d, 258. 4—The word 'Bhakta' means also "serving for maintenance."
5—Digest 2d, 224-25. Colebrooke on Obligations, 26. 6—Digest 2d, 231.
7—Digest 2d, 241. Reports 1st, 372, note. 8—Digest 2d, 243. The last half of the couplet is here omitted ; it is as follows : "for what was consumed in a famine, is not discharged by labour [alone]."
9—Digest 2d, 245. Here again, the last half couplet is omitted : "but if [the creditor] take him in payment, he "becomes a purchased slave."
10—Digest 2d, 245. 11—Digest 2d, 246.

offered himself in this form, 'I am thine;' one made captive in war, and a slave won in a stake, are emancipated on giving a substitute equally capable of labour."[1] : "A slave for a fixed period is also emancipated, by fulfilling the stipulated terms."[2] : "One maintained in consideration of service is immediately released on relinquishing his subsistence; and a slave for the sake of his bride is emancipated by divorcing his wife." *Substitute*, a surety, deputy. *Bride*, a female slave.

Slavery in what cases void, ab-initio.

8. Yájñavalkya:[3] "One enslaved by force, and also one sold by robbers, is released from slavery." Nárada:[4] "One not his own master, who, having given himself [to one man] in this form, 'I am thine,' goes [to another], does not obtain his wish; the former owner may reclaim him." *One not his own master*, the slave of another. The word slave, used throughout on this subject, being not specially confined to the masculine gender, must therefore be understood as affecting all rules also for female slaves.

CCII.

Reason for emancipating females.

9. A reason for enfranchising female slaves is declared by Káty-áyana:[5] "If a man approach his own female slave, and she bear him a son, she must in consideration of her progeny, be enfranchised with her child. *Progeny*, offspring; meaning, that she becomes thereby qualified for liberty.

Rite of emancipation.

10. Nárada[6]: "Let the benevolent man, who desires to emancipate his own slave, take a vessel of water from his shoulder, and instantly break it, sprinkling his head with water containing rice and flowers; and, thrice calling him free, [let the master] dismiss him with his face towards the east: thenceforward let him be called 'one cherished by his master's favour;" his food may be eaten, and his favours accepted; and he is respected by worthy men.

How any free woman may become a slave.

11. Kátyáyana[7]: "A free woman, or one who is not a slave [of the same master; for this word, adási, may bear either sense], becoming the bride of a slave, also becomes a slave [to her husband's owner]; for her husband is her lord, and that lord is subject to a master." "Whatever goods belong to a slave, his master is declared by law to have dominion over them."[8]

1—Digest 2d, 245. This should come in after "Paying the debt with interest," &c.

2—Digest, 2d, 247. 3—Digest 2d, 239.

4—Digest 2nd, 237. The translation is varied here, to suit the gloss.

5—Digest 2d, 247. 6—Digest 2d, 248.

7—Digest 2d, 252-3.

8—Digest 2d, 252. The last hemistich is here [it would seem fraudu'ently] omitted: but that matter has no right to the goods which are acquired by public sale. See particularly Colebrooke on Obligations, 30-31-232.

CHAPTER XI.

Non-payment of Wages,—(Vetanádánam.)

Non-payment of wages. CCIII.

1. Nárada:[1] "The rule and the act of payment, and non-payment, of the wages or hire of servants, are now declared, called in law, Non-payment of wages or hire.

Rates of wages, when not stipulated.

2. Yájñavalkya:[2] "He who causes work to be performed without fixing the wages, shall be compelled by the king to give a tenth part of the [profit arising from] commerce, cattle, or grain."

3. This relates to light work—For if the work be heavy, Bṛhaspati says:[3] "Let the man who guides the plough-

According to the work.

share have a third or a fifth part [or the grain]." "Let (the ploughman), to whom food and vesture are given, take a fifth; and let him who is supported by the profit (alone), receive a third part of the grain produced." *Food and vesture*, a servant boarded with receipt of food and clothes.

4. Nárada:[4] "A servant who refuses to perform the work he has undertaken, shall be compelled to fulfil his agreement,

Rules affecting the servant in regard to work.

first paying him his wages; but, if he persist in his refusal after receiving his wages, he shall forfeit twice their amount." Manu[5]: "That hired servant or workman, who, not from any disorder but from insolence, fails to perform his work according to his agreement, shall be fined eight raktikás,[6] and his wages or hire shall not be paid." He adds:[7] "Yet, whether he be sick or well, if the work stipulated be not performed [by another for him, or by himself], his whole wages are forfeited, though the work want but a little of being complete."[8]: "But, if he be really ill, and when restored to health shall perform his work according to his original bargain, he shall receive his pay even after a very long time." So Vishṇu:[9] "A servant, [or workman by time], who leaves the work before the expiration of the full term, shall forfeit the whole price of his labor, and pay one hundred paṇas to the king."

5. Again: "If the master dismiss the servant before the full time has passed, he shall pay him his whole wages, and a

Rules affecting the master.

Damage or loss by servants, how to be estimated and when good.

hundred paṇas to the king, unless the servant were in fault." Vṛiddha Manu:[10] "A servant shall pay the full value of what he has lost by mere inattention; twice the value of what he has lost by gross negligence or malice; but he shall not be forced to pay any thing for

1—Digest 2d, 2.

2—3—Digest 2d, 261-64. See Tomlins, and Burn, tit. "Servants."

4—Digest 2d, 267. 5—Chap. 8th, 215. Digest 2d, 269. 6—As Res. 5th, 91.

7—Chap. 8th, 217, Digest 2d, 270. 8—Chap. 8th, 216. Digest 2d, 271.

9—Digest 2d, 271. Reports 2d, 237. 10—Digest 2d, 272.

what robbers have seized, for what has been burned, or for what an inundation has carried away, [unless he were himself blameable]. *Malice,* enmity. *Carried away,* swept away. Yájñávalkya :[1] "He who raises obstacles on solemn occasions shall pay twice the amount of his wages; one who declines when on the road [shall be compelled to pay] the seventh part of the wages, or the fourth part, if he leave him on the way." Vrddha Manu :[2] Should a merchant [having hired a servant for a certain journey,] sell his goods by the way, and discharge the servant, his [wages] must be paid; but the servant shall receive half only of the hire." Kátyáyana :[3] "And if the goods be stopped, or seized on the way, the servant shall receive wages for so much of the way as has been passed by him :"[4] "The master, who leaves in the way a tired or sick servant, without taking care of him in a village for three days, shall pay the first or lowest amercement." *Be stopped,* be attached by the king's order.

Cases of dispute about wages discharge.

6. Brhaspati :[5] "If a servant, by the command of his master, and for his benefit only, do an improper act, the offence shall be imputed to the master." :[6] "The master, who pays not the hire of labour after the work is performed, shall be compelled by the king to pay it, as well as a proportionate amercement."

Liability of the master.

CCV.

7, Nárada :[7] "The owner of goods, who hires carriages or beasts of burden, and takes them not, shall be compelled to pay a fourth part of the hire; or the full amount, if he leave them on the road." *Carriages,* conveyances of all sorts. *Beasts* of burden; horses and other animals, carrying burthens on their own [backs]. Kátyáyana :[8] "He who hires, at a fixed price, an elephant, a horse, a bull or cow, an ass, or a camel, shall be made to pay for the hire of it as long as he delays to restore the cattle, having used it according to agreement." Nárada :[9] He who dwells in a house which he built on the ground of another man, and for which he pays rent, shall take with him, when he leaves it, the thatch, the wood, the bricks, and the like. But if he live, without paying rent, on the ground of another, and there be no agreement, he shall, when he quits it, give the thatch, the timber, and the bricks which he has expended, to the landlord." *Rent,* hire.

Rules relating to hire, of carriages, and beasts of burthen.

Rules for Landlord and Tenant.

1—Digest 2d, 274-75. 2—Digest 2d, 277. 3—Digest 2d, 278.

4—Digest 2d, 279. Moore's Index, Term Reports 1st, 76. Tomlins, and Burn, tit. "Servants."

5—Digest 2d, 273. Bl. Com. 1st, 429. "Qui facit per alium facit per se." Tomlins, tit. "Servants."

6—Digest 2d, 270. 7—Digest 2d, 277, q. v.

8—Digest 2d, 283, where it is attributed to Nárada.

9—Digest 2nd, 281. q. v. Strange's Elem. 1st, 293.

CHAPTER XII.

Breach of Compact,—(Samvida Vyatikrama.)

1. Nárada:[1] "The general rule, settled among irreligious men [Pákhanda], and among citizens [Naigama], and the like, is named a compact; and the title of law concerning disputes arising thereon, is called Breach of compact." *Pákhanda,* persons pursuing commerce or the like, [and] deviating from the ordinances of the Vedas. *Citizens,* those who do not act contrary [to the Vedas]. From the term *the like,* we must include those skilled in the three Vedas.

Breach of Compact.

CCVI.

2. The part to be taken by the king in these matters is laid down by Bṛhaspati:[2] "Assembling Bráhmaṇas endued with knowledge of the Veda, Çrotriyas [or learned teachers of the scripture,] and priests who keep a perpetual fire for oblations [Agnihotri,] let the king establish them in that place, and assign their subsistence:" "Let him grant to them, in his own dominions, houses and land exempt from taxes, delivering by a written grant, that the royal dues are remitted. *Exempt:* They from whom taxes are not to be taken, are *exempt from taxes. Remitted dues*: *Remitted,* abandoned: *dues,* the fruits of the earth, and the like; meaning, these [are to be remitted] to them. And the laws for these persons, the Çrotriyas and the rest, are declared by Yájñavalkya:[3] "Duties which are stipulated, or seasonable [for Sámayika may bear either sense,] or prescribed by the king, and which are not inconsistent with their own [regular] duties, should also be diligently observed [by those priests, and enforced by the king.]"

Royal establishments.

3. Nárada:[4] "Let the king maintain the associations of the Pákhanda, of the Naigama, of joint companies [Çreni,] of separate trades [Púga,] and of various tribes [Vráta,] and the like, both in a place of difficult access, and in a frequented spot." Associations of persons of dif-

Associations enumerated and defined.

2—Digest 2nd, 286-92-3. Ellis's Lectures "Kulika Sabhá from Kulika, heads of tribes or families. A court composed of ancient persons of the same Gotra as the plaintiff and defendant The Gana, Kula, and Kulika courts took cognizance, especially, of what is termed technically, Samvida vyatikramam, all transgressions against the discipline and peculiar customs of the tribe or family: they had, also, jurisdiction, probably to a limited extent, in civil causes between the members of the tribe or family: but they had no jurisdiction in criminal cases, and did not, therefore, resemble the domestic courts of the Romans, in which the Pater-familias presided, and punished the faults of his wife and children even with death." See Chap. 1st, Sec. 1st, para. 10th.

3—Digest 2nd, 288.

1—Digest 2nd, 287. 2—Digest 2nd, 293. The words of the text are retained, to avoid perplexity. The Mayúkha, and Mitákshará, vary in their acceptation of the term Naigama, for which "trader" seems the most common meaning, See Chap. 17th, para. 2d, For the three last terms, see Chap. 1st, Sec. 1st, para. 10th, and references.

ferent castes for the carrying on of one kind of trade or business between them, are *joint companies.* Among them again, those who are associated by different kinds of work, are called *separate trades. Various tribes,* are associations of near kinsmen, connexions, or gentile relations; the same which are also denominated kula, or family. Of the Pákhanda and Naigama, we have before spoken [para. 1.] Associations of all these, from the Pákhandas to the Vráta inclusive, are all denominated 'companies.'

4. The punishment for a departure from the rules laid down among them, is declared by Yájñavalkya:[1] "Him who embezzles the property of the company, and him who violates his engagement, let the king banish from the realm, after confiscating all his effects."

Punishment for members.

CHAPTER XIII.

SECTION I.

Rescission of Purchase.—(Krítánushaya.)

1. Nárada:[2] "He who is dissatisfied with his purchase, after buying a commodity for a [just] price, is called a rescinder of purchase, [which is] a title of judicial procedure."

Rescission of Purchase.

CCVIII.

2. The limit for examination of an article is fixed by the same author:[3] Milch cattle should be examined within three days; beasts of burden, within five; but the examination of pearls, gems, and coral must be within seven days; of male slaves, within half a month; of females, within one month; of all seeds, within ten days; of iron, and wearing apparel, within one day." Kátyáyana:[4] "Rescission of a sale of land within ten days [is permitted] whether to the buyer or the seller." Bṛháspati:[5] "Within those times, if a blemish be any where discovered in the commodity purchased, it must be returned to the seller, and the purchaser shall take back the price."

Term allowed for trial of articles.

3. Kátyáyana:[6] "But an unexamined commodity being bought, and afterwards proved to have a blemish, it must be returned to its owner within the limited time, and not otherwise." If he took the article after personal examination, then, says Nárada:[7] "If a man, having bought for a just

Excepted cases.

3—Digest 2nd, 297. Reports 2nd, 437.

1—Digest 2d, 309. See Strange 1st, 301-304, for this and the succeeding section.

2—Digest 2nd, 214-15, Reports 1st, 404-5.

3—The same hemistich, and no more is in the Víratrodaya, 134 1st, 1st.

4—Digest 2nd, 315-6. The second reading of which, 'sanjayate,' is followed here.

5—Digest 2nd, 316. 6—Digest 2nd, 309-10.

price any [cloth or other consumable] commodity [except seed grain,] should suspect that he had made a bad purchase, he may return it on that very day to the seller, unless it be diminished." The buyer who returns it on the second day, shall give [the seller] a thirtieth part of the price; on the third day, twice as much [or a fifteenth]; and, after that, it is absolutely his own." Nárada[1]: "But a mantle, that has been worn, and is tattered and soiled, yet is bought with those known blemishes, cannot be returned to the seller."

SECTION II.

Rescission of Sale.—(Vikríyásampradánam.)

Rescission of sale. CCIX.

1. Nárada:[2] "When a vendible thing, sold for [a just] price, is not delivered to the purchaser, this is called 'non-delivery of a thing sold,' a title of judicial procedure*(a)*."

Rules affecting the vendor.

2. Yájñavalkya:[3] "He who, having received the price of a thing sold, delivers not that thing to the buyer, shall be compelled to deliver it together with interest; or, among those who trade to foreign countries, the foreign profit." *Foreign*, of another country. Its *profit*, that is, the profit on a commodity, the produce of a foreign country. The same author:[4] "Should a commodity sold, but not delivered on demand [with tender of payment], be injured by the act of God or of the king, the loss shall fall on the vendor.

and the vendee.

3. But again[5]: "And if a loss arise by the fault of the vendee, on him alone shall it fall." Nárada[6]: "But if a vendee refuse to accept the commodity which he has bought, when it is offered, the vendor commits no offence if he sell it to another."

Sales void.

4. Yájñavalkya says:[7] "That which has been sold by a drunken, or by an insane man; or for a base price; also that which has been sold by one not independent, and by an idiot, *(b)* must be given up and restored by the purchaser." All these

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1—2 Digest 2d, 317.

3—Digest 2d, 319-20.

4—Digest 2d, 324.

5—Digest 2d, 324. Reports 1st, 404. The last hemistich of one text is here tacked on to the end of the other.

6—Digest 2d, 327. Reports 1st, 404.

7—This is a text of Bṛihaspati, according to the Víramitrodaya [136—1st, 5th,] and is attributed also to him in the Digest 2d, 328, or at least one very like it. Reports 2d, 118.

(a) By Hindú law a purchaser may recover in an action for breach of a contract to deliver goods not only double the earnest money but also damages for the non-delivery. *Alvár Chetti* v. *Vaidilinga Chetti* 1 Mad. H. C. Rep. 9 —*Ed.*

(b) Where an infirm and foolish man, proved by a reference to his caste to be incapable of managing his own affairs, sold his house at a base price, without the knowledge or consent of his relations, the sale was set aside at the suit of his widow, and she was decreed to be put into possession of the house, the purchaser from the idiot paying all costs, but being at liberty to recover for any sums he might prove to have actually advanced to the deceased, *Lukmeedas Vereedas* v. *Mt. Mankunwur*, 2 Borr. 114. 1 Morl. Dig.

for decision.

rules must be understood, as referring to a contract made by the seller to this effect: 'The price being paid, I will give it to you alone, and to no other,' [as is evident] from the following text of Nárada[1]: "This rule has been declared for vendible commodities, of which the price has been paid [or tendered]; but where it has not been paid [or tendered], there is no injury to the buyer by [delaying the delivery] unless there have been a special agreement [as to the times of delivery and payment]."

Punishment of fraud.

5. On the subject of selling a damaged article, Yájñavalkya says[2]: "The dishonest man, who sells the commodity knowing its blemish, [but not disclosing it], shall pay double the price of it [to the vendee], and a fine of equal amount [to the king]."

CHAPTER XIV.

Disputes between Master and Herdsmen.—(Svámipálaviváda).

Disputes between master and herdsmen.

CCXI.

Punishment for faults.

1. When damage occurs to kine, or other animals, through the fault of their keeper, Yájñavalkya says:[3] "On the loss [of a beast] by the fault of the herdsman, the fine ordained for him is thirteen paṇas and a half; and [he shall pay] the value [of the beast] to its owner." *The value* of the cow, or whatever animal it may be.

Mode of certifying deaths in the herd.

2. The mode of certifying the death of any animal, is thus laid down by Manu:[4] "When cattle die, let him carry to his master their ears, their hides, their tails, the skin below their navels, their tendons, and the liquor exuding from their foreheads: let him also point out their marks." *Marks*, their horns, or other known marks, according to Madana.

Pasture lands of townships.

3. The portion of ground [to be set apart] to serve as pasturage for kine, and the like, is defined by Yájñavalkya[5]: "Let a space be left between village and village, in breadth four hundred cubits; let it be eight hundred cubits round a town, and sixteen hundred round a city." *Space* [Parináha], land appropriated for pasturage of cattle and the like.[6] In the

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1—Digest 2d, 319. 2—Digest 2d, 325, where it is attributed to Bṛhaspati

3—Digest 2d, 343, and the commentary.

4—Chap. 8th, v. 234. Digest 2d, 347. There is a variation in the reading here, ankáh, marks, for angáh, limbs.

5—Digest 2d, 348. 6—In practice, this is well known, the ground so set apart being termed Kotra in Gújurat.

same sense also, a similar word [Parihára] is issued by Manu :[1] "On all sides of a village or small town, let a space [Parihára] be left for pasture, four hundred cubits." Some author has defined a village, as a place where several artificers and husbandmen are found: a town [Kharvata], as a place surrounded with a strong thorn hedge.

Loss by trespass to be made good by the owner, with a fine for the of-

4. When the grain or property of another is eaten by cattle, fines must be paid by their owner, according to this ordinance of Yájñavalkya[2] : [The owner of] a female buffalo, doing damage to grain, shall be fined eight máshas[3] ; of a cow, half that [amercement]; and of a goat or sheep, half [again] of this amercement." "For cattle eating and lying down in the field, the fine is double the amercement mentioned; it is also the same, if they trespass on preserved lands, and the fine for an ass or a camel, is the same with that for a female buffalo."[4] "As much grain as shall be destroyed, so much produced shall be [paid] to the husbandmen; the herdsmen shall be scourged; but the owner of the cattle incurs the fine already declared." *Preserved lands,* a place for collecting or preserving grass, wood, or the like.

Exceptions, with the reasons for them.

5. An exception to this is stated by Uçanas :[5] "Kine are not liable to fine for trespass on jubilees, and they are equally exempt at the season of obsequies." Vyása; "O lion [lord] of kings, he whose property has been snatched away and enjoyed by a Bráhman, or by a very indigent relation, or by a kine, receives greater reward, than he would obtain from the Vájapeya sacrifice." Uçanas[6] : "Neither ancestors, nor deities, taste the offering of that man who demands compensation for corn destroyed by cows."

CHAPTER XV.

Boundary Disputes.—[Síma Viváda].

Boundary disputes.

CCXIII. Mode of defining boundaries.

1. Bṛihaspati tells the means of knowing boundaries : "The following substances, cow-dung, bone, husks of grain, charcoal, large stones, potsherds, sand, bricks, cows'-hair, cotton,[7] bones, and ashes, having been placed in vessels, shall be deposited under ground at the extremities of the boundary."

1—Chap. 8th, v. 237. Digest 2d, 347-8. 2—Digest 2d, 361-2.

3—As Res. 5th, 91. Digest 2nd, 358. 4—Digest 2d, 366.

5—Digest 2d, 372, where certain other animals are altogether exempted.

6—Digest 2d, 354. 7—Or cotton seeds, according to the Víromitrodaya [139 2d, 10th,] which has been consulted for the translation of the other terms : a text of the same author is there found, but transposed and read differently "Stones, bones, cows' hair, husks of grain, ashes, potsherds, cow-dung, bricks, charcoal, gravel, sand."

2. Yájñavalkya here shows the nature of the witnesses required: "Men inhabiting a neighbouring village [Sámanta], or that in which the disputed ground is situated, being in number either four, eight, or ten, having put on a chaplet of red flowers, and a red dress, and taking some of the earth [on their heads], shall point out the true boundary." Nárada: "A single man shall not determine a [disputed] boundary, even if he be worthy of confidence; for the weighty nature of this business requires that such fact be settled by many." Bṛihaspati: In default of the marks for knowing the boundary, even a single man, who is virtuous and upright, and mutually agreed upon by both parties, having put on a chaplet of red flowers, and red clothes, and taking some earth on his head, and having fasted, may point out the boundary."

Requisite witnesses.

One witness inadmissable, except under certain circumstances and limitations.

3. Kátyáyana: "On three occasions, the act of God or the king is to be looked for: in walking over a boundary, undergoing the ordeal of holy water, and likewise in swearing by holy feet; [in the first[1] within six weeks; [in the second] a fortnight; and [in the third], within seven days."

Divination to be attended to.

Manu:[1] "Veracious witnesses who gave evidence as the law requires, are absolved from their sins; but such, as give it unjustly, shall each be fined two hundred paṇas." Nárada: "Now if neighbouring villagers have spoken what is not true in deciding a [contested] boundary, they shall be fined, all separately, in the middling amercement, by the king." Kátyáyana: "Where many are assembled [for this purpose], and they do not give an unanimous verdict [or testimony], whether from fear or hope of reward, they shall be made to pay the highest amercement."[2]

Punishment of false evidence.

CCXIV.

5. Yajñavalkya: "In default of assessors, or of marks for distinguishing it, the king ought of his own accord to define the boundary." Manu:[3] "If the boundary cannot be [otherwise] ascertained, let the king, knowing what is just, [that is without partiality, and] consulting the future benefit of both parties, mark a boundline between their lands: this is a settled law."

Proceedings in default of evidence.

1—Chap. 8th, 257.

2.—In the Víramitrodaya [141: 2d, 14th] this is elucidated by another hemistich of the same author: "If it be so delivered from want of knowledge, let the boundary be examined afresh; but if there be a contradiction in what they have delivered, they shall be fined in the highest amercement."

3—Chap. 8th, 365.

6. The same author says:[1] "Reckoning from the time of entry, even as a house-door, a shop [or market], and other places may have been enjoyed by any one, according to that time and manner shall he possess them, and shall not be removed." Kátyáyana also: "An enclosure; a drain; a projection, and small apertures, let them not stop up, or interfere with; let him who stops a permanent water-course or the scite of a house, receive punishment." *An enclosure*, the foundation of a wall. *A drain*, a road for the exit of water. *A projection*, is, according to Madana, 'a place for sitting in, made of wood or other materials, not touching the ground, but built out, from a house or other place.' In some copies they read [dhuma nishkása], 'a passage for smoke, [a chimney]' instead of [bhrama nishkása] 'a drain and a projection.' It then would mean, small apertures, as bull's eyes, or the like, for the purpose of letting out smoke. By the phrase *other places*, we must understand, the walls of other people, and the like.

Possession, held to be a title to certain conveniences.

7. The same author says: "From and after the date of entry [or possession], such things are not at any time to be made, neither shall they make a passage for sight, nor a water-course, into the habitation of another." Bṛihaspati: "Never let a necessary, a fire-place [or heap]; a skin, or dirty water, [or a vessel of it], be at any time placed very near to the house of another." *A necessary*, the place for voiding impurities. *Very near*, in close contact. Kátyáyana: "Places set apart for dispositing urine, fæces, and water; a fire-place and a sink [or pit], let them situate, when they make them, at the distance of two cubits from the houses of other people."

Prohibition against erection of nuisances.

CCXV.

8. Bṛihaspati: "That [road], by which men and animals have come and gone unprevented, is called a highway [Sansaranam]: it is not to be shut up by any one whomsoever." Nárada: "Let them not stop up a thoroughfare [or junction of four roads, Chatushpatha], a place dedicated to the gods, or the king's highway, [Rájámárga], by [making there] a place for sweepings, a pit, a drain, a heap, [of rubbish] or the like." Kátyáyana: "That place through which all [sorts of] people are constantly moving, is a thoroughfare [Chatushpatha]: that which has not at any time been stopped up, is called the king's highway."

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9. Bṛihaspati: "Let one máshika be the fine of him, who there makes either a stoppage [with carts], or a pit [or sink], or a plantation of trees, and likewise for him who wilfully voids ordure there." Manu:[2] "He, who shall drop his ordure on the king's highway, except in case of necessity, shall pay two paṇas, and immediately remove the filth."

Fine for committing nuisances in them.

1—It is not found in Manu's Institutes, and the Víramitrodaya attributes it, by implication, to Bṛihaspati

2—Chap. 9th, 282.

Kátyáyana: "Let him who defiles a pond, a royal garden, or a holy piece of water, with ordure, be made to remove the defilement, and be punished in the lowest amercement."

Fine for transgressing boundaries, &c. CCXVI.

10. Yájñavalkya: "For altering the divisions [of joint lands], as well as for transgressing the boundary [of others], and taking away a man's land, let the fine be, in order, the lowest, the highest, and the middling, scale."

and for seizure by intimidation.

11. Manu:[1] "He who, by means of intimidation, shall possess himself of a house, a pool, a field, or a a garden, shall be fined five hundred paṇas; but only two hundred, if he trespassed through ignorance of the right."

Rights in the produce of boundaries defined

12. Kátyáyana:[2] "The fruit and flowers of trees produced upon the boundary between two fields, are declared to be joint property, pertaining in common to the masters of the two fields." Kátyáyana:[3] "But where the branches of trees growing in one man's field, be spread out over that of another, then he shall be considered as the owner [of their produce], over whose field they are so situated." Yájñavalkya: "If a man, not even giving notice to the owner, set up a bridge upon [another person's] field, the enjoyment of its profits is the right of the landlord, or, on failure of him, of the king."

Erection of bridges allowed on the ground of another.

13. The same author says: "A bridge[4] which diffuses general benefits [must not be put a stop to] where the inconvenience is slight; and a well, which takes off from the land of another, if the ground [so lost] is small, and the supply of water great." 'Must not be put a stop to,' should here be added. Nárada also: "But a bridge in the middle of another man's field must not be objected to, if the benefit be great, and the damage small, and a profit be expected above the less." Nárada: "If any one, without asking the owner, repair a bridge built long before but fallen into decay,[5] that person in such case shall not enjoy the profits of it." Vyása: "If any one, having taken a field [in hire] shall neither till it himself nor cause it to be tilled, he shall be made to pay to the owner of the land the vegetable products of that field, and a fine equal to it to the king."[6]

Repair of them gives no title.

Punishment for neglecting to cultivate land held under lease.

Products, profits suitable to the powers of the land.

1—Chap 8th, 264.

2—3—Hallhed, 188. Strange's Elem. 1st, 393.

4—Mit. 65. 1st.—Bridges [Setu] are declared by Nárada to be of two kinds: "Bridges of two sorts are known: the one open, and the other confined: "when for the passage of water, it is open; that which is closed, is for the stoppage [of water]."

5—In the Mitákshará, it is read Uttsannam; in the Víramitrodaya, Utpannam; the former of which is followed here.

6—See Wilks's Mysore, vol. 1st, p. 128.

CHAPTER XVI.
SECTION I.
Abuse,—(Vákpárushyam).

Abuse defined to be of three degrees.

1. Bṛihaspati: "That is reckoned the first scale in abusive language where, without any thing specific, disgraceful accusation of country, town, or family, is made." "False accusation, of connexion with the sister, or the mother, of another; [or] of a sin in the minor degree, is called the second degree of wordy abuse, by those skilled in the Çástra." "Accusation of [using] forbidden food, or drink; the charging with a mortal sin; and spreading abroad very deep secrets, is termed the highest misuse of language." *Without any thing*, means, 'mere mention made, but without specifying any thing so as to identify the thing [or person] meant.' *Spreading abroad*, divulging.

CCXVII.

Punishment of it in various cases.

2. Vishṇu: "For loud abuse of one of the same class, a man is to be fined twelve paṇas." In another Smṛiti, it is said:[1] "When a couple of persons stand mutually charged with the offence of abuse, and no difference is observable [in their respective guilt],• the punishment [the guardian of good behaviour] of both shall be equal." Nárada: "He who commences an abusive quarrel, shall most certainly be held to be blameable, and also he who in retort is guilty of such improper conduct; but the man who first began is the principal offender."

The aggressor to receive most.

Difference of punishment varies as the class of the parties.

3. Manu:[2] "A soldier defaming a priest, shall be fined a hundred paṇas; a merchant, [thus offending], an hundred and fifty, or two hundred: but [for such an offence] a mechanic or servile man shall be whipped." Bṛihaspati: "The punishment of a Bráhman for giving abuse to a Kshatriya, shall be fifty paṇas; thus, if to a Vaiçya, the half of fifty; if to a Çúdra, thirteen and a half." With respect to a Çúdra, the same author says: "He who makes known the ordinances of religion, and he who joins in reading the Vedas, or is abusive towards Bráhmans, shall be punished by having his tongue cut out."

CCXVIII.

1—Macnaghten 418. 2—Chap. 8th, 267. Ellis's Lectures. "We had occasion to observe the misapprehension which prevailed with respect to the exemption of Bráhmans from capital punishment. This is one only of the innumerable misconceptions of their situation in Hindu society, which has obtained among foreign nations from the earliest times. Not the least gross of these, is that which ascribes to the whole body a sacerdotal character; and which Sir W. Jones has unaccountably countenanced, by translating, in the Institutes of Manu, the words used to designate an individual of the first caste [Bráhmana and Vipra] "priest," and the feminine of them [Bráhmaná and Viprá] "priestess." The latter mistake is particularly remarkable, as the wives of Bráhmans, though they assist in the private devotions of their family, not only never officiate as priestesses, but have no part in the public ceremonies of religion, except as spectators." It may be further remarked, that the second and third tribes,

4. Manu :[1] "He shall be fined a hundred [paṇas], who defames his mother, his father, his wife, his brother, his father-in-law, or his preceptor; and he who gives not his preceptor the way." *Brother*, his elder brother, because of his companionship with the father, and the rest. According to the Mitákshará, and other authorities, punishment [should follow abuse] against a mother and the rest, even though they deserved it; of a wife, provided she be not in fault.

Punishment for abuse of venerable persons.

5. Yájñavalkya: "Let punishment to the amount of an hundred paṇas, be inflicted for threatened injury to the arm, neck, eyes, or thigh; and the half of it, for [the like injury to] the foot, nose, ears, the hand, or the like. If this [threat] be uttered by a powerless person, he need only be fined ten paṇas, but if he have the power to perform his threat, let him be made to give security for the safety of him [threatened."]

6. The same author says: "Any one abusing another thus, 'I have criminal connexion with thy mother, or thy sister,' let the king oblige to pay a fine of twenty-five paṇas The highest punishment [shall be the portion] for him, who abuses a Bráhman learned in the three Vedas, the king, or the gods." Nárada: "A man calling a degraded man fallen; or taxing a thief with being such again, commits no fault: but if falsely, he shall obtain double blame." Yájñavalkya: "He, who contemptuously heaps ridiculous compliments, whether true, or untrue, or ludicrously distorted, upon persons wanting a limb, or diseased in their organs, shall be fined thirteen paṇas and a half."

Indecent abuse,

CCXIX.

7. Uçanas: "He who confesses, 'Such a thing was said by me from ignorance, carelessness, envy, or affection; I will not say so again,' may be fairly considered deserving of only halt the fine."

Mitigation in cases of confession.

SECTION II.

Assault.—(Daṇḍa Párushyam.)

1. Nárada: "Injury inflicted upon the limbs of another, with the hand, foot, weapons, or other thing, and defiling him with ashes, or the like, is called actual affray."

Assault, defined.

...iya and Vaiçya, which he translates Soldier and Merchant, no longer exist in a ...re state, and that the Soldiers and Merchants of the present day are, in the eye of their own law, lower than the real Çúdra, being of the Varṇa Çankara, or mixed classes.

1—Chap. 8th, 275, where the reading is 'tanayam, son,' instead of 'çvaçuram, 'father in-law,' as here, and in the Víramitrodaya, and Mitákshará.

2. Bṛhaspati: "The man who, having received abuse, retorts abuse; or being beaten, returns the blow; and he who beats one doing him some wrong, does by no means thereby become liable to punishment."

Self-defence permitted.

3. Kátyáyana: "Bhṛgu has ordained, that the highest punishment shall be inflicted for cutting off an ear, a nose, a foot, the eyes, tongue, the penis, or a hand; the middling degree for breaking [or wounding] any of them." Yájñavalkya: "A fine of ten paṇas, is recorded as the punishment, for touching any one with ashes, mud, or dust; double that sum is demanded, for touching him with excrement, or the heel, or spittle; these fines to be doubled, if the fault be committed against those of equal as well as superior caste, or against, the wife of another; if the [sufferers] be of inferior caste, let half the specified fine be levied; but if committed through inadvertence, drunkenness, or the like, it is not punishable." *The heel,* the hinder part of the foot. Kátyáyana: "The fine is declared to be four-fold, when the vomited contents of the stomach, or urine, or fæces, or the like, are thrown on the lower extremities; six-fold if upon the trunk itself; but eight-fold, if upon the head."

Degrees of assault defined.

CCXX.

4. Yájñavalkya: "For holding up [threateningly a hand or a foot, the punishment shall be [in order] ten, and twenty, paṇas: the middle scale of punishment is declared for all classes, for mutual raising of weapons." The same author says: "The punishment of ten paṇas shall be inflicted, for violent pulling of the foot, the hair, the clothes, of the hand, of another; an hundred, for painfully pulling a man about, tightly binding his clothes about him, and trampling him under foot." The man who causes pain [to another], short of drawing blood, with a stick or the like, shall be fined thirty-two paṇas; double that sum, if blood be produced." The meaning of pain, and the rest is, that an hundred paṇas shall be levied for [a complicated assault, both] tying a man in his clothes, violently pulling him about, and trampling him under foot. The same author says: "The middle amercement shall be imposed, for breaking a hand, a foot, or a tooth; for tearing the ears or the nose; for laying open a sore, and likewise for beating one till he seems dead: the limb with which any one gives pain to Bráhmans, if not himself a Bráhman, shall be cut off. The lowest amercement, for raising [that limb, or a weapon] against them, but the half of it, for only touching [weapons] with hurtful intent." Manu:[1] "With whatever member a low-born man shall assault or hurt a superior, even that member of his must be slit, [or cut more or less in proportion to the injury]: this is an ordinance of Manu." "He who raises his hand, or a staff, against another, shall have his hand cut." Kátyáyana: "Just as the fines are laid down for abusive language between men in the regu-

Offences enumerated, with the fines for them.

CCXXI.

1—Chap. 8th, vs. 279-80.

lar or inverse order of the classes, even so shall the fines for violent affray be imposed, according to their order [in rank]."

Double fine for many assaulting one.

5. Vishṇu: "The fine for every one of many persons beating one, shall, for each, be double of that declared [for a single offender]."

Damages awarded in proportion to the injury.

6. Kátyáyana: In case of injury to the body, or organs, of another at whatever amount they determine the fine, the very same sum shall be given to cause pleasure, and for the cure, [as fixed] by learned men." *To cause pleasure*, to make satisfaction to the sufferer. *The cure*, the price of medicines, and the like. By learned men, is meant: 'That must be paid, which is settled by those skilled in the matter.'

Cruelty to animals punishable.

7. With reference to beating animals, and the like, Yájñavalkya says: "The fine for giving pain to, or drawing blood from, as well as cutting off the branches [as horns, &c.] of inferior animals, shall be from two paṇas, ascending in order: [of the injury]." "For cutting off their organs of generation, and for causing their death, the second amercement shall be paid, and their value also; a double punishment shall be imposed in the case of superior animals, when ill-treated as above described."

As well as damage to trees.

8. In respect of damage to trees, says Manu:[1] "According to the use and value of all great trees, must a fine be set for injuring them; this is an established rule."

CHAPTER XVII.

Robbery,—[Steyam].

Robbery defined; of three degrees.
CCXXII.

1. Nárada specifies three degrees, of things liable to be stolen: "All earthenware utensils; a stool, a bed-stead; [all articles made of] bone, [or ivory], wood, or leather; as well as grass, and the like; leguminous grains, and grain ready dressed; are termed inferior articles." "Cloth made from any material except silk, and likewise all cattle, with the exception of kine; all metals except gold, and rice of all sorts; barley and such like [grain], are termed articles of middling estimation." "Gold, precious stones, silken clothes, women, men, kine, elephants, horses, and the property of the gods, the Bráhmans, and the king, are the first rate articles."

1—Chap. 8th, v. 285.

Notorious rogues enumerated.

2. The same author here first exhibits [the nature] of an open thief: "Traders [naigama];[1] physicians; gamesters; assessors; persons taking bribes, [and] cheats; fortune-tellers [and] professional prostitutes;[2] persons skilled in the arts; counterfeits, and those who perform unlawful acts; arbitrators, [Madhyastha],[3] false witnesses, and likewise those who gain a living by fraudulent practices, are all of them open thieves." In another Smṛiti also we find: "Whenever manifest cheats, persons having recourse to false weights and measures; those taking bribes, or employing fraud; impostors; bad women; as well as counterfeits, and those who live by showing fortunes, are found, all these, and the like, may be known for manifest thieves."

The above terms explained by other texts.

3. Bṛihaspati: "That trader, who shall sell an article, concealing its blemish, mixing it up and making it over again, shall be made to give [an article of] twice its value, and likewise pay a fine equal to the same." "That physician who, being ignorant of medicine or its invocations,[4] or unacquainted with the nature of disease, yet levies money from those who are sick, deserves to be punished even as a thief." "Those who play with false dice; professional prostitutes; those who seize the king's dues; astrologers, as well as cheats, are deserving of punishment as being all denominated swindlers." "Assessors pronouncing an unjust decision; even so also, those who live by bribery; and those who cheat persons trusting them, are every one of them to be banished." "Those who, not understanding their subject, shall pretend to a knowledge of astrology, or shall foretell prodigies, and likewise expound auspicious omens or the like to mankind, must be strictly kept down." "Those men, who exhibit themselves [as religious mendicants] with a staff, deer's skin, and other requisite accompaniments,[5] and by these means deceiving men, kill "them, shall be put to death by the king's people." "Those who, making up a thing of very small value, raise a great price upon it, and they who impose upon other people, deserve to be punished in proportion to the amount." "They who make false gold, precious stones, coral, or the like, shall be made to give back their price to the person who has bought them, and to pay double the amount as a fine to the king." "Persons, acting as arbitrators [Madhyastha], who become corrupt through favour, gain, or other [motive], and those witnesses who depose

CCXXIII.

1—See Chap. 12th, para. 3d. The word is here translated in conformity to the succeeding text of Bṛihaspati, evidently intended by our author to furnish the gloss on it.

2—The word 'Kshudráh' for which the Víramitrodaya reads Bhadrah, is translated thus, as in the masculine plural it is unmeaning; in the subsequent text of Bṛhaspati, as read in the Víramitrodaya, it bears the same sense, supported by the succeeding text, 'bad women.'

3—See Chap. 1st, Sec. 1st.

4—Perhaps "consultation, advice," would be a better term. The higher classes, when taking medicine, use very appropriate mantras, or formulas, evincing their reliance on the Deity and their medical advisers' skill.

5—Or, as some copies read, "adorned with jewels and fine clothes."

contrary to the truth, shall be made to pay double [the sum depending] as a fine."

Secret thieves.

4. Vyásа: "When persons are found walking about at night-time in a secret manner, furnished with implements [of theft] or the like, and whose place of abode is not known, they shall be recognized as secret thieves." The same author adds: "Pick-pockets [or shop-lifters];[1] burglars or house-breakers breaking a hole; highwaymen [Panthamusha] who rob travellers; those who open bundles [Granthí mochaka], and stealers of women, men, kine, horses, and other cattle, are all reckoned but nine different kinds of thieves." *A hole* [Sandhi] in a wall or the like.

CCXXIV.

Punishments enacted for them.

5. Yájñavalkaya: "Let shop-lifters, and those who open bundles, be both made to lose the tongs of their hand; for the second offence, they shall be deprived of a hand or foot." *The tongs*, the forefinger and thumb. "The robbers, who having broken a hole,[2] commit a robbery at night, them shall the king, having cut off both hands, cause to be impaled with a very sharp stake." Bṛihaspati: "In like manner, let him cause highwaymen to be hanged, tied by the neck to a tree. He shall cause the fingers of package-openers to be cut off, for apprehension on the first offence; on a second [apprehension], both hands or feet; for the third, they are deserving of vadha." *Fingers*, the forefinger and thumb.

Responsibility of the country, in certain cases.

6. Nárada specifies certain distinctions in the flight of thieves, taking the stolen property with them: "A thief shall by every effort be seized by him in whose district [or premises] he may be furtively concealed. Else, if the trace or footmark[3] be not carried out [of the premises], he shall be made to pay the amount of the loss. If the trace be carried forward from that [district], yet have not fallen elsewhere, then they shall cause the neighbourhood[4], the road-keepers, or even those entrusted with the care of the district to pay the loss." Yájñavalkya also: "The village shall pay, when within its own limits, or wherever the trace goes; the five-village community, if beyond one *kroça*; or again, that of ten villages."

1—Utkshepaka. The Mitákshará defines it to be, "those who pilfer by throwing up clothes and the like," hooks for the instance. The Víramitrodaya in commenting on the text above, says, "those who, having satisfied themselves of the ignorance of the owner, get the property out of his possession, by snatching it from him."

2—Sandhi, a hole made in a wall for felonious entry. Sandhichaura, a burglar, a house-breaker.

3—Padam; the same which is called "paglá" in Gujurat to this day; the custom is in the Dakhan equally well known, under the name of Mága.—Reports 2d, 344.

4—Sámantá; the same word occurred in the same sense, at Chap. 15th, para. 2d.

7. On the subject of kidnapping women, Vyása says: "The woman-stealer shall be burned[1] on an iron bedstead, with a fire of grass; the man-stealer shall be set up where four roads meet, after having his hands and feet cut off." Bṛihaspati: "Having cut off the nose of a stealer of kine, and bound him, let them plunge him into the water."[2] Nárada: "Vadha shall be inflicted on him, who robs another of his all, or who carries off a married woman, or a virgin." "Bṛihaspati directs that they confiscate all [the wealth] of those who carry off a horse, an elephant, or metals." *All;* the wealth, must be here supplied. Vyása: "Let them cut off, with a very sharp instrument, half the foot of him who carries off [common] animals." Nárada: "For stealing animals of a superior kind, let his punishment be that of the highest scale, the middle scale for the middle class of animals, and the first [or lowest] scale for such an act in respect of mean animals."

Punishment for kidnapping, and for stealing cattle, &c.

8. Manu:[3] "Corporal punishment [vadha] shall be inflicted on him, who steals more than ten Kumbhas[4] of grain; for less he must be fined eleven times as much, and shall pay to the owner the amount of his property." One *Kumbha* is twenty *Prasthas.* He again says[5]: "For stealing the most precious gems [as diamonds or rubies], the thief deserves capital punishment [vadha]." Nárada: "Capital punishment [vadha] shall be inflicted for stealing more than a hundred of [any of the following things], gold and silver pieces, or the like; fine clothes, and likewise all precious stone." Manu[6]: "For stealing gold and silver, or the like, or costly apparel: or more than fifty palas, it is enacted that a hand shall be amputated; for less, the king shall set a fine eleven times as much as the value."

And for robbery of valuables and grain.

9. Yájñavalkya: "Having set a mark on a Bráhman found guilty of such offence, let him be banished from that his native country." Manu[7]: "[Criminals of] all the classes, having performed an expiation as ordained by law, shall not be marked on the forehead, but be condemned to pay the highest fine." Yájñavalkya also: "Having caused restitution of the stolen property, they shall cause the thieves to be put to death, by different modes of Vadha.

Certain limitations to capital punishment.

1—The Víramitrodaya reads, "in the ordeal of hot iron, with the fire in his hand."

2—So the Víramitrodaya, according to which this text was inserted in the errata.

3—Chap. 8th, v. 320. Kulluka, whose commentary Sir W. Jones follows, divides vadha into three degrees; Márana, capital; Chhedana, membral, involving loss of limb; and Táraṇa, corporal. As our law admits not infliction of the second, [though a commutation of it into imprisonment is awarded, where the punishment itself is enjoined by the Hindú Law], vadha must be taken to mean, either Capital, or Corporal punishment, as the case may be. It is used in the latter sense in verse 320, in the former in verse 323. Indeed it is more than hinted, in the commentary on verse 320, that either of the three kinds is to be applied, according to the circumstances of the robbery; for instance, the first, if a Bráhman be the person robbed, &c.

4—See As. Res. 5th, 96-7—Wilson, ad verb.

5—Chapter 8th, 323. 6—Chapter 8th, 321-2. 7—Chapter 9th, v. 240.

10. Nárada: "They who grant food and an asylum [opportunity] to thieves flying before pursuit, and they who wink at their escape, though able to stop them, are also their accomplices in the offence." And therefore, sharers in their punishment.

Aiders and abettors.

CHAPTER XVIII.

Heinous offences,—(Sáhasam.)

1. Their nature is declared by Nárada: "Whatever act is by strength performed, by one inflamed with power, [bala] is denominated [Sáhasa] violence, oppression; for strength [Sahas, whence Sáhasa] is also termed power [bala]."

Violent acts CCXXVII.

2. Bṛhaspati: "Killing a human being, robbery, handling the person of another man's wife, and both species of assault, are the four kinds of violence." *Both species,* that is, abuse and affray.[1] Nárada: "Spoiling fruits, roots, water, and such things, and agricultural implements, or throwing them away, treading them under foot, or the like, is declared to be the first degree of violence [prathama sáhasa]." "[Misusing in the very same way, clothes, animals, food, drink, and household utensils, is denounced as the middle degree of violence [madhyama sáhasa]." "Malicious practice with poison, weapons, or the like; the handling of another man's wife, and all other encompassing of life, is called the highest degree of violence [uttama sáhasa]."

defined and enumerated.

3. Yájñavalkya: "The king shall apprehend sacrilegious housebreakers [Bandigráha]; likewise those who steal horses, and elephants, as well as violent murderers, and cause them to be impaled on a stake." Bṛhaspati: "Having carefully ascertained who are notorious murderers, and likewise murderers in secret, and having seized all their effects, they are to be killed by different modes of death."

Capital punishment for certain

4. The same author says: "When many persons, filled with rage, beat [to death] one single person, then he who strikes him on a vital part, is declared to be the murderer."[2]

Punishment in case of mobs.

5. Kátyáyana: "He who commences the quarrel, or takes a part in it, as well as he who points out the road; he who gives an asylum, and he who furnishes weapons, or gives food, to evil doers; so even, he who advised for battle, he who instigated his destruction; one concern-

Aiders and abettors.

CCXXVII.

1—Chapter 16th, Sections 1st and 2d.

2—In most of the copies, this text ran in a plural sense, but in some it was singular, and the Pundits were determined on the adoption of that number, by finding it so in the Vîramitrodaya.

ed in the work of deceit; he who speaks harm [of the deceased]; who rejoices [with the murderers]; or prevents not the injury, though possessing the power, are all of them actors in the deed: They shall cause a suitable punishment to be awarded, proportioned to the power [of each to suffer]."

Exceptions in favor of Bráhmans, in respect to capital punishment.

6. Nárada lays down distinctions in the punishment of Bráhmaṇas: "From there being no difference [in the degrees of guilt], the same measure of punishment is laid down for all. That of Bráhmaṇas must be short of vadha; a Bráhman is not liable to undergo vadha: his punishment shall be, shaving of the head, banishment from the city, a plain mark upon his forehead, and parading upon an ass. Vadha must not be inflicted on a Bráhman, even if guilty of felony [átatáyí]." For, according to Sumantu:[1] "There is no blame for putting to death persons acting feloniously, excepting kine, and Bráhmans." Kátyáyana: Bhṛgu says, if among felons, there be one of the highest class, and engaged in austerities and reading the Vedas, then, in that case alone, vadha shall not be inflicted. Vadha is for sinners who are of low class.

Felons enumerated.

7. The same author declares who are felons [átatáyinas]:[2] "He who uses a sword, poison, or fire, as well as he who raises his hand in imprecation, and he who kills by magic: and also a spy against the king; he who enjoys a married woman contrary to rule;[3] who is diligent in picking out holes [in another man's coat]: all these persons, and the like of them, are to be known as felons." And Vasishṭha likewise says:[4] "An incendiary, and a poisoner, one who offensively handles weapons, who robs the wealth of another, as well as he who steals his land, or his wife, are all six of them felons."

Examination of the inviolability of Bráhmans. CCXXIX.

8. However, the text of Manu[5]: "Let a man without hesitation slay another, [if he cannot otherwise escape], who assails him with intent to murder [átatáyi], whether young or old, or his preceptor, or a Bráhman deeply versed in the scripture:" and this of Kátyáyana: "To him who shall kill a felon coming with intent to take his life, even though he [the felon] have gone through the Vedas [Vedanta], the sin of the death of a Bráhman does not attach:" [require consideration]. The words *whether* [*va*], and *even* [*api*], relate to the death of all felons with the exception of Bráhmans; because the introduction of the word Bráhman is for the sake of giving greater force to the law [by an extreme example, Kaimutikanyáya]. So, in the Mitákshará it is said: "A Bráhman felon is liable to Vadha; how then

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1—2—Macnaghten, 423.

3—Explained to mean "Rape," in a subsequent text, para. 14th.

4—Macnaghten, 423.

5—Chapter 8th, 350. See General note, "Smṛti," at the end.

[kimutá] shall any other man [escape]." And we find the same, both from this text of Gálava(*a*): "He who kills one, the highest Bráhman, feloniously attacking him with a raised weapon, does not render himself a Bráhman's murderer; did he not kill him, he would really be guilty of a Bráhman's murder" [1]: and this of Bṛihaspati: "He who kills a felon, versed in the Vedas and come of a good family, does not commit heinous murder; did he not kill him, he would be guilty."

Doctrine of the Smṛti Chandriká stated, and approved.

9. The following interpretation is given in the Smṛti Chandriká: 'That the Bráhman who comes with a felonious intention of putting another to death, alone deserves Vadha; not the Bráhman who seizes the land or wife, or other [property] of another. But Kshatriyas, or other persons guilty of the abovementioned crimes, are deserving Vadha'.[2] And this is the right [interpretation], because of the necessity for opposing the vague [or general] sense of the aforementioned rules, of Sumantu and Kátyáyana, by the more explicit expression of 'one feloniously attempting the life of another,' suggested by these last quoted texts, of Manu, Kátyáyana, Gálava, and Bṛihaspati.

CCXXX.

Subject continued.

10. However, what Bṛihaspati says: "He who shall refrain from killing a man of superior class, a performer of austere acts of devotion and reader of the Vedas, though liable to Vadha for felonious acts, shall obtain the benefit of one Açvamedha*(b)*," has reference only to a felon distinct from one seeking the man's own life.

11. And again, the killing of a Bráhman feloniously seeking the life of another, is forbidden in this age of the world [by the text]: "There must be no killing, even in a just quarrel,[3] of a chief Bráhman, though seeking one's life," which prohibition would be evaded, if Vadha were inflicted according to law: and though all the things now forbidden in the Kali, or present age, had previously received the sanction of [our ancient] enactment, yet: "The learned have declared these laws abrogated in the Kali age." And in all the commentaries there is a clear line drawn, from the acceptation of the word *laws*. Therefore, in the present age of the world, a Bráhman feloniously seeking the life of another is not liable to Vadha. But for other [offences] a Bráhman felon, is not in any Yuga liable to Vadha; whilst all other felonious criminals, whether Kshatriya or other class, are in all ages of the world liable to Vadha.[4]

(*a*) An ancient sage and teacher: according to the Harivâñça, a son, and according to the Mahábhárata, a pupil of Viçvámitra—Böhtlingk. Roth.—*Ed.*

1—The expression Bhrúṇahan, [lit 'who procures abortion'] is explained in the Víramitrodaya, "as having reference to a very superior Bráhman," [Uttama Bráhmaṇa vishesha.] 2—See note to Chap. 16th, Sec. 1st, para. 3d.

(b) Horse-sacrifice.—

3—Dharma yuddhe; this seems to be the same term which Sir W. Jones has translated "religious war," in this general note at the end of Manu, Smṛti 2d; the text appears the same. 4—Nirṇaya Sindha, Section 3d.

12. Bṛhaspati declares the punishment for stealing articles of low, middling, and great value: "So, even he who shall destroy or carry off implements of husbandry or flowers, roots, or fruits, is deserving of punishment, above a hundred paṇas, according to his offence. In like manner, he who shall destroy or steal [inferior] animals, clothes, grain, liquids, as well as household utensils, shall be punished by a fine, not less than two hundred paṇas. If women, men, kine, gold, precious stones, as well as the property of the gods, or of Bráhmans, and that of females; [and similar] costly articles, his fine shall be equal to the value of the stolen property. Or, double its amount [even] may be thought equitable by the king, according to the person; or, the thief may be [even] put to death, with a view, to the prevention of [bad example from] his society." *Female*, a woman's property. The word, *Or*, has the meaning of 'even.' This text belongs to the Chapter on Heinous Offences, according to Madana, [and not to that on Robbery] from the literal meaning of the words '*shall destroy*' and '*thief*,' which come together in this place.

Estimation of articles subject to robbery.

CCXXXI.

13. Yájñavalkya shews the punishment for the original instigator of heinous offences: "He who causes the commission of violence, shall be made to pay a double fine; he also who, by saying, 'I will give [such a reward,'] causes its prepetration, shall be made to pay quadruple its amount." That is, *double* or *quadruple*, in proportion to the fine imposed on the actual perpetrator of it.

Instigators, and their punishment.

14. The punishment for him who by force enjoys a virtuous Bráhmaṇí, is thus declared by Manu:[1] "A Bráhman who carnally knows a guarded woman without her free will, must be fined a thousand [paṇas."] If the crime be committed against such a woman, by a man of the Kshatriya, or other class, says Bṛhaspati: "If any one by force enjoy [a woman,] then let the king seize the whole of his property, and having cut off his penis and scrotum, afterwards cause him to be carried round [the town] upon an ass." *Enjoy*, have connexion with the lawful wife of another man. The following punishment for forcible enjoyment of a married woman, whether of lower or higher caste [than himself] or of equal class, by a man of the Kshatriya or other tribe, is denounced by Káty*á*yana: "When a man has obtained enjoyment of a woman, by seizure of her person, infliction of Vadha is in that case established, because the act is a transgressing [of the admitted order] of enjoyment."

Rape.

15. The same author says: "Let the woman who has thus unwillingly been enjoyed, be kept shut up in the house, having her person slovenly, sleeping on the ground, and furnished only with a single ball of food [or with what nature requires."] He adds: "She who has been enjoyed by a man of low caste is to be put away,

Restraints on a ravished woman.

CCXXXII.

1—Chapter 8th, 378.

or suffer Vadha." Here *Vadha* must be understood, only in case of her consenting to the guilty act.

Punishment of the three distinctions of heinous offences.

16. Nárada thus declares the punishment of the lowest, middling, and highest crimes [Sáhasa:] "The punishment of it must be in proportion to the crime, but, in the first [or lowest] degree, not less than one hundred [paṇas.] By those well versed in the law, that of the middle class of crimes, is shewn to be not less than five hundred paṇas. The fine for the highest scale of crime must be nothing short of one thousand [paṇas.] *Vadha*, confiscation of every thing [the criminal is worth,] banishment from the city, with branding, and amputation of his limbs, these are the punishments declared for Uttama sáhasa, or the highest degree of crime."

To be inflicted by the prince alone.

17. The command for inflicting Vadha, amputation, and the other punishments named, however, is the province of the prince, and of no other, since to him alone pertains the right to inflict punishment.

CHAPTER XIX.

Commerce with Women,—(Strísaṅgrahaṇam).

Commerce with women.

CCXXXIII.

1. The punishment for forcible enjoyment of another man's wife, as an act of a heinous nature, has been before declared.[1] Bṛihaspati declares [that for] the fraudulent enjoyment of a woman of similar caste, being the wife of another man*(a)*: "If a man by fraud enjoy a woman, he shall be punished by full confiscation, and, having been branded with the mark of the pudendum muliebre, let him be afterwards banished from the city." *Full confiscation*, that is, confiscation of his all. And this punishment is meant in regard to women of equal class. If she be of lower, the half of it is proper; but in the case of a woman of superior caste, Vadha is enjoined: and accordingly the same author says: "The half of that punishment, which is to be inflicted for connexion with a woman of equal class, is the due of him who enjoys a woman of lower class. But for connexion with a woman of more exalted caste, let the man be put to death."

Punishment of adultery considered with regard to class.

2. The several punishments of adultery, with women of the three comparative degrees, lower, equal, and higher [than the adulterer], are laid down by the same author: "The punishment for adultery in each of these three orders, must be applied to each in its degree, the lowest punishment [for the lowest rank], the middling,

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1—Chapter 18th, para. 14.

(a) Having sexual intercoures with a woman with her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married is made "rape" by the Indian Penal Code, Sec. 375, punishable with transportation or imprisonment and fine.—

[for the middling], and the highest [for the highest]; for forcible enjoyment in secret, let the middling degree be inflicted."

Criminal conversation,

3. The punishment for a man of bad life, who converses with the wife of another man, is laid down by Manu:[1] "A man, before noted for such an offence, who converses in secret with the wife of another, shall pay the first of the three usual amercements." The punishment for mutual conversation between a man and woman, who have been both forbidden by the father or other relative, is declared by Yájñavalkya: "Let a woman, forbidden so to act, be fined one hundred paṇas, but let the punishment for the man be double that sum; but where the prohibition has been given to both, then let their punishment be the same as is inflicted for adultery." The first half of this couplet has reference to prohibition communicated to one of the parties only; and the last half, to a communication of it to both.

CCXXXIV.

And adultery in general.

4. Yájñavalkya declares the punishment for adultery brought about through the mutual desire of both: "[For adultery] between persons of equal caste, let the highest fine be imposed: But the middling scale for the same crime with a woman of lower caste; when the woman's caste is higher, let the man suffer Vadha, and the woman have her ears or other [limbs] cut off."

Punishment of women in all cases, is half of that laid down for males.

5. Kátyáyana: "And in all offences, whatever sum of money is laid down as the punishment of it in a man, the half of it must a woman pay who is guilty of the same; where Vadha is denounced against a man, let a woman's person be mutilated."

Fornication, considered with reference to class.

6. But for connexion with a Bráhmaṇí of loose life, thus says Manu:[2] "But only five hundred [paṇas], if he knew her with her free consent." This relates to a woman of equal caste. On the subject of connexion with women of lower caste, and loose morals, the same author says:[3] "A Bráhmaṇa shall pay five hundred paṇas, if he connect himself criminally with an unguarded woman of the Vaiçya, Rájanya [or Kshatriya], or Çúdra class; and a thousand, [for such a connexion with] a woman of the lowest caste [antyaja]." However this text:[4] "A Bráhman who carnally knows a guarded woman without her free will, must be fined a thousand paṇas," especially intends a virtuous woman. The punishment of a Çúdra for connexion with a woman of higher caste, is declared by Manu:[5] "A Çúdra having an adulterous connexion with a woman of a twice-born class, whether guarded at home or unguarded, [shall thus be punished]: if she was unguarded, he shall lose the part [offending], and his whole substance; if guarded, [and a Bráhmaṇí], every thing, even his life." If a Çúdra have criminal connexion with

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1—Chapter 8th, 554.

2—Chapter 8th, 378, of which the first couplet, as relating to guarded women, was quoted. Chap. 18th, para. 14 and is repeated here below. 3—Chapter 8th, 385.

4—Chapter 8th, 378. 5—Chapter 8th, 374.

an unguarded Bráhmaṇí, his parts must be cut off, and all his property be confiscated; but, if she be guarded, Vadha is further incurred. It means, that for adultery with a guarded woman, his whole property shall be confiscated, and he be considered deserving of Vadha.

CCXXXV.

7. Gautama: "For adultery with the wife of his preceptor, let a man's parts be taken away, and all his property be seized; if the woman be guarded, let him further suffer Vadha." Manu: "But, if a Vaiçya or Pārthiva [man of the royal class, Kshatriya] commit adultery with a Bráhmaṇí whom her husband guards not at home, the king shall only fine the Vaiçya five hundred, and the Kshatriya a thousand." The same author says:[1] "Both of them, however, if they commit that offence with a Bráhmaṇí not only guarded [but eminent for good qualities], shall be punished like Çúdras, or be burned in a fire of dry grass or reeds." And again:[2] "If a Vaiçya converse criminally with a guarded woman of the Kshatriya or a Kshatriya with one of the Vaiçya class, they both deserve the same punishment as in the case of an unguarded Bráhmaṇí" Namely, *the same* fine which is denounced against connexion with an unguarded Bráhmaṇí. Vasishṭha: "If a man of the royal class [Rájanya] have criminal connexion with a Bráhmaṇí woman, let him be enclosed with bundles of reeds, and be consumed with fire. Even thus do to a Vaiçya, if he have connexion with a woman of the royal class, and likewise to a Çúdra, if he commit the crime with a woman of the royal, or of the Vaiçya, class."

Incest defined.

8. Nárada: "He who has criminal connexion with any one of the following women, a mother's sister, a mother-in-law; a maternal uncle's wife; a father's sister; the respective wives of a paternal uncle, a friend, and a pupil; a sister, her friend; a daughter-in-law, a daughter, and the wife of one's preceptor; every woman descended from the same family, any woman dependant on his protection, the king's wife, a female devotee, a nurse, a woman who preserves her conjugal duty inviolate, and any woman of the supreme class, is said to be as guilty as the violator of his religious preceptor's bed. No punishment short of cutting off his parts, is laid down for such a crime as this." Yájñavalkya also: "A man who has connexion with his father's sister, or his mother's sister; with his maternal uncle's wife, and also with his daughter-in-law, with his step-mother, his sister; either with his preceptor's daughter or his preceptor's wife, or with his own daughter, is as the violator of his preceptor's bed; having cut off his privy parts, let vadha be his portion; and the same for the woman, if she were consenting to the act."

CCXXXVI.

Exception in regard to punishment of Bráhmans

9. This punishment however is not to be inflicted on Bráhmans: For, among the texts of Bṛihaspati, on the liability of Bráhmaṇas, we find: "Let the king impose such a mark as will render his punishment memorable, upon a man when caught in the act of improperly handling

1—Chapter 8th, 376-7.

2—Chapter 8th, 382.

another man's wife, and then banish him." If one, not a Bráhman, have criminal intercourse with such women, he is deserving of Vadha, even in the capital degree [Práṇánta]."

10. Çankha and Likhita say: "With whatever member any particular offence is committed, let that very member be cut off, whoever the offender be, unless a Bráhmaṇa." Yájñavalkya declares the punishment of a Bráhman having connexion with a slave or the like: "The man who has carnal intercourse with slaves kept close, as well as those entertained as mistresses, shall be made to pay, even though their connexion be [in other cases] permitted, a fine amounting to fifty paṇas. *Kept close,* that is, those forbidden by their master to have commerce with other men.

11. Nárada: "Any woman, not a Bráhmaṇí, who is self-willed, [Svairiṇí,] or a downright prostitute, or a slave, and one without a home, may have connexion with a man of higher caste than herself, but not with one of inferior. But, if such a woman be kept as a mistress, [the person intriguing with her] is blameworthy, equally as if she were another man's wife." *Not a Bráhmaṇí,* whose nature is denoted by the adjective self-willed, which means, 'one, her own mistress, who goes with other men.' *Without a home,* a woman who has left her family, and goes with other men. Yájñavalkya: "If a man have connexion with [a woman of] the lowest caste [antya,] let him be branded with the mark of some disgraceful thing,[1] and banished the country. If a Çúdra [act in such manner,] he shall be similarly marked;[2] but, if a man of vile caste have connexion with a woman of high class, Vadha [shall be his portion."]

Fornication, in what cases permitted and when punishable.

CCXXXVII.

12. The punishment for connexion wilfully effected by a woman, is thus declared by Nárada: "That female who, going to a man's house, excites his desire by handling him, or the like, and so causes him to lie with her, should be punished, as declared by sages, in half that prescribed for a man [guilty of like conduct." para. 4.] Yama defines the punishment for women of the Bráhman and the other classes, who have criminal connexion with a Çûdra, or other [man of lower class:] "If a Bráhmaṇí woman, overpowered by desire, submit herself to the embraces of a Vṛishala, let the king cause her to be devoured with dogs, at the place of the slaughterers. But if a Bráhmaṇí woman submit herself to the embraces, either of a Vaiçya, or of a Kshatriya, her head shall be shaved, and she shall be carried round upon an ass." Vṛishala, a Çúdra. *Slaughterers,* vendors of flesh or fowl; expressing [that she is to be cast out to the dogs] at the slaughter-houses. And this punishment is for continued [or excessive] attachment to such person, according to the Chandriká.

Seduction of a [illegible] by a woman

1—Kubandha, or, "of a headless trunk," if Kabandha be the correct reading.

2—The Mit. reads, "antyevasyát," shall become even of that lowest caste, and it here been altered, perhaps, without cause, as some of the manuscripts had the

13. Yájnavalkya points out the means of ascertaining the act of adultery :[1] "In cases of criminal conversation, the man may be seized, if engaged in playing with the hair of a woman, the wife of another, or at the moment of discovering love-marks [as bites or scratches,] and likewise upon the confession of both." From the expression, *of both*, it cannot, on the confession of only one of the parties, be pronounced that criminal intercourse has taken place.

Proof of adultery defined.

14. Yájnavalkya propounds slander: "He who asserts blemishes against an [unmarried] woman, shall pay an hundred [paṇas.] But for a false accusation, two hundred; for connexion with a beast, he shall pay an hundred, and even the middle scale of punishment, for connexion with a distressed woman, or a cow*(a)*." Moreover: "If a man enjoy a woman in an improper part,[2] or a male, and if he perform natural evacuations before [a woman,] he shall be fined the sum of twenty-four paṇas; and likewise for connexion with a female devotee." Distressed,[3] any one in pain, even the man's own wife. We must understand [also], that he who shall perform his evacuations or the like [dirty act] before the face of a woman [shall be punished].

Punishment of slander; and of unnatural crimes.

CHAPTER XX.

Duties of Man and Wife,—(Stríपुंindharma).

1. Now, the punishment for a husband who puts away a wife possessed of good qualities, is declared: "The husband who puts away a wife that is obedient, not evil speaking, dexterous [at her duties], virtuous, and maintaining her conjugal vow, must be kept [in his duty to her] by a fine from the king." Yájñavalkya :[4] "He who forsakes a wife, though obedient to his commands, diligent in household management, mother of an excellent son, and speaking kindly, shall be compelled to pay the third part [of his wealth;] or, if poor, to provide a maintenance for that wife."

Duties of the husband.

2. The same author says, with respect to women: "Let the bidding of their husbands be performed by wives; this is the chief duty of a woman. Even if he be accused of deadly sin, yet let her wait until he be purified from it."

And of the wife.

(a) See Yájñ. çl. 289 : 6 Sevestre's Rep. 119 : Penal Code § 377.—*Ed.*

1—Strange's Elem. 1st, 45. 2nd. 36-7.

2—Ayonau, non in vulva; ut, in ore, aut alio [modo obscœno,"] secund. comm. Mit.

3—The Mit. reads "with a low-caste woman:" 4—Digest 2d, 420. Reports 1st, 63,

CHAPTER XXI.

Gambling,—(Dyúta Samáhvayam.)

1. Yájñavalkya: "'[Payment of] that which has been won publicly, in an assembly of gamesters, in the presence of the master of a gaming house, and when the king's share has been paid, shall be enforced: but not otherwise." *Publicly*, not in secret. *In an assembly of gamesters*, in a gaming house. *Master of a gaming-house*, one made, by the king, superintendent of gambling. The interpretation should be thus: 'Whatever has been won [whilst playing] in comformity to these regulations, the prince must cause to be paid, but nothing else.'

Gambling when permitted.

CCXL.

2. The same author specifies the punishment for one guilty of fraud in gambling: "The man convicted of [making or using] false dice, or of [safely undergoing] ordeal, by deceit, shall be banished, after branding, by the king." *Deceit*, fraud. Manu[1] declares the punishment for gambling without permission from the king: "Let the king punish [corporally at discretion,] both the gamester, and the keeper of a gaming-house, whether they play with inanimate, or animate things; and Çúdras who adopt the marks of the twice-born." *The marks of the twice-born*, wearing their string, reading the Vedas, or the like.

Punishment of fraud.

3. Yájñavalkya thus assimilates the laws of gambling [Dyútam] and matches [samáhvaya:] "These very rules for gambling [dyúta] must also be applied in live gambling matches." *Live Gambling* [Práṇi dyúte] denoting the nature of the match [Samáhvaye.]

Gambling of two kinds.

CHAPTER XXII.

Sundries (Prakírṇakam.)

1. Yájñavalkya: "He who either omits, or adds any thing, in writing the king's edicts, or who allows him that has robbed another of his wife to escape, shall suffer the highest amercement: he who does injury to a twice-born man, by feeding him with things not fit to be tasted, shall receive the punishment of the highest scale of crime; that of the middle scale for [a like injury to] a Kshatriya; the lowest, if to a Vaiçya, and the half [of that again] to one born a Çúdra." *Things*

Sundries.

CCXLI.

1—Chap. 9th, 224.

not fit to be tasted, are intoxicating liquors, wine, excrement, or the like. The same author adds: "Let him who deals in adulterated, gold as pure, and him who sells unclean meat, have their body made less [by a limb], and undergo the highest punishment." *Unclean meat* the flesh of cows, or the like. From the use of the particle and, we must understand loss of limb; according to the Mitákshará. Again: "The master of any animal also, whether armed with teeth or horns, who, having the power, still fails to relieve any one in pain from it [when attacked]; shall suffer the punishment of the middle scale of crime; but double, if the sufferer likewise made a noise beforehand." *Making a noise,* that is, crying out. Manu:[1] "For killing a man, a fine equal to that for theft shall be instantly set; half that amount for large brute animals, as for a bull or cow, an elephant, a camel or a horse. For killing very young cattle, the fine shall be two hundred [paṇas]; and fifty, for elegant quadrupeds, or beautiful birds [as antelopes, parrots, and the like]. For an ass, a goat or a sheep, the fine must be five silver máshikas,[2] and one másha for killing a dog, or a boar." This fine must be understood, to be over and above payment of the value of the animal killed.

CCXLII.

Yájñavalkya: "He who charges any roaming gallant as a thief, shall be made to pay fifty paṇas as a punishment; if he sordidly take money from him, and let him go, then eight times its amount is ordained as the fine." *Sordidly take,* receive. "Let the king banish, after cutting out his tongue, that man who utters evil wishes against the king, as well as him who openly abuses him, and him who divulges his secret counsels. *Evil wishes,* for his death or the like. *Abuses,* by saying, 'May thy reign not last,' or the like. Manu[3]: "Men who rob the king's treasure, or obstinately oppose his commands, let him destroy by various modes of just punishment; and those who encourage his enemies." Yájñavalkaya: "The punishment of him who sells what has touched a dead body, and likewise of him who strikes his preceptor, and of him who seats himself in the king's carriage, or throne, is that of the highest scale of crime." *What has touched a dead body,* funeral clothes, or the like. The same author says: "The punishment of him who puts out both the eyes of another, as well as of him who performs acts hostile to the king, and of him who, being a Çúdra, gains a livelihood by the office of a Bráhman, shall be eight hundred paṇas." The meaning is, 'him who puts out both the eyes of another, him who does an act prohibited by the king, and that Çúdra who lives by the profession of a Bráhman'. But according to the Mitákshará, 'If he assume the Bráhmanical string for the purpose of partaking of food at a Çráddha, he shall have a line, resembling the real string, imprinted on his body with a redhot rod.'

CCXLIII.

1—Chapter 8th, vs. 296-97-98.

2—As. Res. 5th, 91.

3—Chapter. 9th,

Standard for valuation of fines.

The same author propounds the punishment for those who make [decrees] contrary to justice: "An unjust decision must be revised by the king, and he must, as a punishment, impose a fine double [the loser's fee[1] on] the amount litigated, upon the assessors, together with him who gained [in the first instance]." "If a man, though he have justly lost his cause, yet cherish in his mind this idea, 'I am not conquered,' and again come into Court, let him again lose his cause, and be made to pay a double fine."

In every part of this work, where the amount of fine is left unstated, it must be considered as meaning the number of paṇas. This paṇa, again, is the copper one, equal in weight to the Karsha [of 16 Mashas], whence the copper paṇa is denominated kárshika [of the Karsha standard], in Dictionaries. One Karsha is the fourth part of a pala. And when there are twice ten kauris, their amount, or joint weight, is called one Kákiní, four of which make one paṇa. This is the table of the paṇa standard, according to Bháskara Áchárya.[2]

And for application of criminal punishment.

But with respect to the [punishment enjoined for the] highest scale of crime and the rest, we find: "When the fine amounts to a thousand paṇas with eighty more, it then is equal to the highest scale [Uttama Sáhasa]: The half of it is named as the fine for the middling scale, and the half of, that again, is laid down for inferior crimes."

General observations on punishment.

Moreover, if in any of the aforementioned crimes, prevention is not attainable, by fines regulated after the above specified scale, even a greater one may be imposed; according as Ápastamba says: "Punishment is said to be for the sake of subduing crime; by it therefore let those bold in crime be brought into subjection." Nárada again points out some exceptions in the punishment of confiscation of a man's all: "Even when confiscation of all a criminal possesses is enjoined, it is not fit that the king should take away his weapons, if a soldier; the beasts of burthen or other [conveyance], of these who subsist by carrying for hire; the ornaments, of professional prostitutes; the musical instruments, of musicians; or those implements by which artizans subsist; in short, any thing by which any person gains his livelihood." Yájñavalkya declares the destination of a fine levied through injustice: "What has been obtained through injustice by the king as a fine, having devoted it to Varuṇa, let him give, with his own hands, increased thirty-fold to Bráhmans." The meaning is, 'let him give thirty times as much to Bráhmans, having vowed it to Varuṇa, through their mediation.'

1—Chapter 5th. Section 4, para. 8.

2—As. Res. 5th. 96.

Here ends the portion, called Vyavahára Mayúkha, of the book Bhagvata Bhaṣkara, written by Nílakantha, own son of Çaṅkara Bhaṭṭa, he who had traversed the oceans of the mímáṁsá, the head jewel of Paṇḍitas, son of Bhaṭṭa Náráyaṇa Suri, Jagata Guru, as requested by that ornament of the Saṅgara dynasty, Mahárája Ádhiráj, Çrí Bhágvanta Deva, the intense adorer of the lotos-eyed God, the firmly seated Rájá of the noted city of Bhareha, situated near the resplendent junction of the Charmanvatí and the Tarṇija in the happy Madhya Deça.[1]

Conclusion.

1—The last paragraph varies in almost all the copies: some omit it altogether and others take no notice of the place mentioned, which is at the junction of the Chambal and the Jamna; in the printed copy, part of the passage has been inserted at the end and part at the conclusion of the chapter on inheritance, but is here thrown together.

TWO

TREATISES

ON THE

HINDÚ

LAW OF INHERITANCE.

TRANSLATED BY

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PREFACE.

NO branch of jurisprudence is more important than the law of successions or inheritance; as it constitutes that part of any national system of laws, which is the most peculiar and distinct, and which is of most frequent use and entensive application.

In the law of contracts, the rules of decision, observed in the jurisprudence of different countries, are in general dictated by reason and good sense; and rise naturally, though not always obviously, from the plain maxims of equity and right.

As to the criminal law, mankind are in general agreed in regard to the nature of crimes: and, although some diversity necessarily result from the exigencies of different states of society, leading to considerable variation in the catalogue of offences, and in the scale of relative guilt and consequent punishment; yet the fundamental principles are unaltered, and may perhaps be equally traced in every known scheme of exemplary and retributive justice.

But the rules of succession to property, being in their nature arbitrary, are in all systems of law merely conventional. Admitting even that the succession of the offspring to the parent is so obvious as almost to present a natural and universal law; yet this very first rule is so variously modified by the usages of different nations, that its application at least must be acknowledged to be founded on consent rather than on reasoning. In the laws of one people the rights of primogeniture are established; in those of another the equal succession of all the male offspring prevails; while the rest allow the participation of the female with the male issue, some in equal, other in unequal proportions. Succession by right of representation, and the claim of descendants to inherit in the order of proximity, have been respectively established in various nations, according to the degree of favour, with which they have viewed those opposite pretensions. Proceeding from linear to collateral succession, the diversity of laws prevailing among different nations, is yet greater, and still more forcibly argues the arbitrariness of the rules. Nor is it indeed practicable to reduce the rules of succession as actually established in any existing body of law, to a general or leading principle, unless by the assumption of some maxim not necessarily nor naturally connected with the canons of inheritance.

In proportion then, as the law of successions is arbitrary and irreducible to fixed and general principles, it is complex and intricate in its provisions; and requires, on the part of those entrusted with the administration of justice, a previous preparation by study; for its rules and maxims cannot be rightly understood, when only hastily

consulted as occasions arise. Those occasions are of daily and of hourly occurrence: and, on this account, that branch of law should be carefully and diligently studied.

In the Hindú jurisprudence in particular, it is the branch of law, which specially and almost exclusively merits the attention of those who are qualifying themselves for the line of service in which it will become their duty to administer justice to our Hindu subjects, according to their own laws.

A very ample compilation on this subject is included in the Digest of Hindú law, prepared by Jagannátha under the direction of Sir William Jones. But copious as that work is, it does not supersede the necessity of further aid to the study of the Hindu law of inheritance. In the preface to the translation of the Digest, I hinted an opinion unfavourable to the arrangement of it, as it has been executed by the native compiler. I have been confirmed in that opinion of the compilation, since its publication; and indeed the author's method of discussing together the discordant opinions maintained by the lawyers of the several schools, without distinguishing in an intelligible manner which of them is the received doctrine of each school, but on the contrary leaving it uncertain whether any of the opinions stated by him do actually prevail, or which doctrine must now be considered to be in force and which obsolete, renders his work of little utility to persons conversant with the law, and of still less service to those who are not versed in Indian jurisprudence; especially to the English reader, for whose use, through the medium of translation, the work was particularly intended.

Entertaining this opinion of it, I long ago undertook a new compilation of the law of successions with other collections of Hindú law, under the sanction of the Government of Bengal, for preparing for publication a supplementary Digest of such parts of the law as I might consider to be most useful. Its final completion and publication have been hitherto delayed by important avocations; and it has been judged mean time advisable to offer to the public in a detached form, a complete translation of two works materially connected with that compilation.

They are the standard authorities of the Hindu law of inheritance in the schools of Benares and Bengal respectively; and considerable advantage must be derived to the study of this branch of law, from access to those authentic works, in which the entire doctrine of each school, with the reasons and arguments by which it is supported, may be seen at one view and in a connected shape.

In a general compilation, where the authorities are greatly multiplied, and the doctrines of many different schools, and of numerous authors are contrasted and compared, the reader is at a loss to collect the doctrines of a particular school and to follow the train of reasoning by which they are maintained. He is confounded by the perpetual conflict of discordant opinions and jarring deductions; and by the frequent transition from the positions of one sect to the principles of

another. It may be useful then, that such a compilation should be preceded by the separate publication of the most approved works of each school. By exhibiting in an exact translation the text of the author with notes selected from the glosses of his commentators or from the works of other writers of the same school, a correct knowledge of that part of the Hindú law, which is expressly treated by him, will be made more easily attainable, than by trusting solely to a general compilation. The one is best adapted to preparatory study; the other may afterwards be profitably consulted, when a general, but accurate knowledge has been thus previously obtained by the separate study of a complete body of doctrine.

These considerations determined the publication of the present volume. It comprehends the celebrated treatise of Jímúta-váhana on successions, which is constantly cited by the lawyers of Bengal under the emphatic title of Dáya-bhága or "inheritance;" and an extract from the still more celebrated Mitákshará, comprising so much of this work as relates to inheritance. The range of its authority and influence is far more extensive than that of Jímúta-váhana's treatise; for it is received in all the schools of Hindú law, from Benares to the southern extremity of the peninsula of India, as the chief groundwork of the doctrines which they follow, and as an authority from which they rarely dissent.

The works of other eminent writers have, concurrently with the Mitákshará, considerable weight in the schools of law which have respectively adopted them; as the Smṛiti Chandriká* in the south of India; the Chintámaṇi, Ratnácara and Viváda-chandra† at Benares, and the Mayúkha§ among the Maraháttas: but all agree in generally deferring to the authority of the Mitákshará, in frequently appealing to its text, and in rarely and at the same time modestly dissenting from its doctrines on particular questions. The Bengal school alone, having taken for its guide Jímúta-vahana's treatise, which is on almost every disputed point, opposite in doctrine to the Mitákshárá, has no deference for its authority. On this account, independently of any other considerations, it would have been necessary to admit into the present volume either his treatise, or some one of

* By Devaṇḍa-bhaṭṭa. This excellent treatise on judicature is of great and almost paramount authority, as I am informed, in the countries occupied by the Hindu nations of Drávira, Tailanga, and Karnáṭá, inhabiting the greatest part of the peninsula or Dekhin.

† Viváda chintámaṇi, Vyavahára chintámaṇi, and other treatises of law by Váchespatimiçra. Viváda ratnákara, Vyavahára ratnákara and other compilations by Paṇḍitas employed by Chaṇḍeçvara; Viváda-chandra by Miśáru miçra or rather by his aunt Lakhimá or Lakshmí-dévi.

‡ Víramitrodaya, an ample and very accurate digest by Mitra miçra. Vivádatáṇḍava and other works of Kamalácara.

§ Vyavahára-mayúkha and other treatises by Nílakaṇṭha.

the abridgments of his doctrine which are in use, and of which the best known and most approved is Raghunandana's Dáyá-tátva. But the preference appeared to be decidedly due to the treatise of Jímúta-váhana himself; as well because he was the founder of this school, being the author of the doctrine which it has adopted; as because the subjects, which he discusses, are treated by him with eminent ability and great precision; and for this further reason, that quotations from his work, or references to it, which must become necessary in a general compilation of the Hindú law of inheritance, can be but very imperfectly intelligible without the opportunity of consulting the whole text of his close reasoning and ample disquisitions.

Having selected, for reasons which have been here explained, the Dáya-bhága of Jímúta-váhana and the Mitákshará on inheritance, for translation and separate publication, I was led in course to draw the chief part of the annotations necessary to the illustration of the text, from the commentaries on those works. Notes have been also taken from original treatises, of which likewise brief notices will be here given, that their authority may be appreciated.

In the selection of notes from commentaries and other sources, the choice of them has not been restricted to such as might be necessary to the elucidation of the subject as it is exhibited in the English version; but variations in the reading and interpretation of the original text have been regularly noticed, with the view of adapting this translation to the use of those who may be induced to study it with the original Sanserit text. The mere English reader will not be detained by these annotations, which he will of course pass by.

Having verified with great care the quotations of authors, as far as means are afforded to me by my own collection of Sanscrit law books (which includes, I believe, nearly all that are extant;) I have added at the foot of the page notes of reference to the places in which the text are found. They will be satisfactory to the reader as demonstrating the general correctness of the original citations. The inaccuracies, which have been remarked, are also carefully noticed. They are few and not often important.

The sources, from which the annotations have been chiefly drawn, are the following.

The commentary of Çríkṛishṇa Tarkálankára on the Dáya-bhága of Jímúta-váhana has been chiefly and preferably used. This is the most celebrated of the glosses on the text. It is the work of a very acute logician, who interprets his author and reasons on his arguments, with great accuracy and precision; and who always illustrates the text, generally confirms its positions, but not unfrequently modifies or amends them. Its authority has been long gaining ground in the schools of law throughout Bengal; and it has almost banished from them the other expositions of the Dáya-bhága; being ranked, in general estimation, next after the treatises of Jímúta-váhana and of Raghunandana.

An original treatise by the same author, entitled Dáya-krama-sangraha, contains a good compendium of the law of inheritance according to Jímúta-váhana's text, as expounded in his commentary. It has been occasionally quoted in the notes: its authority being satisfactorily demonstrated by the use which was made of it in the compilation of the Digest translated by Mr. Halhed; the compilers of which transcribed largely from it, though without acknowledgment.

The earliest commentary on Jímúta-váhana is that of Çrínátha Áchárya Chúdámaṇi. It has been constantly in Çríkṛishṇa's view, who frequently copies it; but still oftener cites the opinions of Chúdámaṇi to correct or confute them. Notwithstanding this frequent collision of opinions, the commentary of Chúdámaṇi must be acknowledged as in general, a very excellent exposition of the text; and it has been usefully consulted throughout the progress of the translation, as well as for the selection of explanatory notes.

Another commentary, anterior to Çríkṛishṇa's, but subsequent to Chúdámaṇi's, is that of Achyuta Chakravartí, (author likewise of a commentary on the Çráddha vivéka.) It is in many places quoted for refutation, and in more is closely followed by Çríkṛishṇa, but always without naming the author. It contains frequent citations from Chúdámaṇi, and is itself quoted with the name of the writer by Mahéçvara. This work is upon the whole an able interpretation of the text of Jímúta-váhana, and has afforded much assistance in the translation of it, and furnished many notes illustrating its sense.

The commentary of Mahéçvara is posterior to those of Chúdámaṇi and of Achyuta, both of which are cited in it; and is probably anterior to Çríkṛishṇa's or at least nearly of the same date, if my information concerning these authors be correct;* for they appear to have been almost contemporary; but Mahéçvara seemingly a little the elder of the two. They differ greatly in their expositions of the text, both as to the meaning and as to the manner of deducing the sense: but neither of them affords any indication of his having seen the other's work. A comparison of these different and independent interpretations has been of material aid to a right understanding and correct version of obscure and doubtful passages in Jímúta-váhana's text.

Of the remaining commentaries, of which notices had been obtained, only one other has been procured. It bears the name of Raghunandana, the author of the Smṛiti-tatva, and the greatest authority of Hindú law in the province of Bengal. In proportion to the celebrity of the writer was the disappointment experienced on finding reason to distrust the authenticity of the work. But not being satisfied of its genuineness, and on the contrary suspecting it strongly of bearing a borrowed name, I have made a very sparing use of this commentary either in the version of the text or in the notes.

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* Great grandsons of both these writers were living in 1806: and the grandson daughter's son) of Çríkṛishṇa was alive in 1790. Both consequently must have lived in the first part of the last century. They are modern writers; and Çríkṛishṇa is apparently the most recent.

The Dáya-tatva, or so much of the Smṛti-tatva as relates to inheritance, is the undoubted composition of Raghunandana; and in deference to the greatness of the author's name and the estimation in which his works are held among the learned Hindús of Bengal, has been throughout diligently consulted and carefully compared with Jímúta-váhana's treatise, on which it is almost exclusively founded. It is indeed an excellent compendium of the law, in which not only Jímúta-váhana's doctrines are in general strictly followed, but are commonly delivered in his own words in brief extracts from his text. On a few points, however, Raghunandana has differed from his master; and in some instances he has supplied deficiencies. These, as far as they have appeared to be of importance, have furnished annotations; for which his authority is of course quoted.

A commentary by Káçiráma on Raghunandana's Dáya-tatva, has also supplied a few annotations, and has been of some use in explaining Jímuta-váhana's commentators, being written in the spirit of their expositions of that author's text, particularly Çríkṛishṇa's gloss; and often in the very words of that commentator.

The Dâya-rahasya or Smṛti-ratnávalí of Ráma-nátha Vidyá-Váchéspati, having obtained a considerable degree of authority in some of the districts of Bengal, has been frequently consulted, and is sometimes quoted in the notes. It is a work not devoid of merit: but, as it differs in some material points from both Jímúta-váhana and Raghunandana, it tends too much to unhinge the certainty of the law on some important questions of very frequent recurrence. The same author has written a commentary on Jímúta-váhana's Dáya-bhága, and makes a reference to it at the close of his own original treatise. My researches, however, and endeavours to procure a copy of it, have not been successful. I should else have considered it right to advert frequently to it in the illustrations of the text.

Other treatise on inheritance according to the doctrines received in Bengal, as the Dáya-nirṇaya of Çríkara bhaṭṭáchárya and one or two more which have fallen under my inspection, are little else than epitomes of the work of Raghunandana or of Jímúta-váhana: and on this account have been scarcely at all used in preparing the present publication.

The remaining names, which occur in the notes, are of works or of their authors belonging to other schools. These are rarely, I may say never, cited, unless for variations in the reading of original text of legislators; excepting only the Víramitrodaya of Mitra-miçra; from whose work a few quotations may be found in the notes, contradicting passages of the text. This author, in the compilation mentioned, uniformly examines and refutes the peculiar doctrines maintained by Jímúta-váhana and Raghunandana: but it did not fall within the design of the present publication to exhibit the controversial arguments of the modern opponents of the Bengal school; and quotations from his work have been therefore sparingly inserted in the notes to Jímúta-váhana's treatise.

The commentaries on the Mitákshará of Vijñáneçvara are less numerous. Of four, concerning which I have notices, two only have been procured. The Subodhiní by Viçveçvara bhaṭṭa; and a commentary by a modern author, Bálam-bhaṭṭa.

The Subodhini is a collection of notes elucidating the obscure sages of the Mitákshará, concisely, but perspicuously. It leaves few difficulties unexplained, and dwells on them no further than is necessary to their elucidation. The commentator is author likewise of a compilation entitled Madana párijáta, chiefly on religious law, but comprising a chapter on inheritance, a topic connected with that of obsequies. To this work he occasionally refers from his commentary. Both therefore have been continually consulted in the progress of the translation, and have furnished a great proportion of the annotations.

Bálam-bhaṭṭa's work is in the usual form of a perpetual comment. It proceeds, sentence by sentence, expounding every phrase, and every term, in the original text. Always copious on what is obscure, and often so on what is clear, it has been a satisfactory aid in the translation, even where it was busy in explaining that which was evident: for it has been gratifying to find, though no doubts were entertained, that the intended intrepretation had the sanction of a commentator. Bálam-bhaṭṭa's gloss in general follows the Subodhiní as far as this goes. It has supplied annotations where Viçveçvara's commentary was silent; or where the explanation, couched in Viçveçvara's concise language, might be less intelligible to the English reader.

Vijñáneçvara's Mitákshará being a commentary on the institutes of Yájnávalkya, it has been a natural suggestion to compare his expositions of the law, and of his author's text in particular, with the commentaries of other writers on the same institutes, viz., the ancient and copious gloss of Aparárka of the royal house of Silára, and the modern and succinct annotations of Súlapáṇi in his comment entitled Dípakalikā. A few notes have been selected from both these works, and chiefly from that of Aparárka.

For like reasons the commentators on the institutes of other ancient sages have been similarly examined; they are those of Medhátithi and Kullúka bhaṭṭa on Manu; Haradatta's gloss on Gautama, which is entitled Mitákshará; Nanda-paṇḍita's commentary under the title of Vaijayantí, on the institutes which bear the name of the god Vishṇu; and those of the same author, and of Mádhava áchárya, on Paráçara.

Nanda-paṇḍita is author also of an excellent treatise on adoption, entitled Dattaka-mímánsá, of which much use has been made, among other authorities, in the enlarged illustrations which it has been judged advisable to add to the short chapter contained in the Mitákshará on this important topic of Hindú law.

The same writer appears, from a reference in a passage of his gloss on Vishṇu, to have composed a commentary on the Mitákshará under the title of Pratitákshará. Not having been able to procure that work,

but concluding that the opinions, which the writer may have there delivered, correspond with those which he has expressed in his other compositions, I have made frequent references to the rest of his writings, and particularly to his commentary on Vishṇu, which is a very excellent and copious work, and might serve, like the Mitákshará, as a body or digest of law.

All the works of greatest authority in the several schools which hold the Mitákshará in veneration, have been occasionally made to contribute to the requisite elucidation of the text, or have been cited when necessary for such deviations from its doctrine, as it has been judged right to notice in the annotations. It will be sufficient to particularize in this place the Víramitródaya before mentioned, of which the greatest use has been made; that compilation conforming generally to the doctrines of the Mitákshará, the words of which it very commonly cites with occasional elucidations of the text interspersed, or with express interpretations of it subjoined, or sometime with the substitution of a paraphrase for parts of the original text. All these have been found useful auxiliaries to the professed commentaries and glosses.

This brief account of the works from which notes have been selected or aid derived, will sufficiently make known the plan on which the text of the Mitákshará and that of Jímúta-váhana have been transated and elucidated, and the materials which have been employed for that purpose. It is hardly necessary to add, by way of precaution to the reader, that he will find distinguished by hyphens, whatever has been inserted from the commentaries into the text to render it more easily intelligible; a reference to the particular commentary being always made in the notes at the foot of the page.

Concerning the history and age of the authors whose works are here introduced to the attention of the English reader, some information will be expected. On these points, however, the notices, which have been collected, are very imperfect, as must ever be the case in regard to the biography of Hindú authors.

'ara, often called Vijñána-yogí, the author of the Mitákshará, is known to have been an ascetic, and belonged, as is affirmed, to an order of Sannyásís, said to have been founded by Sankara-áchárya. No further particulars concerning him have been preserved. A copy of his work has indeed been shown to me, in which at its close, he is described as a contemporary of Vikramáditya. But the authority of this passage, which is wanting in other copies, is not sufficient to ground a belief of the antiquity of the book; especially as it cannot be well reconciled to the received opinion above noticed of the author's appertaining to a religious order founded by Sankara-áchárya, whose age cannot be carried further back at the utmost than a thousand years. The limit of the lowest recent date which can possibly be assigned to this work, may be more certainly fixed from the ascertained age of the commentary; the author of which composed likewise (as already observed) the Madana-párijáta so named in honor of a prince called Madana-pála, apparently the same who gives title to

the Madana-vinóda, dated in the fifteenth century of the Sambat era.* It may be inferred as probable, that the antiquity of the Mitákshará exceeds 500 and is short of 1,000 years. If indeed Dháreçvara, who is frequently cited in the Mitákshará as an author, be the same with the celebrated Rájá Bhója, whose title may not improbably have been given to a work composed by his command, according to a practice which is by no means uncommon, the remoter limit will be reduced by more than a century; and the range of uncertainty as to the age of the Mitákshará will be contracted within narrower bounds.

Of Jímúta-váhana as little is known. The name belongs to a prince of the house of Silára, of whose history some hints may be gathered from the fabulous adventures recorded of him in popular tales; and who is mentioned in an ancient and authentic inscription found at Salset.† It was an obvious conjecture, that the name of this prince might have been affixed to a treatise of law composed perhaps under his patronage or by his directions. That however is not the opinion of the learned in Bengal; who are more inclined to suppose, that the real author may have borne the name which is affixed to his work, and may have been a professed lawyer who performed the functions of judge and legal adviser to one of the most celebrated of the Hindú sovereigns of Bengal. No evidence, however, has been adduced in support of this opinion; and the period when this author flourished is therefore entirely uncertain. He cites several earlier writers; but, their age being not less doubtful than his own, no aid can be at present derived from that circumstance, towards the determination of the limits between which he is to be placed. His commentators suppose him in many places to be occupied in refuting the doctrines of the Mitákshará, Probably they are right; it is however possible, that he may be there refuting the doctrines of earlier authors, which may have subsequently been repeated from them in the latter compilation of Vijñáneçvara. Assuming, however, that the opinion of commentators is correct; the age of Jímúta-váhana must be placed between that of Vijñáneçvara, whose doctrine he opposes, and that of Raghunandana who has followed his authority. Now Raghunandana's date is ascertained at about three hundred years from this time; for he was pupil of Vásudeva Sárvabhauma, and studied at the same time with three other disciples of the same preceptor, who likewise have acquired great celebrity; viz., Sírómaṇi, Kṛishṇánanda, and Chaitanya: the latter is the well known founder of the religious order and sect of Vaishnavas so numerous in the vicinity of Calcutta, and so notorious for the scandalous dissoluteness of their morals; and, the date of his birth being held memorable by his followers, it is ascertained by his horoscope, said to be still preserved, as well as by the express mention of the date in his works, to have been 1411 of the Saka era, answering to Y. C. 1489: consequently Raghunandana, being his contemporary, must have flourished at the beginning of the sixteenth century.

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* 1431 Sambat; answering to A. D. 1375.

† Asiatic Researches, Vol. 1. p. 357.

DÁYA-BHÁGA.

A TREATISE ON INHERITANCE,

BY JÍMÚTA VÁHANA.

CHAPTER I.

Partition of Heritage defined and explained. Two periods of partition of the Father's wealth.

1. Partition of heritage, on the subject of which various controversies have arisen among intelligent persons (not fully comprehending the precepts of Manu and the rest) should be explained for their information. Hear it, O ye wise!

1. Subject proposed.

2. First, the term Partition of Heritage (dáyabhága) is expounded; and, on that subject, Nárada says, "Where a division of the paternal estate in instituted by sons, that becomes a topic of litigation, called by the wise Partition of Heritage."*

2. Partition of heritage, described by Nárada, as a head of action.

ANNOTATIONS.

2. Division of the estate.] Partition is an act adapted to ascertain property; as will be subsequently explained. Division of patrimony by sons, or a distribution of which they are the makers, is partition of heritage. The wealth, in regard to which that is especially instituted, or is executed by the persons making it, with one accord, or by the intervention of arbitrators or the like, is denominated by the wise a subject of litigation. Such is the construction of the text. Çríkṛshṇa.

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* Nárada 13. 1.

3. What came from the father is "paternal:" and this signifies property arising from the father's demise. The expressions "paternal" and "by sons" both indicate any relation: for the term "partition of heritage" is used for a division of the goods of any relation by any relatives. Accordingly Nárada, having premised "partition of heritage" as a topic of litigation, (§2) shows under that head of actions, the distribution of effects left by the mother and the rest.* So Manu, likewise, premising inheritance,† but without employing the word father or any other specific term, propounds the division of effects of any relative.

3. Exposition of his text.

Inheritance includes succession to the goods of any relation.

ANNOTATIONS.

Or the meaning may be, in a controversy or law-suit wherein partition of patrimony is instituted by sons, the subject of litigation is entitled division of heritage. Achyuta.

Chūdámaṇi, and the rest of the commentators on Jímúta Váhana's treatise, exhibit many variations in the reading and interpretation of the passage here cited from Nárada; and have entered into long disquisitions on the different expositions of the text. The principal disagreement is in regard to the relative pronoun.‡ There is not, however, any essential difference in the results of the various interpretations.

Some, observes Çríkṛishṇa, interpret the pronoun (yatra) in the causative seventh case, making it relate to the term "topic of litigation," and they thus explain the text: 'That subject of controversy, on account of which a division of patrimony, or distribution of it by lots, is executed by sons, has been termed partition of heritage.'

Maheçvara, who adopts this interpretation, states the consequent meaning thus: 'that topic of litigation, which consists in the ascertainment of property whether effected by arbitrators or by the parties, and, for the sake of which ascertainment, a division of patrimony is executed by sons, such as casting of lots or other act separating property, is called by the sages partition of heritage.'

Taking the pronoun in the nominative case, either by so reading it, or by the license which justifies anomalies in sacred writings, the passage is by some explained (as is remarked by commentators) 'the division of patrimony, which is instituted by sons, is called partition of heritage.'

After noticing the various readings, Çríkṛishṇa adds, 'certain writers, however, expound the term patrimony, in the distributive sixth case. Accordingly, the import of the text, consonantly to their opinion, is "the portion of the paternal estate, for which a partition is instituted by sons, is division of heritage." Agreeably to this interpretation, likewise, the wealth must be understood to be the subject of the action.'§

Nárada 13. 2. Vide infra, C. 4. Sect. 2. § 13.

‡ Most copies and quotations of the text read it yatra, "where" or "in which." But some read yattu; and others yastu; "but which."

§ The author of the Dáya rahasya gives the preference to this interpretation.

4. The term "heritage," by derivation, signifies "what is given." However, the use of the verb (dá) is here secondary or metaphorical; since the same consequence is produced, namely, that of constituting another's property after annulling the previous right of a person who is dead, or gone into retirement, or the like. But there is no abdication of the deceased and the rest in regard to the goods.

4. Derivation of dáya, heritage, from dá, to give.

5. Therefore, the word "heritage" is used to signify wealth, in which property, dependant on relation to the former owner, arises on the demise of that owner.*

5. Definition of heritage.

6. Is the partition of heritage a splitting of the divided thing into integrant parts? Or does partition consist in the chattels not being united with the heritage of a co-heir? The first position is not correct; for the heritage itself would be destroyed. Nor is the second accurate: for, though goods be conjoined, it may be said, "this chattel, which was before parted, is not my property, but my "brother's."

6. Partition is not a splitting of the chattel; nor the separation of it from the co-heir's goods.

7. Nor can it be affirmed, that partition is the distribution to particular chattels, of a right vested in all the co-heirs, through the sameness of their relation, over all the goods. For relation, opposed by the co-existent claim of another relative, produces a right (determinable by partition) to portions only of the estate: since it would be burdensome to infer the vesting and divesting of rights to the

7. Nor a distribution of a general right to particulars.

ANNOTATIONS.

4. Heritage signifies "what is given."] Since the verb to give signifies the will "be this no longer mine," which has the effect of vesting property in another; and ... that cannot exist in the proposed case, therefore it here merely signifies any act ..., such as the demise of the former owner, his retirement, &c. Achyuta.

... a relinquishment on the part of the person deceased, ...ill "be this no longer mine," and operating to annul the former property. Ragh. Daya-tatva.

5. "Heritage" is used to signify.] The term heritage signifies by acceptation property vested in a relative, in respect of wealth, in right of relation to its former owner (as son or otherwise), on the extinction of his property. Ragh. Dáya-tatva.

6. The heritage itself would be destroyed.] Meaning an inheritance consisting of an individual, as an ox, a slave or the like. If divided by a distribution of parts, the destruction of it would be the consequence. Mahéçvara.

7. Nor can it be affirmed.] The author here censures the doctrine of the Mitákshará, Ragh. on the Dáyabhága.

* Or according to another reading of his passage, "on the extinction of his ownership." For in some copies, and in certain quotations of the passage, it is written tat-svámyáparam; and several of the commentators appear to have so read it. But Maheçvara states this as the sense of the phrase, and the other tat-svámyáparam as the original text.

whole of the paternal estate; and it would be useless, as there would not result a power of aliening at pleasure.

8. The answer is: partition consists in manifesting* [or in particularizing]† by the casting of lots or otherwise, a property which had arisen in lands or chattels, but which extended only to a portion of them, and which was previously unascertained, being unfit for exclusive appropriation, because no evidence of any ground of discrimination existed.

8. Definition of partition.

ANNOTATIONS.

He canvasses the opinion of the Maiṭhilas. Mahéçvara.

8. Partition consists.] Raghunandana, in his Dáya-tatva, quoting Jímúta Váhana's definition to refute it, has a little varied the terms of it, by blending both the explanations proposed by that author (§ 8 and 9). "Some," he says, "allege, that partition, which takes place by reason of the co-existence of other relatives, [who have an equal right of succession‡] is a particular ascertainment of property arisen in lands or chattels, (extending to a part only, but unfit for special use and appropriation, because grounds of discrimination are wanting;) by the casting of lots or other means, which determine, that a particular chattel belongs to a particular person." To this he objects, that "the definition is not accurate: for how may it be certainly known, since no text declares it, that the lot, for each person, falls precisely on that article which was already his? Again, if wealth be gained, after the father's demise, by a brother using one of two horses which belonged to the father, is universally acknowledged, that two shares of it appertain to the acquirer; and one to any other co-heir. In such a case, when the original property is subsequently divided, if that very horse be obtained by the acquirer, then, according to the opinion of those who affirm partial rights, the horse was already his; why then should another brother share the wealth gained by him? But, if the horse be obtained by another co-heir, equal participation of wealth so acquired would be proper, since it is gained by the personal labour of the one and by the work of a horse belonging to the other."

Raghunandana then states his own definition. "But, in fact, partition is a distributive adjustment, by lot or otherwise, of the property of relatives vested in them, over the whole wealth, in right of the same relation, upon the extinction of the former owner's property. The vesting and divesting of property over the whole estate are inferred, in like manner as the divesting of partial rights over portions, and vesting of a common right over the whole, are deduced in the instance of re union of co-heirs."

Çríkṙshṇa, in his commentary on the work of Jímúta-váhana, endeavours to repel Raghunandana's objection. He cites his reasoning nearly in the exact words, and replies, "The objection, which is thus proposed by the learned author, is not right. For, according to the opinion of those who contend for the doctrine of partial rights, undivided is the sense of the term common:§ and, since the nature of it is not changed by denying a general right, the objection, alleged by the opponent, cannot be valid."

After thus endeavouring to vindicate his author, Çríkṙshṇa proceeds to state the concurrent opinions of Hariṇáṭha, Vijñáneçvara, Váchespati Miçra and others who main-

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* So the term, here employed, is explained by Chúḍámaṇi.

† Achyuta and Çríkṙishna expound the term "making it positive, that a certain thing appertains to a certain individual."

‡ So the sentence is supplied by the commentator Káçiráma Váchespati, who remarks, that the observation in the text is made, "because no partition would be necessary were there no other relative.

§ As used in texts concerning participation in acquired property. For example: "When a man acquires wealth by valor, relying on any common vehicle or weapon, the brethren shall be sharers in it." This note is suggested by an equivalent insertion in the passage itself, as quoted by the commentator on the Dáya-tatva.

9. Its literal meaning.

9. Or partition is a special ascertainment of property, or making of it known [by reference of a particular share to a particular person.*]

10. The definition holds good in the case even of a single article: the right to which may be shared as provided by Vṛihaspati.

10. Even in the case where a single article, as a female slave, a cow, or the like, is common to many, the property is severed by separate use, in carrying burdens, or in milking, during specific periods, in turn, as directed by Vṛihaspati. "A single female slave should be employed on labour in the houses [of the several co-heirs] successively, according to the number of shares:—and water of wells or ponds is drawn for use according to need [without stint]—such property [as is regularly not divisible] should be distributed by equitable adjustment; else it would be useless [to the owners]". These three half stanzas occur in many places, [as quotations from this author,] though not found in their regular order [in his institutes of law.†]

ANNOTATIONS.

tain, that "partition does annul a previous right and become the cause of the property, as inferred in the instance of partition made by a father;" adding reasons, which are similarly cited by the commentator on the Dáya-tatva, with the remark, "that the opinion delivered by Raghunandana is conformable to that doctrine" Whence also Jagannátha, in the digest of Hindū law, concludes, that "Raghunandana's opinion is indirectly admitted even by Çrīkṛishṇa."

9. Or partition is &c.] This abridged definition of partition is intended by the author for a literal interpretation of the term vibhága, conformably with its derivative sense; assuming, that the radical verb, bhaj, signifies to make known; either "because roots have numerous significations," according to the remark of Achyuta; or "because that import is deducible from the proper meaning of the verb bhaj, to serve or adore," as stated by Maheçvara in his note on this passage.

By reference of a particular share to a particular person.] So Çrīkṛishṇa completes the sentence. He adds "the making of property known, here signifies the casting of lots or other operation tending to the ascertainment of the right."

10. As directed by Vṛihaspati.] Raghunandana, in the Dáya-tatva, citing the same text as propounding a distribution by difference of time, remarks, that "the rise and extinction of various periodical rights to the same individual, must evidently be here admitted: or else a restriction of the general property vested in all."

Çrikṛishṇa asks, "if the articles be sold by the possessor during his own turn, without the consent of the other periodical owners, does not the buyer obtain the complete property for all the periods?" He replies, "No: such interest only as the vendor held, is vested by the purchase in the buyer; and thus the purchaser, standing in the place of the seller, has the use of the article in turn with the other proprietors."

"In the houses of the several co-heirs successively."] According to some copies of Raghunandana's Dáya-tatva, the reading is "on successive days" dine dine, instead of gṛihe gṛihe "in the houses successively." But the latter is the reading of the passage as cited in other compilations. The whole passage, as it is here quoted by Jímūtaváhana, consists of portions of three different stanzas; which in Vṛihaspati's text are remote and in a reversed order; according to the quotation of the text in the Smṛiti-Chandriká Kalpataru and Ratnákara.

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* Çrīkṛishṇa.

† Çrīkṛishṇa.

11. Does it not follow from the text of Nárada, ("let sons regularly divide the wealth when the father is dead") which authorizes sons to divide their father's effects after his decease,* that sons have not property therein before partition? nor can partition be a cause of property, since that might be misunderstood as extending even to the goods of a stranger.

11. Partition not create

12. The answer is this: since it is the practice of all people to call an estate their own, immediately after the demise of their father or other predecessor; and the right of property is acknowledged to vest without partition in the case of an only son; the demise of the relative is the cause of property. Consequently there is no room for any misconstruction.

12. But the demise of a relation is its cause.

13. Acquisition is the act of the acquirer; and one, who has the state of ownership dependent on acquisition, is the acquirer. Is not birth therefore, as the act of the son, rightly deemed his mode of acquisition? and have not sons, consequently, a proprietary right, during their father's life, [even without his being degraded or otherwise disqualified;†] and not by reason of his demise? and therefore is it declared "in some cases birth alone [is a mode of acquisition,‡] as in the instance of a paternal estate."

13. Acquisition property by

That is not correct: for it contradicts Manu and the rest

14. After the [death of the] father and the mother, the brethren, being assembled, must divide equally the paternal estate; for they have not power over it, while their parents live."§

14. Shown to be an erroneous supposition.

ANNOTATIONS.

11. Does it not follow &c.] Does partition ascertain a pre-existent right? Or does it create the right itself? To both these doctrines objections are here proposed. Sons have not property before partition: for the father's property, suggested by the relative case in the phrase, "their father's effects;" is an obstacle to it. Consequently partition cannot be the ascertainment of a pre-existent right. Çríkṛshṇa.

Therefore, the property of the father, though deceased, would subsist until partition took place. Such is the import of the objection. Admitting this, and the inference that property arises from partition alone, and that the father's property is thereby divested; what arm ensues? The author replies "partition cannot be a cause of property." Mahéçvara.

Nor can it extinguish a former right. For it might else be supposed, that, if strangers cast lots for the goods of one with whom they are unconnected, the property of the owner would be thereby annulled, and the right vested in the strangers. Çríkṛshṇa.

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* Nárada, 13. 2.

† Çríkṛshṇa furnishes this clause.

‡ Supplied on the authority of Çríkṛshṇa and other commentators.

§ Manu, 9, 104.

15. Manu, (§ 14.) denies the son's right in his father's life time.

15. This text is an answer to the question, why partition among sons is not authorized, while their parents are living: namely "because they have not ownership at that time."

16. His text cannot intend mere dependence and control.

16. It should not be argued, that the text intends want of independence, like another passage of the same author, concerning acquisitions by a wife or son:* for there is no evidence of property then vested; but, in the other instance, dependence is rightly supposed to be meant, since property is suggested by the phrase "what they earn" or acquire.

17. The son's property in his own gains is requisite to his performance of religious rights therewith.

17. Besides it would contradict revealed law, if these persons had not ownership even in that which is by them earned; since religious rites, enjoined by the holy rite, and which must be effected by means of their own wealth, would be prevented.

18. Dévala denies the son's rights in the goods of his father yet living.

18. Dévala, too, expressly denies the right of sons in their father's wealth. "When the father is deceased, let the sons divide the father's wealth: for sons have not ownership while the father is alive and free from defect."

19. No authority declares a right by birth.

19. Besides, if sons had property in their father's wealth, partition would be demandable even against his consent: and there is no proof, that property is vested by birth alone; nor is birth stated in the law as means of acquisition.

ANNOTATIONS.

17. Besides it would contradict the revealed law.] It would contradict those passages of scripture which prescribe certain fasts and other religious rites to be observed by women. Maheçvara.

Neither should it be argued, that the religious rites may be accomplished with goods given for the purpose by the husband or father, &c. For, on that supposition, the husband's relinquishment would vest property in his wife. But, in like manner as the right vests in him immediately upon his wife's receipt of any thing from another person, so does it vest in him on her receipt of goods from himself. Çríkṛshna.

18. Free from defect.] Raghunandana, in the Dáya-tatva, interprets "free from defect," not degraded, and cites Nárada (13. 3.) "If the father be lost, or no longer a householder, &c." § 32.

19. Nor is birth stated in the law as means of acquisition.] The author apparently alludes to a passage of Gautama cited in the Mitákshará, and which expressly declares "by birth alone a man takes ownership of wealth: so the holy instructors maintain." Accordingly the commentators, Achyuta and Çríkṛshṇa, question the authenticity of the text: and indeed it is not found in Gautama's institutes. Çríkṛshna says "the text of Gautama, which is cited in the Mitákshará, is unauthorized; or, if it be authorized, it relates to the case of one, whose father dies while the child is in the mother's womb."

* Manu, 8, 416.

20. Relation of father and son, & demise of the father, are causes of property.

20. In some places it is alleged: but there, by the mention of birth, the relation of father and son, and the demise of the father are mediately indicated as causes of property.

21. A right may accrue to one by the act of another; as in donation.

21. The right of one may consistently arise from the act of another: for an express passage of law is authority for it; and that is actually seen in the world, since, in the case of donation, the donee's right to the thing arises from the act of the giver; namely from his relinquishment in favor of the donee who is a sentient person.

22. Acceptance of a gift is not the cause of property.

For gift precedes acceptance.

22. Neither is property created by acceptance; since it would follow, that the accepter was the giver: for gift consists in the effect of raising another's property; and that effect would here depend on the donee, in like manner as a votary, though making a relinquishment of a thing offered to a deity, is not a sacrificer; but the priest alone is so denominated, as performing the act of presenting its relinquishment, which act was the purpose of the ceremony termed a sacrifice. Besides the word gift occurs in passages of law as signifying something antecedent to acceptance.

ANNOTATIONS.

This commentator adds as a reason, "Else a father who had male issue, would not be independent in regard to his own goods." He subjoins an interpretation similar to that which occurs in the Dáya-tatva of Raghunandana, where the passage is explained in an entirely different sense upon an altered reading of it: and, after proposing another exposition of it, he concludes thus: "It must be therefore understood to be the implied sense, that, because the relation of birth is superior to every other, a son, standing in that relation, has the right of succession to his father's wealth immediately on the extinction of his father's right."

Raghunandana's interpretation is this. The text of Gautama, which is cited in the Mitákshará, signifies, "the venerable teachers maintain, that, on the extinction of the father's property, his son, not any other relative, may take his goods, because sons have a right to the wealth of their natural father by the very relation of birth, by which they are his issue, and which is superior to every other relation." It does not mean, that sons have a right by birth in their father's wealth, while his own property in it subsists; for that would contradict the text of Dévala.

20. In some places.] That is, in some books, birth is so alleged. An authentic passage of this import, by a worldly writer, does occur. Çríkṙshna.

21. From relinquishment in favour of a sentient person.] Since no right of ownership arises from mere relinquishment, such as the letting loose of a young bull [at a funeral,] the author adds the condition "in favour of one who is a sentient person." Çríkṙshṇa.

22. The word gift occurs in passages of law.] The particular passage of law which is here instanced, and the initial words of which are quoted by the author, is completed, with some variation, by the commentators Achyuta, Çríkṙshṇa and Maheçvara. "Intending in his mind a proper object of his liberality, let the giver pour water on the ground [to ratify his donation.] The ocean has its bounds; but a gift has no termination."

23. A doubt proposed. How can the property precede the appropriation?

23. Is not receipt acceptance? for the affix, in the word svíkára, implies a thing becoming what it before was not; and the act of making his own *(svaṃ kurvan)* what before was not his, constitutes appropriation or acceptance (svíkára.) How then can property be antecedent to that?

24. Answer. Receipt and acceptance are means of acquisition though not creating property, but rendering it disposable.

24. The answer is, though property had already arisen, it is now by the act of the donee, subsequently recognizing it for his own, rendered liable to disposal at pleasure: and such is the meaning of the term 'acceptance' or 'appropriation.' From its association with teaching, and assisting at sacrifices,* receipt (pratigraha) is, without question, a mode of acquisition, though it do not immediately create property: for, in the case of assisting at sacrifices and so forth, property in wealth so gained arises solely from the gift of the reward.

25. Survival may constitute the right of succession.

Either that, or demise must do so.

25. Or the survival of the son, at the time of his father's demise, may constitute his acquisition. Besides, in the case of goods left by a brother or other relative, the property of the rest of the brethren or other heirs, must, however reluctantly, be acknowledged to arise either from his death or from the survival of the rest at the time of his decease.

26. Manu, before cited, declares property, on the father's demise, by authorising partition then.

26. Hence [that is, because property is not vested in sons, while the father lives,† or because property is not by birth, but by survival,‡ or because the demise of the ancestor is a requisite condition,§] the passage before cited,‖ beginning with the words "after the [death of the] father," being intended to declare property vested at that period, [namely at the moment of the father's decease¶] recites partition which of course then awaits the pleasure [of the successor.] For it cannot be a

ANNOTATIONS.

23. The affix implies.] The affix Chivi, which affects the first member of the compound term svíkára, bears the import here stated.

26. Recites partition.] The recital of partition is intended as an indication of property arising at that period. Çríkṛshṇa.

By the passage above çited (Manu, 9. 104.) it is not understood, that partition must be made of the death of the father: but it is signified, that property, which authorizes partition, takes effect from his demise. Maheçvara.

If property be truly vested at that period, then partition at pleasure follows of course.

For a precept teaches only what was not otherwise known. Maheçvara.

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* Manu, 10-76, and many similar passages, in which these are mentioned as three modes of earning wealth.

† Çríkṛshna and Achyuta. ‡ Chūdámani. § Mahéçvara.

‖ Manu, 2. 104, vide Supra § 14.

¶ So all the commentators interpret this passage.

precept, since the same result [respecting the right of partition,* at pleasure,†] was already obtained [as the necessary consequence of a right of property.]

27. He neither enjoins partition, nor restricts it to that time.

27. Nor can it be a restrictive injunction. For, as that is contrary to the text of Manu "Either let them thus live together; or let them dwell apart "for the sake of religious merit ;"‡ and as it produces visible consequences only [not any unseen or spiritual result,§] it can neither be an injunction for an immediate partition, nor a limitation of the time.

28 It would be a limitation to that particular moment:

Or would be superfluous if taken with greater latitude.

28. Besides, partition would be admissible, only at the moment immediately following the father's decease and not at any later period; for there is not in this instance, as in that of a sacrifice on the birth of a child, an objection analogous to the hazard of the new born infant's life: and partition to be made at any time after the father's demise, while the sons live, and at their pleasure, is already obtained [as a necessary result of obvious reasoning, without need of a special precept for the purpose.‖]

ANNOTATIONS.

An explanatory recital is introduced, for greater clearness, where the same result was already obtained from reasoning or authority. Chūḍámani.

27 Nor can it be a restrictive injunction.] If it can be understood as a precept, it should not be taken as an explanatory recital. It may therefore be a restrictive injunction. Apprehending this objection, the author obviates it. Çríkṙshṇa.

It cannot be an injunction; for Menu, by authorizing their living together, gives a sanction to their omission of partition. Mahéçvara.

Being followed by no spiritual consequences attendant on the performance or on the omission of it, partition cannot be restricted by a hundred texts. Çríkṙshṇa.

The option cannot be restricted by a hundred passages. Chūḍámaṇi.

28. Besides partition.] Supposing it to be a limitation of time intended for spiritual ends; the author proceeds in his reasoning. Time subsequent to the father's decease may be the moment immediately following it, or any time subsequent. On the first interpretation, the author says, Partition would be admissible only at the instant immediately following it. The condition being exclusive, it would be inadmissible at a subsequent period. Might not partition nevertheless take place at a subsequent time, in like manner as the sacrifice directed to be performed when a child is born, and which should accordingly be celebrated immediately after the birth of the infant, is deferred until the period of uncleanness end? The author replies to that. Since the period of uncleanness begins immediately after the section of the navel string, the sacrifice should be first performed like other rites on the birth. But Gobhila directs, that the breast shall be given after the section of the string: and if that be defeŕred for so long a time, the infant's throat will be parched and his life endangered. On account of this objection, a postponement takes place. But no such objection exists in the present instance.

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* Chūḍámaṇi.

† Mahéçvara.

‡ Manu, 9. 111. Vide Infra. § 37.

§ Çríkṙshṇa.

‖ Çríkṙshṇa.

29. It cannot intend a prohibition in the father's life-time.

29. Therefore, the text of Manu must be argued [by you*] to intend the prohibiting of partition, although the son's right subsist during the life of the father. But that is not maintainable. For it would thus bear an import not its own.

30. Manu correctly interpreted, denies the right of sons during the life of parents, and affirms it after their demise.

30. Hence the texts of Manu and the rest [as Dévalá, § 18†] must be taken as showing, that sons have not a right of ownership in the wealth of the living parents, but in the estates of both when deceased. One position is conveyed by the terms of the text; the other by its import *(a)*.

31. Demise includes other causes of divestiture of property.

31. Mere demise is not exclusively meant: for that intends also the state of a person degraded, gone into retirement, or the like; by reason of the analogy, as occasioning an extinction of property.

32. Nárada enumerates several.

32. Accordingly Nárada says: "When the mother is past child-bearing, and the sisters are married, or if the father be lost, or no longer an householder, or if his temporal affections be extinct.‡

ANNOTATIONS.

Taking the second interpretation; partition after the death of the father is at the pleasure of the successor. Thus, since sons have not a right of ownership prior to their father's demise, partition could not be then supposed; and it follows, even without a precept declaring it, that the time for partition must be subsequent to his decease. The limitation is therefore superfluous. Çríkṛshṇa.

29. It would thus bear an import not its own.] The words "may divide after the death of the father" would signify, differently from the obvious import of the terms, "may not divide while he lives." Çríkṛshṇa.

30. One position is conveyed by the terms &c.] One position, namely the want of right, during the parent's life, is expressed by the terms of the text: it is conveyed by the words "they have not power &c." The other, namely ownership after the parent's demise, is the import deducible from the right of partion. Çríkṛshṇa &c.

31. Gone into retirement or the like.] The order of a hermit, as well as the extinction of worldly affections, is here comprehended under the term "or the like." Çríkṛshṇa.

32. Accordingly Nárada says.] For since partition is recited, being here understood from the preceding passage in which it was premised, (Nárada 13. 2.) this indicates the departure of property from the father and the rise of property vested in sons. Çríkṛshṇa.

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* So Çríkṛshṇa supplies the text. Mahéçvara says, "by you, who aver property dependent on birth. † Raghunandana. ‡ Nárada.

(a) Compare Secs. 25, 26 Supra, c. iii, s. i. 19 *infra*. Mit. c. i. s. iii. I. Manu. ix. 104: 2. Macn. Pr. H. L. 104, 106. If a son die before his father, the Bombay Ṣadr Court seem to have held that the father's wife will succeed on his death in preference to his son's widow; but if the father died first, then the son's wife is heiress on her husband's death and the mother-in-law gets only maintenance. *Ramkoonwur* v. *Ummur*. 1 Borr. 415.—*Ed.*

33. "Lost" signifies degraded: "no longer a householder," having quitted the order of a household.* If the reading be "when he is exempt from death," then the sense is "when being exempt from death (that is alive,) he is devoid of affections." The variation in the reading is unfounded.

33. His text explained.

Various readings noticed.

ANNOTATIONS.

33. Lost signifies degraded &c.] Raghunandana, in the Dáya-tatva, copies the first part of this gloss; and adds 'therefore, if the right of property be annulled by death or by degradation, or by quitting the order of a householder, sons are entitled to partition; and so they are, even though the right of property remain, if the father be devoid of wish for wealth which appertains to him.'

The concluding part of Jímúta-váhana's gloss is construed by Mahéçvara as censuring the reading which had been just mentioned. But most commentators understand it as an allusion to another not specified. Achyuta remarks, that three several variations of the text are exhibited in the Prakáça and other compilations. According to the first (nivṛtté chá'pi ramaṇát,) the meaning is "if he be destitute of virile power." In the two last (nirapekshé cháçaraṇe and nirasté chápy açaraṇe) both first terms have the same import with the concluding term. The variation in the reading is groundless, says this author, being wanting in many books.

The reading preferred by Jímúta-váhana, and in which he is followed by Raghunandana, is vinashṭe vápy açaraṇe "lost, and no householder." The variation, noticed by him in the text, is nivṛtté vá'pi maraṇát, "exempt from death;" and the authority for it is Haláyudha, according to a remark of Chandeçvara in the Viváda ratnákara.

Çríkṛishṇa observes, 'when such is the reading of the third verse of the stanza, then it is an epithet of "one devoid of affections." The author uses the words, "when" and "then" to indicate his disapprobation. The reason is, that the epithet is superfluous.' The author's allusion to a reading not specified is referred by this commentator to one of those exhibited in the Prakáça, as before mentioned: viz. nivṛtte vápi ramaṇát.

But the author of a commentary bearing the name of Raghunandana, considers the author's censure as relative to a term in the text, níshpríhé (devoid of affection) a supposed reading for vinashṭe (lost.) This however appears to be a mistake, as is remarked by Achyuta, for no such reading occurs.

In the same commentary it is further observed, that, in the Viváda Chintámani, the text is read nivṛtte ramané chápi (when the sexual passions have ceased.) The remark is true. But that is only a transposition of the common reading (nivṛtté chápi ramané,) which occurs in the Mitákshará and many other compilations, and which is defended by the author of the Viramitrodaya against Jímúta-váhana's supposed rejection of it, or of the equivalent reading (nivṛtté chá'pi ramaṇát.)

The author of the Dáya rahasya follows the reading ascribed by Chandéçvara to Haláyudha, and noticed by Jímúta-váhana. He says 'while the father is exempt from death, that is, alive, there are two periods of partition: one, "when the mother is incapable of bearing issue;" the other, "when the father is devoid of affections." He quotes Jímúta-váhana's reading of the text and interpretation of it; and proceeds thus: "If the father be no householder," that is, if he become an anchoret or ascetic, and "if he be devoid of affections," if he do not care for his wealth; if there be a relinquishment on his part through aversion from trouble, though he continue to be a householder; then, the father's voluntary relinquishment, his quitting the order of a householder, and his degradation from his class, are declared to be causes of annulling his property."

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* The commentators notice another reading of this passage: gṛihasthágramáçarane, 'not preserving the order of a householder;' instead of gṛihasthágrama-rahite, without the order of a householder.'

34. Here also, to show, that the sons' property in their father's wealth arises from such causes as the extinction of his worldly affections, this one period of partition, known to be at their pleasure, is recited explanatorily: for the recital is conformable to the previous knowledge; and the right of ownership suggests that knowledge.

By authorizing partition, he declares property to be then vested.

35. Since any one parcener is proprietor of his own wealth, partition at the choice even of a single person is thence deducible; and concurrence of heirs, suggested as one case of partition, is recited explanatorily in the text "the brethren being assembled &c.*" Else, since assemblage implies many, there could be no distribution between two; for no passage of law expressly propounds a division between two co-heirs.

35. Partition may be demanded by any one of the co-heirs.

36. Is not the eldest son alone entitled to the estate, on the demise of the coheirs? and not the rest of the brethren? for Manu says: "The eldest brother may take the patrimony entire; and the rest may live under him, as under their father."† And here eldest intends him who rescues his father from the hell called Put;‡ and not the senior survivor. "By the eldest, as soon as born, a man becomes father of male issue, and is exonerated from debt to his ancestors; such a son, therefore, is entitled to take the heritage. That son alone, on whom he devolves his debt, and through whom he tastes immortality, was begotten from a sense of duty: others are considered as begotten from love of pleasure."§

36. Is not the firstborn sole heir?

As hinted by Manu.

ANNOTATIONS.

There are other variations in the reading of this important text, which it appears unnecessary to notice, as they do not concern Jímúta-váhana's exposition of it.

34. To show, &c.] Literally 'From showing' (jnyápanát;) that is, for the purpose of 'showing' (jnyápanáya.) Çríkṙshṇa.

In the manner before explained; by means of declaring partition. Achyuta.

The recital is conformable to the previous knowledge.] How is it a recital of what was known to be at their will; since will is not even mentioned? The author replies, "It is conformable to the previous knowledge." Without will, there is no partition; therefore, by declaring partition, will is suggested. The recital of partition conforms to that. Maheçvara.

35. At the choice of a single person.] At the choice of one out of Achyuta.

Since he has full power in right of ownership, partition by the choice of one is an inference of reasoning. Çríkṙshṇa.

36. Who rescues his father from the hell Put.] This is an allusion to a passage of Manu and others.‖ Vide infra. C. 11. Sec. 1. § 31.

* Manu, 9. 104. Vide Supra, § 14. † Manu, 9. 105.

‡ Vide Infra. C. 5. § 6. & C. 11, Sect. 1. § 31.

§ Manu, 9, 106 & 107. Vide Infra. C. 11. Sect. 1 § 32.

‖ Manu, 9, 138. Vishṇu 15, 43.

37. Not so: for the right of the eldest [to take charge of the whole] is pronounced dependent on the will of the rest. Thus Nárada says: "Let the eldest brother, by consent, support the rest, like a father; or let a younger brother, who is capable, do so: the prosperity of the family depends on ability."* By consent of all, even the youngest brother, being capable, may support the rest.(b) Primogeniture is not a positive rule. For Manu declares: "Either let them thus live together, or let them live apart for the sake of religious merit: since religious duties are multiplied apart, separation is, therefore, lawful."† By the terms "together or apart," and "for the sake," he shows it optional at their choice.

37. No. But he, or any capable brother, may assume the management with the consent of the rest, as declared by Nárada.

Manu authorise separation of coheirs.

38. Thus there are two periods of partition: one, when the father's property ceases; the other by his choice, while his right of property endures.

38. Two periods of partition are admitted.

39. But three periods must not be admitted; one, when a father dies; another, when he is devoid of worldly regards, and the mother's courses have ceased; and a third by his own choice, while the mother continues to be capable of bearing children, and the father still retains temporal affections. For, if the cessation of the mother's courses be joined, as a condition, with the extinction of the father's worldly inclinations, it might be concluded, that partition could not take place among sons, however desirous of it, when the father becomes a hermit (his temporal propensities being extinguished;) since the cessation of the mother's courses cannot yet have happened [while she is still between thirty and forty years of age:‡] for the nubile age, as ordained by Manu,§ is twelve years for a girl to be married to a man aged thirty, and eight years for one to be espoused by a man aged

39. Not three periods; reckoning for one, the time when the ancestor's worldly inclinations cease, his wife being then incapable of bearing more issue.

ANNOTATIONS.

38. Thus there are two periods of partition.] Although the annulment of the father's property, by his own relinquishment, must necessarily be admitted, in the instance of partition by his choice; since partition, mentioned by the author, could not else take place; nevertheless two periods are stated by discriminating the cessation of property from the will to divide it. In fact, since it is an easier explanation, the period when the father's right ceased without special intention of investing another with the property, is the only reason of the son's succession to the heritage. There are not two periods of succession: for that would be a troublesome exposition. This mode of interpretation is consonant to Chúḍámani's opinion. Çrikṛshṇa.

The notion entertained by a certain writer, that the only period is when the father's property ceases, must be rejected as absurd. Achyuta.

(b) See further as to management c. iii. s. i. 15 *infra*: 2 Coleb. Dig. 189, 528, 533: 1 Strange H. L. 199: 2 Ibid. 252, 339, 342: 1 Morl. Dig. 444: as to debts incurred by a manager and the distinction when one of the members is a minor, see *Hunoomanpersaud Panday* v. *Mt. Babooee Munraj Koomveree*, 6 Moo. I. A. C. 393: *Tándava Mudali* v. *Velli Ammál*, 1 Mad. H. C. Rep. 398.—*Ed.*

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* Nárada, 13. 5. † Manu, 9. 111. ‡ Çrikṛshṇa. § Manu, 9. 94.

twenty-four; and the age prescribed for entering into another order is fity years.

40. If it be said, the extinction of passions, without any condition annexed to it, marks the period for a division of the father's estate: that is denied; for it might be thence inferred, that partition would not take place, although the father were a degraded person, if he were not at the same time devoid of temporal regard.

40. Or without that condition.

41. But, if this be pronounced to be another period of partition, then four distinct periods would arise: 1. the demise of the father; 2. his degradation; 3. his disregard of secular objects; 4. his own choice.

41. Four periods else: viz. demise, degradation, disregard of worldly objects, choice.

42. The alleged power of sons to make a partition, when the father is incapable of business [by reason of extreme age, &c.*] has been asserted through ignorance of express passages of law [to the contrary.] Thus Hárita says: "While the father lives, sons have no independent power in regard to the receipt, expenditure and bailment of wealth. But, if he be decayed, remotely absent, or afflicted with disease, let the eldest son manage the affairs as he pleases."† So Sankha and Likhita explicitly declare: "If the father be incapable, let the eldest manage the affairs of the family, or, with his consent, a younger brother conversant with business. Partition of the wealth does not take place, if the father be not desirous of it, when he is old, or his men-

42. The son's power of making a partition, in case of the father's incapacity, is an erroneous supposition.

to express passages of Hárita.

Sánkha and Likhita.

ANNOTATIONS.

But when the father, for the sake of obviating disputes among his sons, determines their respective allotments, continuing however the exercise of power over them, that is not partition: for his property still subsists, since there has been no relinquishment of it on his part. Therefore, the use of the term partition, in such an instance, is lax and indeterminate. Çríkṙshna.

39. But three periods must not be admitted.] The author here opposes the doctrine maintained in the Mitákshára; as is remarked by the commentators Achyuta, Çrikṙshṇa and Maheçvara.

Çríkṙshna observes on the author's argument: 'Since a damsel, twelve years old, being married to a man aged thirty, will be only thirty-two years of age when he is fifty; and a girl of eight, being espoused by a man of twenty-four, will have attained only thirty-four years, when her husband reaches fifty; it must follow,' says the author 'that partition could not take place. But this reasoning is not accurate: for the postponement of partition is admissible, lest sons born after his retirement, if his passions be not extinguished, and his wife accompany him to the wilderness under the option allowed by the law,‡ should be thus deprived of a maintenance. But, if he retire to the wilderness at the later period described by the legislator,§ there is nothing to prevent partition at that time, since the cessation of the mother's courses must have previously taken place.'

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* Çrikṙshṇa. † In the Viváda-ratnákara this is read Kámadáné, "if he be prodigal," (or bestow wealth, according to his mere pleasure;) and the Prakáça is cited for the other reading, Káman díné "as he pleases, (or with the father's consent,) if he decayed (that is, poor.") ‡ Manu, 6. 3. § Manu, 6. 2.

tal faculties are impaired, or his body is afflicted with a lasting disease. Let the eldest, like a father, protect the goods of the rest; for [the support of] the family is founded on wealth. They are not independent, while they have their father living, nor while the mother survives."

43. These two passages, forbidding partition when the father is incapable of business, or when he labours under a lasting disorder, direct, that the eldest son should superintend the household, or a younger son who is conversant with business. The text last cited, therefore, runs "not if the father desire it not;" and it was by mistake that it was written "if he be incapable of business, partition of the wealth takes place,

43. Which forbid partition in such case, and provide for the care of the estate.

An erroneous reading noticed.

44 Two periods are acknowledged: 1st, when the owner's property ceases: 2d, when he chooses to divide.

44. Therefore two periods only are rightly affirmed: one, when property ceases by the owner's degradation from his tribe, disregard of temporal matters, or actual demise; the other by the choice of father, while his property still subsists.

ANNOTATIONS.

42 Thus Háríta says.] The passages, cited in the text, have been here translated, in conformity to the interpretations of Jímúta-váhana's commentators; they are differently explained by other compilers; and in some places read differently.

43. And it was by mistake, that it was written.] It does not clearly appear where Jímúta-váhana found the reading which he here censures. Chúdámani, Achyuta, and Çríkṛishna understand the erroneous reading to have consisted in the substitution of one phrase for the other (káryákkhamé pitari instead of na tvakámé pitari.) But Maheçvara supposes the error to have consisted in the interpolation of the erroneous passage, including the words 'partition of the wealth.' According to him the text means "not if the father desire not, when he is old, &c." na tvakáme pitari and the words "partition of wealth if he be incapable of business" (káryákkhamé pitari ṛktha-vibhágah) are an interpolation which is here condemned. Neither of these variations occur in the text, as cited by the authors of the Kalpatara, Ratnákara and Víramitrodaya; who all agree with Jímúta-váhana in the reading of this passage. But a different text is quoted from Sankha in the Mitákshará, Smṛtichandriká, Chintámani, Mayúkha, and Víramitrodaya;* and its import is the reverse of the one above cited. "Partition of wealth takes place, though the father be not desirous of it, if he be old, or his mind be perverted, or his body be afflicted with a lasting disease." The author of a commentary on the Dáya-bhága, to which Raghunandana's name is affixed, supposes that to be the reading to which Jímúta-váhana here alludes; censuring it as an erroneous quotation in the Mitákshará.

45. When the mother is past child-bearing.] Mother here denotes generally any wife of the father. Çríkṛishna.

Since the condition is stated by way of illustration, it intends generally the impossibility of further male issue. If therefore it be possible, that the father should have issue by another wife, partition should not be made. Achyuta.

Even then, when the father's wife is incapable of bearing issue, partition is by the father's choice.

* It is ascribed to Háríta, instead of Çankha, by the compiler of the Vyavahára

45. The condition "when the mother is past child-bearing,"* regards wealth inherited from the paternal grandfather. Since other children cannot be borne by her, when her courses have ceased, partition among sons may then take place: still, however, by the choice of the father. But, if the hereditary estate were divided while she continued to be capable of bearing children, those, born subsequently, would be deprived of subsistence. Neither would that be right: for a text expresses, "They who are born, and they who are yet unbegotten, and they who are actually in the womb*(b)*, all require the means of support: and the dissipation of their hereditary maintenance is censured."†

45. The restriction concerning the father's wife being incapable of child bearing regards the patrimony.

46. It is because there are two periods of partition, in the case of the father's wealth, that Manu, Gautama and others, avoid the word "dead," and use the term "after."‡ Since the father's right then ceases, the term "after," is employed to express that sense. Hence this is one period of partition. Another, regulated by his choice, while he does retain worldly affections, is indicated by the text "a son born after the division, &c."§

46. Passages of the law intimate one period of partition, when property ceases; and another, by the choice of the owner.

47. The condition "and when the sisters are married"‖ does not intend a distinct period, but inculcates the necessity of disposing of them in marriage: as the text of Nárada "What remains of the paternal inheritance over and above the father's obligations and after payment of his debts, may be divided by the brethren; so that their father continue not a debtor;"¶ is intended to inculcate the obligation of paying the father's debts, not to regulate the time of partition.

47. The restriction concerning the marriage of sisters inculcates the obligation of disposing of them in marriage,

Like an injunction concerning debts of the father.

ANNOTATIONS.

46. This is one period of partition.] The period when property ceases, is one of the periods of partition.] The other, different from the cessation of property, is the moment of the father's choice. Çrí*k*rishṇa.

It is the moment of his will to divide his property. Achyuta.

47. Over and above the father's obligation.] Or sums, of which payment had been promised by him. Achyuta.

* Nárada, 13. 3.

(*b*) See 7 Moore I. A. Ca. 182, and infra ch. vii. secs. 11, 12.—*Ed.*

† Vyása. The close of this passage is read otherwise in the Mitákshará Smṛtisára, Prakaça, Chintámaṇi, &c., viz "No gift or sale should be made." Raghunandana in the Dáya-tatva, Çrí*k*rishṇa, and Vidyáváchespati in the Dáya-rahasya, copy Jímúta-váhana's reading of the passage.

‡ Manu, 9, 104. Gautama, 28. 1.

§ Manu, 9. 216. Nárada, 13, 43.

‖ Nárada, 13. 3.

¶ Nárada, 3. 32.

48. From that text of Nárada, it results, that co-heirs, making a partition, may apportion the debts of their father or other predecessor, with the consent of the creditors, or must immediately discharge the debts. For such is the purpose of ordaining a partition of the residue after payment of debts. Accordingly Yájñavalkya propounds the distribution of a mother's wealth, remaining over and above her debts. "Daughters share the residue of their mother's property, after payment of her debts: and the male issue, in default of daughters."* This will be fully considered under the head of debt.†

48. For the father's debts must be discharged, or be apportioned on the co-heirs; before partition of his wealth. And the mother's debts, before her goods are divided; as Yájñavalkya directs.

49. Or the restriction may signify, that the mother's effects should be shared by the sons, if their sisters have been given in marriage: but, if they be unmarried, the inheritance is held in common with them. This will be explained in due time.‡

49. The restriction concerning daughters may regard the succession to their mother's goods.

50. It is thus established [by reasoning, as well as by positive law,§] that two periods exist for the partition of wealth appertaining to a father [whether acquired by himself or inherited from ancestors.]‖

50. Conclusion. The periods for dividing the father's possessions are two.

ANNOTATIONS.

49. The mother's effects.] Other than such as were received by her at her marriage: for it will be shown, that the son's right of succession to such goods is subsequent to the daughter's son. Çríkṙshṇa.

50. It is thus established, &c.] When partition is made by the father, his choice only is requisite, if the estate were acquired by himself; but if it be an estate inherited from ancestors, his will, joined with the circumstance of the mother being past childbearing, is required. Çríkṙshṇa, Dáyakrama.

* Yájñavalkya, 2. 128. Vide Infra. C. 3. § 4.

† The author refers to his treatise on debt, which is not extant; if indeed it were ever completed.

‡ See chapter 4.

§ Çríkṙshṇa.

‖ Maheçvara.

CHAPTER II.

Partition, made by a Father,—of property ancestral,—and of his own acquisitions.

1. Vrihaspati authorizes partition, no more issue may be expected.

1. In the next place, the period for the distribution of an estate left by a paternal grandfather or other ancestor, is propounded(c). On that subject Vrihaspati says "On the demise of both parents, participation among brothers is allowed: and even while they are both living, it is right if the mother be past child-bearing."*

2. This relates to property ancestral, the restriction concerning the wife being past child-bearing regards that.

2. This passage does not relate to the father's wealth; for the text, concerning the exclusive right of a son born after partition,† would be without relevancy: since there can be no son born when the woman is past child-bearing. Nor can it be supposed to relate to the mother's goods: for she would thus be stript of her wealth. The condition, that she be past child-bearing, must then relate to the estate of the grandfather or other ancestor.

3. It is no reason of partition, independently of the owner's choice.

3. Neither can the circumstance of her being past child-bearing, be a cause of partition, independently of choice: for there can be no partition without a will to make it.

4. Partition is by the father's choice: as intimated by Gautama.

4. If it be asked, 'admitting a choice, whose must it be?' The answer is, 'the father's;' as deduced from the text of Gautama: "After the [demise of the] father, let sons share his estate. Or while he lives, the mother be past child-bearing, and he desire partition."‡

ANNOTATIONS.

also
the mother
father's estate, not the father's: for the succession of a son born after partition is in this case provided for. Ragh. Dáya-tatva.

(c) See as to the alienation of ancestral estate, 2 Coleb. Dig. 98: 1 Strange H. L. 200: 1 Macn. Princ. H. L. 2, 4, et seq. 4. 6: Macn. Cons. H. L. 4, 5, 242. 340: 2 S. D. A. Rep. 214 in *Dáyakráma Sangraha* 96, referred to in 1 Morl Dig. 38.—*Ed.*

Vide infra, C. 3. § 1.
Gautama, 28. 1—2.

† Manu, 9. 216. Nárada, 13. 44.

5. One period of partition is after the death of both parents.
It should not be made while the mother is living.

5. Hence [since such is the import of Vṛihaspati's text*] the decease of both parents is one period [for the partition of the grandfather's estate :†] and since "parents" are here exhibited in the dual number, a division of the father's estate, among brothers of the whole blood, ought [in strictness‡] to be made only after the decease of the mother.

6. This does not relate to her separate property.

6. The mention of the mother's demise, does not here imply partition of her goods : since the phrase "even while they are both living" cannot relate to the mother's separate property. It must be understood as relating to the property of another person ; for the legality of partition in the instance of survival is there propounded, (as appears from the word even,) in the same case, in which the demise of both parents was declared a reason of distribution. The death of the mother must not be expounded as relative to her goods. This subject will be fully considered in its place.§

7. One period as above. The other by the choice of the father, provided the mother be past child-bearing.

7. Therefore the death of both parents is one period for partition of an estate inherited from a grandfather or other ancestor, and the other is by the choice of the father when the mother is past child-bearing.

8. But not without his consent : as appears from many passages of Manu, &c.

8. A division of it does not take place without the father's choice ; since Manu, Nárada, Gautama, Baudháyana, Çankha and Likhita, and others, (in the following passages, "they have not power over it,"‖ "they have not ownership while their father is alive and free from defect,"¶ "while he lives, if he desire partition,"** "partition of heritage by consent of the father,"†† "partition of the estate being authorized while the father is living," &c.‡‡) declare without restriction, that sons have not a right to any part of the estate, while the father is living, and that partition awaits his choice : for these texts, declaratory of a want of power, and requiring the father's consent, must relate also to property ancestral ; since the same authors have not separately propounded a distinct period for the division of an estate inherited from an ancestor.

* Çríkṛishna. † Çríkṛishṇa.
‡ Maheçvara supplies this limitation of the text.
§ Chapter 4.
Manu, 9. 104. Vide. § 14.
Cited as from Nárada, but is part of a passage of Dévala.
** Gautama, 28. 2. †† Baudháyana.
‡‡ Çankha, and Likhita.

9. The text of Yájñavalkya ("The ownership of father and son is the same in land which was acquired by his father, or in a corrody, or in chattels,"*) properly signifies, as rightly explained by the learned Udyota, that, 'when one of two brothers, whose father is living, and who have not received allotments, dies leaving a son; and the other survives; and the father afterwards deceases; the text, declaratory of similar ownership, is intended to obviate the conclusion, that the surviving son alone obtains his estate, because he is next of kin(*d*). As the father has ownership in the grandfather's estate: so have his sons, if he be dead. There is not in that case, any distinction founded on greater or less propinquity; for both equally confer a benefit by offering a funeral oblation of food, as enjoined at solemn obsequies.' Such is the author's meaning.

9. A text of Yájñavalkya concerning the equal right of father and son, cited and explained.

A grandson, whose father is dead, shares with his uncle the grandfather's estate.

10. Accordingly a great grandson, whose father [as well as grandfather†] is deceased, is in like manner an equal claimant with the son and grandson. For he likewise presents a funeral oblation.

10. And a great grandson, whose father and grandfather are dead, shares the great grandfather's property.

•

11. But, if sons had ownership, during the life of their father, in their grandfather's estate, then, should a division be made between two brothers one of whom has male issue and the other has none, the children of that one would participate, since [according to your opinion‡] they have equally ownership.

11. If the text be otherwise explained, grandsons, whose father is living, would participate with their fathers and uncle.

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9. The learned Udyota.] It is not agreed, who is the author here cited by Jímúta-váhana. The commentator Chúḍámani says 'some author or compiler so named.' Maheçvara retains the name exhibited in the text and calls him Udyota. But Çríkṛishṇa hints, that his appellation is Diváḳara. While Achyuta interprets the phrase as commendatory of an unnamed writer: and Raghunandana, or the commentator who has assumed his designation, intimates, that the author himself has here delivered his own doctrine. Udyota is again mentioned in another place. Vide C. 11. Sect. 6. § 32.

The text of Yájñavalkya is thus expounded in Raghunandana's treatise entitled Dáya-tatva. 'In regard to the land, a çorrody, or slaves, though acquired by the grandfather; as the father has the property of them, in right of his being the person who presents a funeral oblation at solemn obsequies, so, if his property cease by death or other cause, his sons have a right, though their uncle survive, to so much as should have been their father's share.'

Where a Hindú died possessed of real property and leaving a son and grandson an equal right descends to each and not to the son alone. *Duyashunkur Kasseeram* v. *Brijvullubh Moteechund*, Sel. Rep. 41, cited 1 Morl. Dig. 307.—*Ed.*

* Yájñavalkya, 2. 122. † Maheçvara. ‡ Çríkṛishṇa.

12. The former interpretation agrees with the context.

12. It should not be objected that such cannot be the meaning of the text, as not being the subject premised: for the case of grandsons by different fathers, was the proposed subject.

13. Corrody, mentioned in the preceding text, explained.

13. A "corrody" (‡9) signifies what is fixed by, a promise in this form, "I will give that in every month of Kartiḱ."

14. Chattels intend slaves.

14. "Chattels."] From their association with land, slaves must be here meant.

15. Or the text may be understood as forbidding the unequal division of property ancestral.

15. Or the meaning of the text (§9) may be, as set forth by Dhárécvara, 'A father, occupied in giving allotments at his pleasure, has equal ownership with his sons in the paternal grandfather's estate. He is not privileged to make an unequal distribution of it, at his choice, as he is in regard to his own acquired wealth.'

16. That agrees with a passage of Vishṇu.

16. So Vishṇu says "When a father separates his sons from himself, his will regulates the division of his own acquired wealth. But, in the estate inherited from the grandfather, the ownership of father and son is equal."*

17. The father may distribute his own acquisitions as he pleases, but not the patrimony.

17. This is very clear. When the father separates his sons from himself, he may, by his own choice, give them greater or less allotments, if the wealth were acquired by himself: but not so, if it were property inherited from the grandfather; because they have an equal right to it. The father has not in
cretion.

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12. Was the proposed subject.] It was the subject of the preceding passage in Yájñavalkya's text.†

13. A corrody.] The author explains corrody (nibandha) as signifying any thing which has been promised, deliverable annually, or monthly, or at any other fixed periods. Çríḱṛshṇa.

Raghunandana, in the Dáya-tatva, cites from the Kalpataru this definition, "A fixed amount granted by the king or other authority, receivable from a mine or similar fund."

14. Slaves must be meant.] Immoveables and bipeds are mentioned together in a subsequent text. From that association, it is inferred, that the term chattel here intends biped or slave. Chúḍámaṇi.

For if the term intend substance in general, the mention of land and corrody, and the specific notice of chattels, would be superfluous. Achyuta.

15. As in regard to his acquired wealth.] He may not in this case, as in the distribution of his own property, (for there he had the option,) give unequal shares to his sons. Dáya-tatva.

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* Vishṇu, 17. 1—2. Vide Infra. § 55. and § 76.

† Yájñavalkya, 2. 121.

18. The doctrine of the Mitákshará, &c. concerning equal participation of father and son, and the right of the latter to require partition, is rejected.

18. Hence [since the text becomes pertinent by taking it in the sense above stated;* or because there is ownership restricted by law in respect of shares, and not an unlimited discretion;†] both opinions, that the mention of like ownership provides for an equal division between father and son in the case of property ancestral, and that it establishes the son's right to require partition, ought to be rejected.

19. Other texts similarly forbid an equal division.

19. Other texts should be explained in the very same manner.

20. The father takes a double share as usual; and the partition is by his choice.

20. It is consequently true, [since the texts above cited do not imply co-ordinate ownership,‡] that the father has his double share of wealth inherited from the grandfather or other ancestor; and that a distribution takes place at the will of the father only, and not by the choice of his sons.

21. A passage of Manu and Vishnu, exempting from partition the patrimony recovered by the father, unless by

21. "If the father recover paternal wealth [seized by strangers, and§] "not recovered [by other sharers,‖ nor by his own father¶] he shall not, unless willing, share it with his sons: for in fact it was acquired by him."** In this passage, Manu and Vishṇu, declaring that he shall not, unless willing, share it, because it was acquired by himself, seem thereby to intimate a partition among sons even against the father's will, in the case of here-

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18. Both opinions ought to be rejected.] The opinions, here rejected, are those of the author of the Mitákshará and others. Çríkṛishṇa and Achyuta.

19. Other texts.] A text of Vṛihaspati, concerning the equal power of father and son over property moveable or immoveable, acquired by the grandfather, is here alluded to. Maheçvara.

Such text must be interpreted as forbidding an equal distribution of the grandfather's property, among the grandsons, by their father. Çríkṛishṇa.

20. Has his double share.] It is true, that he has two shares, since passages, which will be hereafter cited, authorize him to reserve a double allotment when partition is made in his lifetime. Çríkṛishṇa, Chūḍámaṇi, and Achyuta.

At the will of the father.] By the text of Gautama before cited (§ 4,) partition depends on the father's choice. Çríkṛishṇa, &c.

21. And not according to his own pleasure.] Not according to his mere will: but as choice governed by dread of sin inclines. Thus it must be understood, that, if they be able to subsist by other means, there is no offence in his giving them no share of land or similar property recovered by him. For it is the unequal distribution of patrimony not so retrieved, that is prohibited. Çríkṛishṇa.

and Achyuta.

† Maheçvara.

‡ Achyuta.

‖ Çríkṛishṇa and Achyuta.

Maheçvara.

** Manu 9. 209.

his free will, does not authorize the sons to demand partition of other patrimony against his will.

ditary wealth not acquired [that is, recovered,] by him. But here also, the meaning is, that a father, setting about a partition, need not distribute the grandfather's wealth which he retrieved: but must so distribute the rest of it, and not according to his own pleasure. Those authors do not thereby indicate partition at the choice of sons.

22. The father has ownership in gems, pearls and other moveables, though inherited from the grandfather, and not recovered by him, just as in his own acquisitions; and has power to distribute them unequally, as Yájñavalkya intimates. "The father is master of the gems, pearls and corals, and of all [other moveable property:] but neither the father, nor the grandfather, is so of the whole immoveable estate."*

22. Moveables, though inherited, may be unequally divided at pleasure, like new acquisitions. So Yájñavalkya

23. Since the grandfather is here mentioned, the text must relate to his effects. By again saying "all" after specifying "gems, pearls, &c." it is shown, that the father has authority to make a gift or any similar disposition of all effects, other than land, &c., but not of immoveables, a corrody and chattels [i. e. slaves.] Since here also it is said "the whole," this prohibition forbids the gift or other alienation of the whole, because [immoveables and similar possessions are†] means of supporting the family. For the maintenance of the family is an indispensable obligation; as Manu positively declares. "The support of persons who should be maintained is the approved means of attaining heaven. But hell is the man's portion if they suffer. Therefore [let a master of a family] carefully maintain them."‡

23. His text expounded.

Manu inculcates the duty of maintaining the

24. The prohibition is not against a donation or other transfer of a small part not incompatible with the support of the family. For the insertion of the word "whole" would be unmeaning [if the gift of even a small part were forbidden.§]

24. A small part of the immoveables may be aliened, though the gift of the whole be forbidden.

ANNOTATIONS.

23. **By again saying "all."**] The separate use of the term "all" must be meant to suggest gold and other moveables. For it cannot be an epithet of gems, &c., since it does not agree in number. Çríkṛshṇa.

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* Cited also as a passage of Yájñavalkya by Çríkṛshṇa in the Dáyakrama, and Raghunandana in the Dáya-tatva. But the quotation in the Mitákshará, (whence it has been evidently taken,) is anonymous.

† Çríkṛshṇa. ‡ Not found in Manu's Institutes. §

25. The prohibition regards land, pensions and slaves.

25. From the express mention of immoveables, a prohibition is inferred by the analogy exemplified in the loaf and staff, against the gift or other transfer of a corrody or of slaves.

26. But, if the family cannot be supported without selling the whole immoveable and other property, even the whole may be sold or otherwise disposed of: as appears from the obvious sense of the passage; and because it is directed, that a man should by all means preserve himself.

26. But, if necessary, the whole may be sold.

27. It should not be alleged, that by the texts of Vyáśa ("A single parcener may not without consent of the rest, make a sale or gift of the whole immoveable estate, nor of what is common to the family." "Separated kinsmen, as those who are unseparated, are equal in respect of immoveables: for one has not power over the whole, to give, mortgage or sell it."*) one person has not power to make a sale or other transfer of such property. For here also [in the very instance of land held in common,†] as in the case of

27. Texts of Vyása cited. They do not disable the owner from aliening his property.

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25. The loaf and staff.] This example of analogy, to which frequent allusion is made in argumentative writings, is variously stated. According to one explanation, the reasoning, exemplified by it, is analogy drawn from association. According to another, it is an argument a fortiori. A loaf having been left suspended on a staff, the loaf is missing and the staff is observed to have been gnawed by rats: it is concluded, that the loaf has been devoured by them. A staff being thrust through loaves, these are necessarily brought by bringing the staff. Other explanations are given: but the result is similar. Çríkṙshṇa, Maheçvara, &c. Also Ragh. Dáya-tatva. Vide infra. C. 3. §. 15. in notis.

A prohibition is inferred.] The prohibition extends to a corrody and slaves, because they are exhibited in conjunction with land. (Yájñavalkya 2. 122.) Maheçvara.

Because the three are yoked together. Çríkṙshṇa.

26. As appears from the obvious sense, &c.] For the obvious sense of the passage inculcates the obligation of maintaining the family.

In like manner, if there be no land or other permanent property, but only jewels or similar valuables, he is not authorized to expend the whole: for the reason holds equally. But the declaration of a power over moveables supposes the existence of both sorts of property. It should be so understood. Çríkṙshṇa.

27. It should not be alleged, &c.] To refute Chaṇḍeçvara's doctrine, that gift without the consent of co-heirs, is invalid; and that such gift, though actually made, must be set aside, as the mere semblance of donation; the author states it by way of objection. Çríkṙshṇa, Achyuta on Dáya-Bhága. Káçiráma on Dáya-tatva.

The author here imagines an objection to the opinion which he himself entertains, that a gift or other alienation made by an unseparated brother, or co-heir, is valid like a transfer made by a father. Ragh. on the Dáya-bhága.

In fact, the requiring of the assent of co-heirs in the case of separated brethren, is for the purpose of ascertaining the fact of partition and settling the limits, like the consent of townsmen and neighbours. Therefore the transfer is valid without the concurrence of a separated co-heirs: as has been shown in the Mitákshará. Ragh. Dáya-tatva.

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* Both stanzas are here ascribed by Jímútá-váhana (and similarly by Çríkṙshṇa) to Vyása; but the second is cited in the Ratnákara as a passage of Vṙihaspati.

† Çríkṙshṇa Dáyakrama.

28. But the texts of Vyásа (§27,) exhibiting a prohibition, are intended to show a moral offence: since the family is distressed by a sale, gift or other transfer, which argues a disposition in the person to make an ill use of his power as owner. They are not meant to invalidate the sale or other transfer.

28. They show a moral offence. But do not invalidate the transfer.

29. So likewise other texts (as this, "Though immoveables or bipeds have been acquired by a man himself, a gift or sale of them should not be made by him, unless convening all the sons,") must be interpreted in the same manner. For here the words "should" "be made" must necessarily be understood.

29. Other passages must be similarly explained.

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On the question whether goods held in common may or may not be aliened by one of the parceners, some maintain, that joint property may not be given away by one parcener, because joint or common property is mentioned in a text of Manu* among things not fit to be given. It is accordingly declared by two passages of Vyása,† that a single parcener has not power to make a gift or other alienation. The notion of these writers is, that a sale or other transfer made by the will of a single parcener, is invalid, because all have property in the whole wealth; for they maintain a common right to the whole, vested in all. That is wrong: for a common property vested in all is denied by the author of the Dáya-bhága, because there is no proof of it. Çríkṙshṇa, Dâyakrama.

Separated kinsmen.] This is according to the reading in the Mitákshará, Dáya-bhága, Dáya-tatva, Víramitrodaya, &c. But in the Smṙtichandriká, Párijáta, Kalpataru, Ratnácara, Chintâmaṇi, &c., the reading is Dáyadáḥ, "heirs," instead of Sapiṇḍáḥ, "kinsmen." However, Chaṇḍeçvara remarks, "heir" here signifies sons, &c. And the term is so explained by the author of the Prakáça.

28. Not to invalidate the sale.] Since there is not a general property of the whole, a community of rights, consisting in there being numerous owners to the same thing, does not exist: and community signifies only the state of not being separated. But here it is the notion of the author of the Dáya-bhága, who maintains a several right to a part vested in each person, that nothing prevents a donation or other transfer of the coparcener's own share, even before partition, since a common property is already vested in him. Çríkṙshṇa, Dáyakrama.

29. Must be understood.] It should not be asked why may not the words understood be "is" "valid" or "is" "possible"? Were it so, the verb could not be governed by the same term with the participle ("convening.") Çríkṙshṇa on Dáya-bhága.

(*c*) The opinion of Jagannátha (2. Cole. Dig. 56, 215) and of the authors quoted by him on the general question of alienations by one of several co-parceners without consent of the rest, decidedly is that the sale or transfer is valid so far as concerns the seller's own share, but not so for the shares of his co-heirs who were not consenting. Jímúta-váhana is not so explicit; but it does not appear from his text or the observations of his commentator that his doctrine can be understood as going any further than to maintain the sale or alienation by a father of a family, for the whole patrimony, without consent of his sons, or by a co-heir for his own share of the inheritance, without the assent of the co-parceners, 1 Morl. Dig. 40. p. 1.—

* The passage here cited is not found in Manu's institutes, and is quoted by most compilers from Vṙhaspati. The author of the Vivâda Chandra has silently introduced into it, a reading, which, if genuine, would make it confirm the contrary doctrine. For, as read by him, the passage in question enumerates void gifts.

† Cited in the text.

30. The precept is infringed, but the transfer is not null.

30. Therefore, since it is denied, that a gift or sale should be made, the precept is infringed by making one. But the gift or transfer is not null: for a fact cannot be altered by a hundred texts(*a*).

31. This inference is corroborated by a passage of Nárada.

31. Accordingly [since there is not in such case a nullity of gift or alienation.*] Nárada says: "When there are many persons sprung from one man, who have duties apart, and transactions apart, and are separate in business, and character, if they be not accordant in affairs, should they give or sell their own shares, they do all that as they please, for they are masters of their own wealth."†(*b*)

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30. A fact cannot be altered by a hundred text.] If a Bráhmaṇa be slain, the precept "slay not a Bráhmaṇa," does not annul the murder: nor does it render the killing of a Bráhmaṇa impossible. What then? it declares the sin. Ragh. on Dáya-bhága.

31. Nárada says.] The passage of Nárada's institutes, here cited, is otherwise interpreted by different compilers; and is generally understood as declaring the separate and independent right of co-heirs, who have made a partition. It is so expounded in the Smṛtikhandriká, Ratnákara, Chintámaṇi, Víramitrodaya, &c. But, in the present quotation, it is apparently understood as relating equally to divided and undivided shares.

The author of the Víramitrodaya giving a summary of this doctrine, says, 'Jímútaváhana, having cited two passages of Vyása (§27), affirms, that they are not intended to incapacitate a single co-heir for making a sale or gift; since he has property defined to be a power of disposal at pleasure, in the case of immoveables, precisely as in that of other effects; and since those texts cannot declare null an actual gift consisting in the relinquishment of the property; for the fact cannot be altered by a hundred texts. But the prohibition is levelled against wicked persons, and is intended to declare the alienation sinful, because it is injurious to the family, if there were no sufficient cause for the alienation, such as the distress of the family or the like. So the texts (§29) relative to separated co-heirs must be explained as above. Accordingly Nárada authorizes generally a sale or any other alienation (§31). Since the text specifies the reason, "because they are masters of their own wealth," it relates to immoveables; for it would else be impertinent.'

Çríkṛshṇa and Achyuta on the Dáya-bhága of Jímúta-váhana, Káçiráma on the Dáya-tatva and Raghunandana, remark on Nárada's text (13. 14.) 'This relates to gift or alienation by a well disposed man. But the prohibition was relative to an ill disposed person. [Consequently there is no contradiction.‡] It is here expressly declared, that the gift or alienation is valid without consent of heirs. And thus the prohibition of gift or sale of the whole estate, unless in distress, must be understood as especially regarding immoveables (land, &c.) rather than chattels (gems, pearls, coral, &c.) But, if this relate to a man's own acquisitions, the preceding text (§22) would be impertinent. [For he had of course power over them, since they were acquired by himself.§]'

(*a*) See *Eshanchund Rai* v. *Eshorchund Rai*, 1 S. D. A. Rep. 2 and Colebrooke's note 1 Morl. Dig. 38. See too, 1 Strange, H. L. 24.—*Ed.*;

(*b*) Each of the holders of separate shares of one hereditary zamíndárí may sell his share to whom he pleases, and the other sharers have no necessary right of pre-emption, *Ramrutun Sing* v. *Chunder Naraen Rai*, 1 S. D. A. Rep. 1, see Colebrooke's note 1, Morl. Dig. 535.—*Ed.*

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* Nárada, 13, 42-43. Several variations occur in the reading of this passage; particularly in the third and fourth verses of the first stanza; as Samyak, well, for Pṛthak, apart; and Kṛtyeshu for Káryeshu.

† Çríkṛshṇa and Achyuta.

‡ Achyuta. § Káçiráma on Dáya-tatva.

32. We resume the subject. Thus, for the reasons before stated, since the equal participation of father and son in the estate of the grandfather or other ancestor would be incongruous;* and since it cannot be intended by the text (§ 9) to confer on sons a right to demand partition; that text must either be meant to prevent an unequal distribution depending solely on the father's pleasure, [according to Dhâreçvara's interpretation; § 15.†] or it must intend the equal right of a nephew whose father is deceased, to share with his uncle; [conformably with the other exposition. § 9.‡]

32. Recapitulation. The text, (§ 9) has been rightly expounded.

33. Thus [since sons have not power to require partition §] a division even of wealth inherited from the grandfather must be made by the sole choice of the father. But, with this difference, that it is requisite, the mother should have ceased to be capable of bearing issue: whereas, in the instance of his own acquired property, partition takes effect without that condition. But, after the demise of the father, it takes place equally in the case of both sorts of property [the father's estate or the grandfather's ||] without distinction.

33. Partition is by the choice of the father. When the mother is past childbearing; if the estate be hereditary. Or after the father's demise.

34. Therefore the periods of partition are two, even in the case of wealth inherited from ancestors.

34. The periods of partition are two.

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32. We resume the subject.] The sons have not a right to participate equally with the father in the grandfather's estate, and that partition is not exigible at the will of grandsons, are positions which constituted the subject under consideration. Chūḍámaṇi and Çríkṙshṇa.

Partition of the estate of a paternal grandfather or other ancestor, was the subject. Achyuta.

Since equal participation would be incongruous.] For a reason which will be subsequently stated. Çríkṙshṇa.

For it is provided by positive institute ¶ (§ 35.) that the father shall have two shares of such property. Maheçvara.

Since it cannot be intended &c.] For the reasons before mentioned. Çríkṙshṇa.

34. The periods are two.] The cessation of the father's property, by death or otherwise, and the father's own choice, provided the mother be incapable of bearing more children, are the two periods here meant. But in fact, whether it be an hereditary estate, or his own acquired property, the time of the father's property ceasing is the only admissible period of partition. The distinction is, in the case of dividing the grand-father's estate, that the circumstance of the mother's being incapable of bearing more children is associated with it. This should be understood; for, even in the instance of a distribution made by the father, his property in the share receivable by his son is annulled by his own relinquishment. Else, if the father's property subsist, his goods could not become heritage, nor be subject to partition; since his sons have no previous vested right. Çríkṙshṇa.

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* Maheçvara reads 'since the ordaining of equal participation, &c. would be incongruous:' inserting the word Vidhána, which is omitted by Çríkṙshṇa in his reading, of this passage.

† Maheçvara. ‡ Conformably with Udyota's exposition. Maheçvara. § Çríkṙshṇa.

|| Chūḍámaṇi. ¶ Nárada, 13. 12. Vide §

35. In such case, if the father voluntarily make a partition with his sons, he may reserve for himself a double share of property ancestral. Vṛihaspati, saying "The father may himself take two shares at a partition made in his life time;" and Nárada,* "Let the father, making a partition, reserve two shares for himself; do so ordain, without restriction.

35. The father takes a double share of the patrimony; as ordained by Vṛihaspati and Nárada.

36. Besides, a double share of the grand-father's wealth is the father's due by this [following†] argument.

36. This is confirmed by analogy.

37. Deductions of a twentieth part (with the best of all the chattels,) and of half a twentieth, and of a quarter thereof, are propounded by a passage of Manu: ("The portion deducted for the eldest is the twentieth part of the heritage, with the best of all the chattels; for the middlemost, half of that; for the youngest a quarter of it,"‡) and shares increased by one portion, by half of one, and by a quarter, are propounded by other passages of the same author: ("If a deduction be thus made, let equal shares of the residue be allotted: but if there be no deduction, the shares must be distributed in this manner; let the eldest have a double share; and the next born, a share and a half; and the youngest sons each a share: thus is the law settled."§) Gautama likewise, after directing, that "A twentieth part shall belong to the eldest, besides a pair [of goats or sheep,] a car, together with beasts that have teeth in both jaws, and also a cow and bull;"‖ (i. e. a pair of goats, or the like,

37. For an elder [illegible] takes two

And Gautama.

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35. Without restriction.] According to the author's own doctrine, the double allotment concerns hereditary property only, and is consequently propounded with discrimination of cases. But, according to the opinion of his opponent, who admits the double share in the case of the father's own [acquired] property, the allotment of such share is here declared in regard to the grand-father's estate also, since there is no specified restriction of it to the father's wealth. Ragh. on Dáya-bhága.

36. By this argument.] Having in the preceding paragraph shown, that a double allotment for the father is ordained by express passages of law, the author proceeds to show by the following reasoning, that, since a double share is allotted to the elder brother, two shares must a fortiori be given to the father who is entitled to greater reverence. Maheçvara.

37. Middlemost.] Here the word middlemost intends the next after the eldest: and those born after him are all comprehended under the term youngest. Çrík*ṛ*shṇa.

A pair of goats &c.] Or of sheep or other cattle. But kine are separately mentioned. Çrík*ṛ*shṇa.

Provided the cattle be numerous.] But if they be few, the distribution should be adjusted in proportion to the deduction receivable by the eldest. Çrík*ṛ*shṇa.

A house.] A habitation other than that which is the father's abode. For so ordains.

* Nárada, 13. Manu, 9. 112. † Chṛ́ḍámani, &c. § Manu, 9. 116—117. ‖ Gautama, 28. 5.

a car with horses or other beasts having teeth in both jaws, and a bull together with a cow; all this shall belong to the eldest;) and after directing, that "Cattle blind of one eye, or aged, dwarfish, or disfigured, shall belong to the middlemost, if there be more than one;"* (i. e. aged or old, dwarfish or stunted, disfigured or having a distorted tail; these shall appertain to the middlemost, provided the cattle be numerous;) and after further directing, that "A sheep, grain, iron, a house, and, together with a cart, one of each sort of quadruped, shall be given to the youngest; all the residue shall be equally divided;"† (i. e. a sheep and other things, as specified, shall be allotted to the youngest; but let the brethren divide equally the whole of the residue;) has by the following passage allotted to a double share to the eldest: "Or let the first born have two shares, and the rest take one apiece."‡

38. It must not be argued, that the eldest has a double share allotted to him as the acquirer of the wealth. For the allotment of two shares is directed "if there be no deduction:" now a deduction could not be supposed in the case of an acquisition; and, since the middlemost and youngest are not, inasmuch as they are acquirers of the property, distinguished from the eldest, the assigning of a share and a half, or other less portion, [as a share and a quarter,§] to them, would be incongruous, and the use of the term "eldest," &c. would be impertinent.

38. Not as acquirer of the wealth.

39. Accordingly, in the case of a partition between an appointed daughter and a true legitimate son, Manu ordains, "A daughter having been appointed, if a son be afterwards born, the division of the heritage must in that case be equal, since there is no right of primogeniture for the woman."‖ Thus propounding equal partition, because there is no right of primogeniture in this instance by reason of her sex, the author thereby intimates, that a male would have had a double share [in right of his being eldest.]¶

39. But in right of primogeniture: as hinted by Manu, who denies that right to the appointed daughter.

40. In regard to what is said, that as in the instance of the Holáká, a passage of revelation to this effect, "The Holáka ought to be performed," is assumed for the justification of the practice of celebrating that festival which

40. The maxim, that more is not to be assumed

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39. Accordingly.] Since priority of birth determines the right to a superior allotment. Achyuta.

Since the right to a double share is founded on primogeniture. Çríkṛshṇa.

40. As in the instance of the Holáká.] The author proceeds to refute the opinion of some writer, who reconciles the matter on the principle of the reasoning taught under the head of Holáká. Maheçvara.

It is the 8th topic in the third chapter of the 1st book of Jaimini's Mímánsá. Vide infra. C. 6. Sect. 1.—§ 22.

* Gautama, 28. 6. † Gautama, 28. 7—8. ‡ Gautama, 28. 9—10.

§ Çríkṛshṇa. ‖ Manu, 9. 134. Vide infra. C. 10. § 2. ¶ Ragh. on Dáya-bhága.

than is necessary, does not authorize the assumption, that the precept relates to an acquirer.

is in use among the Práchyas; (for it can be sufficiently justified by such a passage; and one, containing the word Práchya or other restrictive term, need not be supposed, since the proof of it would be burdensome;) so, in this case likewise, a passage of revelation in these words, "Let the acquirer take a double share," must be inferred, and not one containing the word "eldest" or other restrictive term. That argument is not right; for, in the one case, the practice observed by the Práchyas can be justified by a general precept of revelation, which must be presumed to that end. It should not be alleged, that one containing the term Práchya must be supposed for the sake of justifying the omission of that festival by others than Práchyas. Omission, consisting in non-performance, is no fit reason for presuming a lost revelation. But, here, since Manu and the rest use the word "eldest," a passage of scripture containing that term ought to be presumed to justify its insertion; not one exhibiting the word "acquirer;" since there is no neccssity for assuming this: nor is there any special authority for the proof of one containing both terms. It should not be alleged, that, since it is necessary to suppose a revelation for the purpose of authorizing the acquirer's double share in other cases, that may be the origin of the law in this case also, for it is an easy conclusion, and the word "eldest" may signify the acquirer. The reverse is equally possible; for if, a revelation containing the term "eldest" be supposed, even the word "acquirer" might just as well be presumed to signify eldest, since there is no ground of preference. Besides, on the same principle of facility, a supposed passage of scripture, containing three, four, or more terms, may be any how inferred from reasoning; and the terms of the whole law may be made to relate to it, by interpreting them according to analogy and metaphor; and thus may you demonstrate your skill in the law. Therefore, since an established practice, or a sentence of memorial law, from which a passage of scripture is to be inferred, may be sufficiently justified by assuming a passage in which the particular practice is described, or the words of the law are contained; more should not be presumed. And such is the import of the reasoning, instanced under the head of Holáká.

41. Accordingly [since primogeniture and acquisition are severally, and independently of each other, reasons for the allotment of a double share.*] Vasishṭha, having ordained a double share for the eldest brother, sepa-

41. Vasishṭha distinctly assigns two shares to the

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The Holáká is the festival of spring (Vasanta,) and is observed by the Práchyas. Çríkṛshṇa.

It is called Holâká or Hóli. The Práchyas are the orientals contrasted with the Udíchyas, or people of the north, and Dákshinatyas, or people of the south. The celebration of the Holí is peculiar to the eastern Hindús, as the festival or worship of Karanjárka is peculiar to the southern Hindús. See Çríkṛshṇa, &c.

41. Would be impertinent.] For two passages of one author cannot signify the same thing; since one of them would be superfluous. Çríkṛshṇa.

* Çríkṛshṇa and Achyuta.

eldest brother, and two to the acquirer.

rately propounds the allotment of two shares to the acquirer. Thus, after premising "Partition of heritage among brothers,"* he says: Let the eldest take two shares;"† and at no great distance adds: "He, amongst them, who has made an acquisition, may take a double portion of it."‡ Two shares being thus ordained by this author in right of acquisition, his direction for a double allotment, to be given to the eldest brother, would be impertinent.

42. Vṛhaspati authorizes two shares in right of birth, knowledge and virtue.

42. The right of taking a double share, too, is not confined to the case of primogeniture. Thus, Vṛhaspati says: "The eldest by birth, by science, and by good qualities, shall obtain a double share of the heritage, and the rest shall share alike: but he is as a father to them." If the allotment of two shares were only in right of acquisition, the mention of birth, science, and good qualities, would be useless.

43. The allotment of two shares concerns partition among brothers of the whole blood only, or of the half blood only. The deduction of a twentieth, &c., regards the half blood, as is hinted by Vṛhaspati.

43. This double portion is applicable to the case of partition among whole brothers [or among half brothers only;§] and the deduction of a twentieth part for the eldiest is relative to partition among brothers of both the whole and the half blood. For Vṛhaspati says: "All sons of regenerate men, born of women equal by class, should share alike after giving a deduction to the eldest."‖

44. For this being restricted to the half blood, the other relates to the whole blood.

44. Since partition among sons born of several wives, equal by class, is here stated as preceded by a deduction, it follows, that the doctrine of a double share relates to the case of whole brothers: and this is proper, for the elder brother has the greater weight among his brethren, from the circumstance of his being of the whole blood.

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43. All sons of regenerate men.] Kullūka Bhaṭṭa infers from this and the following passage of Manu's Institutes, (9, 157) that no deduction is allowed in favor of the first-born at a partition among the sons of a Çūdra man. Jīmuta-váhana's commentators, Chūḍámani and Çríkṛshṇa, oppose that doctrine, and assert the right of a Çūdra's eldest son to the established deduction. But Raghunandana, in the Dáya tatva, supports Kullūka Bhaṭṭa's opinion. The arguments are long.

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* Vasishtha, 17. 36.

† Vasisht'ha, 17. 37.

‡ Vasishtha, 17. 42.

§ Çríkṛshṇa and Achyuta.

‖ Manu, 9. 156. Though here cited from Vṛhaspati; but it is quoted from Manu in the Dáya-tava, Calpatura, Ratnáçara, &c.

45. The deduction also of one in ten cows, &c., must not be made. So Manu declares: "Among brothers successful in the performance of their duties, there is no deduction of the best in ten, though some trifle, as a mark of greater veneration, should be given to the firstborn."*

45. The deduction is disallowed in the case of brothers equally meritorious.

46. By the reasoning thus set forth, if the elder brother have two shares of the father's estate, how should the highly venerable father, being the natural parent of the brothers, and competent to sell, give or abandon the property, and being the root of all connexion with the grandfather's estate, be not entitled, in like circumstances, to a double portion of his own father's wealth? Vṛhaspati, extending to the eldest son the right to a double share because he is like a father, as expressed in a passage above cited (§ 42,) does thereby intimate a maxim, that the father shall have two shares: and the maxim is actually propounded by Vṛhaspati; for he ordains such an allotment in general terms: "The father may himself take two shares at a partition made in his life-time."† So Nárada says: "Let the father, making a partition, reserve two shares for himself; and the mother shall take an equal share with her sons, if her husband be deceased."‡

46. Thus the elder brother being entitled to two shares of the patrimony, surely the father shall have two shares of it. That is hinted by Vṛhaspati.

Nárada's text 35) again cited.

47. A father, distributing the goods, may take two shares for himself. The construction of the sentence is not, "A father, distributing his own goods, may take two shares:" for that would contradict the doctrine before stated.

47. And explained.

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45. Successful in the performance of their duties.] It is here understood, that all equal good qualities. But, if endowed with superior qualities, the eldest has his regular deduction. Chūḍámaṇi.

The meaning is 'though successful.' But, if incapable, the rather shall there be no deduction. Maheçvara.

46. Extending to the eldest son.] By ascribing to the firstborn equality with the father, it is implied, that, in like manner as the father has a right to two shares, when a partition of his own father's estate is made by him with his sons and grandsons, so is the eldest son entitled to a double portion of his own father's wealth, when partition is made among brothers. Çríkṛshṇa.

47. That would contradict it.] It would be inconsistent with a passage of Vishṇu above cited (§ 16) and with the text of Hárita (§ 57.) Çríkṛshṇa and Mahéçvara.

It would contradict the foregoing reasoning (§ 36, &c.) in regard to a double share of the grandfather's property. Achyuta.

It would be at variance with the argument, that, if an elder brother have two shares, when the grandfather's estate is divided, surely the father should have as much. Chuḍámaṇi.

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* Manu, 9. 115.

† Already cited, § 35.

‡ Nárada, 13. 12. Already quoted, § 35.

48. There cannot be participation of father and sons in the patrimony.

For either the goods must be in common, and consequently there could be no partition:

Besides, if the father and son are to share equally the grandfather's wealth, [under texts declaratory of their similar or equal rights,*] it must be affirmed, that as much as is the father's share, so much [in number and quantity,†] is the son's: not, that the the very same effects, and same in quantity, which are the father's, are also the son's: for thus the property would be in common; and it might be concluded, that like the goods of husband and wife, no partition thereof could take place.

49. Now, if the case were so, [that is, if sons were entitled to share with their father allotments of equal amount, while his property continued;‡] the eldest, together with his son, would have four shares, if two must be allotted to his son,. at the same time that two are allotted to the eldest himself in right of primogeniture: and one share only would belong to another brother. Thus, if the eldest brother have many children, and equal portions must be assigned to them, as to their father, a mere trifle would remain for a younger brother, which would be in contradiction to great authorities.

Or, if the son have an allotment of equal amount, the eldest brother and his sons taking two shares a piece, would leave but little to a younger brother.

50. As for the text of Vṛihaspati: "In wealth acquired by the grandfather, whether it consist of moveables or immoveables, the equal participation of father and of son is ordained:" its meaning is, that the participation shall be equal or uniform, and the father is not entitled to make a distribution(*a*) of greater or less shares at his choice, as he may do in the instance of his own acquired goods. It does not imply, that the shares must be alike.

50. A passage of Vṛihaspati concerning equal partition, forbids an arbitrary distribution.

51. Or it relates to a son of two fathers (one natural and one adoptive.)

51. Or the text, declaratory of equal shares, may relate to a father who is himself son of two fathers; [one natural, and the other the adoptive parent.]

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It would be incompatible with the right of reserving more or less [than a regular allotment] of his own acquired property. Ragh. on Dáya-bhâga.

The last explanation is wrong, for this doctrine has not been before stated. Achyuta.

48. In common] A single article, becoming the subject of two rights of property predicated of two persons, is property in common. Çrîkṛishṇa.

51. Or the text may relate.] Chūḍámaṇi understands the author to propose the second interpretation (which is founded on a text of Çankha as by him explained;) because this passage of Vṛihaspati propounds the father's want of independent power in regard to all property moveable or immoveable, and is consequently irreconcileable to other texts which allow his dominion over gems, pearls and the like, but deny his independence in regard to immoveables, a corrody or pension, and slaves. But Çrîkṛishṇa and Achyuta restrict moveables in this place to signify slaves; and thus reconcile those texts. They expound "equal" as it were alike. As the father is a sharer, so is the son.

(*a*) See 1 Strange, H. L. 24.—*Ed.*

† Achyuta. ‡ Maheçvara.

52. The text of Yájñavalkya has been already expounded (§ 9.)

52. The passage, which declares that "the ownership of the father and son is "the same," has been already expounded (§ 9. &c.)

53. Moreover, it is said, if that father be eldest, as rescuing his own father from the misery to which a childless person is doomed, it is assuredly reasonable, that he should have an allotment twice as great as his own sons, in the same case in which he would have double the allotment of his brothers, because he was as a father to them, for it is through him, that his sons are connected with the hereditary property. But if he be not the eldest son of his father, he takes only an equal share with his sons.

53. It is said, that, being an eldest son, the father has two shares in a partition with his sons, as with his brothers; but but not unless he be eldest.

54. That is not accurate. For, since a share and a half, or other specific allotment, is ordained for the middlemost and other sons, it is assuredly fit, that the father should have a double share, in right of paternity; and it is not proper on the part of yourself and the holy writers, to direct the equal participation of father and son in general terms.

54. That is wrong: he should have two shares in right of paternity.

55. Besides, the allotment of two shares to the father is not properly applicable to his own acquired wealth; as appears from the circumstance, that the distribution of it follows his choice. The precept regarding that allotment would be superfluous, since he may, at his choice, have either more or less than two or than three shares. Nor can the text be restrictive, for it would contradict Vishnu, who says: "When a father separates his sons from himself, his own will regulates the distribution. But, in the estate inherited from the grandfather, the ownership of father and son is equal."*

55 The allotment of a double share cannot relate to acquired wealth, which the owner may divide as he pleases.

It is so declared by Vishnu.

56. The meaning of this passage is, 'In the case of his own acquired property, whatever he may choose to reserve, whether half, or two shares, or three, all that is permitted to him by the law: but not so, in the case of property ancestral.'

56. Exposition of the text.

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52. Already expounded] In the two modes above stated, (§. 9. and 15). Achyuta.

Conformably to the opinion of Dhárеçvara and others (§ 15.) Maheçvara.

53. The misery to which a childless person is doomed.] The hell called Put. (Vide C. 11, Sect. 1.—§. 31.) Achyuta.

54. It is fit he should have a double share.] Since it is not reasonable, that in the same case in which the middlemost has a share and a half, and the rest have other appropriate portions, the father should in right of paternity have less, namely, a single share. Çríkrishna.

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* Vishnu, 17. 1.—2. Vide Supra. § 18.

57. Accordingly Hárita says: "A father, during his life distributing his property, may retire to the forest, or enter into the order suitable to an aged man; or he may remain at home, having distributed small allotments and keeping a greater portion: should he become indigent, he may take back from them."

57. A passage of Hárita cited.

58. By this text the father is authorised to distribute a small part, and to reserve the greatest portion of his wealth. "The order suitable to an aged man," intends retirement.

58. And explained.

59. As for the text of Çankha and Likhita, "If he be son of one father (ekaputra,) he may allot two shares to himself," the sense of it is this 'The word ekaputra means son of one man: it is not a compound epithet signifying one who has an only son; for that mode of construction prevails less than the other. "A son of one man" is a true legitimate son. The father, being such, is entitled to a double share: not so one who is (kshetraja) issue of the soil, though he be the father of the family. But the text before cited (§ 9.), declaratory of the equal ownership of father and son, must be explained as intending a father who was (kshetraja) issue of the soil or wife.

59. A text of Çankha and Likhita expounded.

The father has two shares if he be son of one father: i. e. legitimate.

60. The offspring of the soil is indeed son of two fathers. Baudháyana declares him so: "The son who is begotten by another on the authorized wife of a man deceased, impotent, or distempered, is son of the soil. He is considered as son of two fathers, as partaking of both families, and as heir to the wealth and obsequies of both."

60. For issue raised to a childless man, is the offspring of two fathers. Baudháyana has so declared.

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It is not proper to direct equal participation in general terms.] For the proper direction is, that the father of a son, who has only one parent, should have double share; but the father of a Kshetraja, or other offspring of two fathers, should have a single share. Çríkṛshṇa.

57. The order suitable to an aged man.] If the period for becoming an anchoret be arrived, let him become an anchoret; if the period for the order suitable to old age or that of a resigned recluse is come, let him make his resignation: or if neither of these be the case, the author declares 'he may remain, having distributed allotments,' having given them to his sons or other descendants. But if that, which he reserved, be wasted by consumption or use, he may take back for his maintenance from his sons to whom he gave allotments. Dáya-rahasya.

Should he become indigent.] Should the property reserved by him be expended. Achyuta.

Should he have consumed all his wealth. Çríkṛshṇa.

59. If he be son of one father.] This is Jímúta-váhana's interpretation. But Chandeçvara and the authors of the Smṛti-Chandrika and Viváda-Chandra, follow the other exposition, "If he be father of one son;" and Váchespati Miçra, with the author of the Madana ratna and others, adopting this exposition, explains "one" as signifying excellent, and pre-eminent, or, in short, virtuous.

61. The meaning of this is, that the son begotten by another person on the wife of an impotent man or the like, with the husband's consent, is termed (kshetraja) the son of the soil.

61. Exposition of his text.

62. So Nárada says: "The produce of seed, which is sown in a field with permission of a proprietor, is considered as belonging to both the owner of the seed and the proprietor of the soil."*

62. Confirmed by a passage of Nárada.

63. Hence [since the compound epithet is a construction not to be preferred;†] and because the term (ekaputra) ought to be made significant in the passage in question, as an epithet of the agent in the sentence; the notion, that it is vaguely used as an epithet of the subject, is confuted.

63. The ambiguous term, in the text before cited (§ 59.) must be construed absolutely.

64. Besides, one, who continually explains in a vague sense, terms used by authors transcendently wise, as Manu, Gautama, Daksha and the rest, only demonstrates his own unsettledness.

64. Terms employed by the sacred writers, are not to be continually taken in a vague sense.

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That mode of construction prevails less than the other.] According to a maxim of grammar, that mode of composition, in which the principal term is no member of the compound epithet, must not be preferred to the more perspicuous composition in which the principal term is a member of the compound word. This maxim is here alluded to: and the author accordingly considers "son of one" to be a simpler explanation than "he who has one son."

61. The son begotten by another person.] A son begotten by another person on the wife of a deceased man; or begotten on the wife of an impotent man with his consent. Çríkṛshṇa.

A son begotten or procreated by another on the wife of a deceased man, is one description of Kshetraja, or son of the soil: another is a child begotten by a different person on the wife of a man not deceased, but impotent or the like, being authorized, that is, being sanctioned by the impotent husband. Permission having been granted to another man to procreate a son, the child was sanctioned. The author explains the second description of son of the soil. But the first is not explained by him, being considered as sufficiently clear. Maheçvara.

63. And because.] "And" must be here supplied. In some copies, the reading actually is so. Maheçvara.

As an epithet.] Being an epithet of the agent, it is a condition of the action in question. Achyuta.

The notion that it is vaguely used, is confuted.] "Let the father, being (ekaputra) parent of one son, allot two shares to himself." In this precept, the allotment of two shares is the act to be done; and the father is the subject of it. Consequently the circumstance of his being ekaputra is an epithet of the subject, vaguely employed. Therefore, if there be many sons, the father still takes two shares. This notion, entertained by others, is here confuted. Maheçvara.

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* Nárada, 12. 57.

† Maheçvara. Vide § 59.

. A father has even ac-

As ordained by Kátyáyana, who allots two shares or a moiety to the father.

65. Thus the father has a double share even of wealth acquired by his own son. For the expression is general: "let him reserve two shares;"* or "he may take two shares."† Kátyáyana declares it very explicitly; "A father takes either a double share, or a moiety, of his son's acquisition of wealth; and a mother also, if the father be deceased, is entitled to an equal portion with the son.".

66. Exposition of this text.

66. The meaning of this passage is, that the father has a right to take either a double share or a moiety of his son's acquired wealth.

67. Another interpretation rejected.

67. It must not be explained thus: 'From the acquisition of both son and wealth, the father becomes entitled to two shares; but from no acquisition of a son, the owner keeps the whole.' For it is admitted, that when partition is made with brothers, one, who even has not got a son, takes two shares, as the gainer of the wealth; how then can he keep the whole? It must therefore be affirmed, that, if any relative exist, who is entitled to participate, the acquirer has two shares; but, if there be none, he keeps the whole: and thus the specific mention of father and son becomes unmeaning, like the singing of a drunkard. Besides, acquisition is an act causing property; and it is a contradiction to say that it does not produce property, since it has been expressly declared to do so [by the wise.‡] Neither is it true, that a son is the property of his father. For the contrary is shown under the head of gift of a whole estate. The term acquisition would be therefore metaphorical in regard to sons, and literal in respect of wealth. But that is inadmissible in the instance of a single term once uttered.

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65. The expression is general.] Being applicable without restriction to any property but that which was acquired by himself. Maheçvara.

Of his son's acquisition of wealth.] Of the wealth acquired by his son. Çrí-kṛshna, &c.

A mother also.] This relates to the father's wealth. Achyuta.

That wealth, of which the son takes a share, when his father is deceased, must be here intended. Therefore the son's acquired wealth is excluded. Maheçvara.

67. From the acquisition of both son and wealth.] The ambiguity arising from the use of the term acquisition, and that in the ablative case, instead of the relative, gives occasion to the author to go into a further disquisition on the meaning of the text.

For the contrary is shown under the head of gift of a whole estate.] For it there appears, that the prohibition against giving away a son is founded on reasoning, inasmuch as a son is not the property of his father. Çríkṛshṇa.

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* Nárada, Vide § 35 and § 46.

† Vṛhaspati. Vide § 35.

‡ Achyuta and

It must not be argued, that the precept would since the son's right to a double share is because the wealth was acquired by him; and the father's right to two shares is also deducible independently of this text; [and*] their equal participation may be thence inferred. The precept is significant: since, without this text, there is no ground for concluding a father's right to two shares of his son's wealth.

68. The precept, as above explained, is not superfluous.

69. Besides, if the term "acquisition of wealth" be interpreted as relating to the father's goods, his right of taking two shares, or a moiety, at his choice, would be inapplicable, for his power of taking according to his pleasure, and the exercise of his will, are unrestricted. He may choose to take a share and a half, or one and a quarter, or three quarters of one share. How then are only two cases stated? That it cannot intend a restriction [to those two cases†] nor relate to the father's own goods, has been already shown [from two passages before cited:‡] and it is as fit that he should have a moiety of his son's acquired wealth, as it is that he should have two shares of such wealth.

69. It cannot relate to the father's own goods.

70. Nor does the text intend his taking a moiety of two shares, or in other words a single share. For moiety and share being relative terms, imply a something of which they are parts: and, since they are equal in regard to the person and to the act of taking, they cannot relate to each other. As the interpretation, which takes the relative term "double share," in construction with "acquisition of wealth" in the ablative, is unexceptionable, it is also right to construe the word moiety with it; for the terms are contiguous. A moiety of the wealth, therefore, is meant; not a moiety of two shares, or in other words a single share: for it would be improper, while the obvious term, "a single share," might have been used, to employ a term, which does not express that sense. A moiety of the wealth, then, is the right interpretation.

70. Nor can it intend a moiety of two shares: i. e. one share.

71. Here, the father has a moiety of the goods acquired by his son at the charge of his estate; the son, who made the acquisition, has two shares; and the rest, take one a piece. But, if the father's estate have not been used, he has two shares; the acquirer, as many; and the rest are excluded from participation.

71. Either a moiety, or a double share, is allotted, according as the patrimony has, or has not, been used in making the acquisition.

ANNOTATIONS.

In the instance of a single term once uttered.] For it is a maxim, that a term, uttered once, conveys a single meaning: and it would be inconsistent to give it two different senses at the same time. Çríkṛshna.

* Achyuta. †

‡ Çríkṛshna. See Vishnu, cited § 16, and 55, and Háríta quoted § 57.

72. Or a moiety is allowed, if the father possess good qualities. But two shares in right merely of paternity.

72. Or else, a father, endowed with knowledge and other excellencies, has a right to a moiety: for an increased allotment is granted to the eldest by science and other good qualities. But one destitute of such qualities has a double share in right merely of his paternity.

73. Recapitulation. A father may take two shares of inherited property; and of wealth acquired by his son. He may reserve as much as he pleases of his own acquisitions.

73. Therefore, the meaning of the texts is, that a father may reserve for himself two shares of wealth which has descended in succession [from ancestors,] or of that which has been acquired by his son. He is not entitled to more, however desirous of it he may be. But, of his own acquired wealth, he may reserve as much as he pleases.

74. He may give or withhold the eldest son's deduction from the patrimony: and he may distribute his acquired property unequally.

74. Among his sons, he may make the distribution(*a*), either by giving [to the first-born] or withholding [from him] the deduction of a twentieth part of the grandfather's estate. But, if he make an unequal distribution of his own acquired wealth, being desirous of giving more to one, as a token of esteem, on account of his good qualities, or for his support on account of a numerous family, or through compassion by reason of his incapacity, or through favor by reason of his piety; the father, so doing, acts lawfully.

75. For Yájñavalkya, Vṛihaspati and Nárada have pronounced that lawful.

75. Yájñavalkya declares it: "A lawful distribution, made by the father, among sons separated with greater or less allotments, is pronounced [valid]."* So Vṛihaspati: "Shares, which have been assigned by a father to his sons, whether equal, greater, or less, should be maintained by them. Else they ought to be chastised." Nárada likewise: "For such has been separated by their father with equal, greater, or less allotments of wealth, that is a lawful distribution: for the father is the lord of all."†

76. It is so only in the instance of the father's ac-

76. Since the circumstance of the father being lord of all the wealth, is stated as a reason, and that cannot be in regard to the grandfather's estate, an unequal distribution, made by the father, is lawful only in the instance

ANNOTATIONS.

73. The meaning of the texts.] Nárada's (§ 35.) &c.,

74. The father, so doing, acts lawfully.] Thus an unequal distribution among sons, without any of the reasons for it here specified, is not lawful even in the case of his acquired property. Çríkṛishna.

76. That cannot be in regard to the grandfather's estate.] Although the father be in truth lord of all the wealth inherited from ancestors, still the right here meant is not merely ownership, but competency for disposing of the wealth at pleasure: and the father has not such full dominion over an estate ancestral.

(*a*) See 1 Strange, H. L. 24.–

* Yájñavalkya, 2. 117.

† Nárada, 13. 15.

quired wealth: as is ordained by Vishṇu.

of his own acquired wealth. Accordingly Vishṇu says, "When a father separates his sons, from himself, his own will regulates the division of his own acquired wealth. But in the estate inherited from the grandfather, the ownership of father and son is equal."*

77. As a superior allotment, in the form of a deduction, is indicated by a passage of Yájñavalkya, ("When the father makes a partition, let him separate his sons according to his pleasure; and either dismiss the eldest with the best share; or, if he choose, all may be equal sharers,"†) how is any other unequal distribution here ordained? The answer is, such cannot be the meaning, for the text would be impertinent, since a superior allotment, resulting from the deduction of a twentieth part, is admissible when partition is made by brothers after the demise of the father.

77. The unequal distribution, meant by Yájñavalkya (§ 75,) is not one made according to specific deductions, as hinted by the same author.

78. Perhaps the text is propounded for the purpose of legalizing an equal distribution made by the father, without the authorized deductions? No: for then a less allotment only is declared lawful, as made by the father; and the word greater would be impertinent.

78. Nor does it intend equal distribution without specific deductions.

79. Besides, if the mention of greater or less shares here intend the regulated deductions, the second verse of the stanza ("let him separate his sons according to his pleasure,") becomes superfluous; for that, which was to be declared, is fully specified in the three other verses of that text. But, according to our interpretation, the phrase, "let him separate his sons according to his "pleasure," relates to his own acquired wealth; while the allotment of the best share, and an equal distribution, both regard an estate inherited from the grandfather. There is consequently nothing superfluous.

79. Part of the passage cited would be impertinent under that limitation.

ANNOTATIONS.

77. The text would be impertinent.] As distinguishing partition made by a father from a division made by brothers, the text declaring valid a lawful unequal distribution would be impertinent. Consequently that passage (Yájñavalkya, 2. 117.) does not intend greater or less allotments, as with or without deductions; but it relates to a distribution of unequal shares made according to the father's pleasure. Çríkṛshṇa.

78. For then a less allotment only is declared lawful.] An equal share assigned by the father is less in comparison with a share to which a deduction is added as is practised among brothers. [illegible]

* Vishṇu, 17. 1—2. Vide supra. § 16 and § 55.

† Yájñavalkya, 2. 115.

80. Vrhaspati propounds two modes of partition among co-heirs; One by specific deductions; the other by equal shares; thus there would be no distinction between partition

80. Moreover, two modes of partition after the death of the father are actually declared by Vṛhaspati in these words: "Partition of two sorts is ordained for co-heirs: one, in the order of seniority; the other, by allotment of equal shares." By saying "in the order of seniority," the author indicates specific deductions. Equal participation is the other mode. Now, since two sorts of mutual partition among brothers are thus expressly declared, there would be no distinction between that and a distribution made by a father.

81. Nárada declares two modes of partition by the father.

81. So Nárada says: "The father, being advanced in years, may himself separate his sons; either dismissing the eldest with the best share, or in any manner as his inclination may prompt."*

82. And here the best share for the eldest is distinguished from unequal partition at will.

82. The unequal distribution, here intended, appears evidently to be different from that, which consists in giving the best share to the first born; since the author, having noticed the allotment of the best share to the eldest, again says "or as his inclination may prompt;" thereby distinctly authorizing any unequal distribution, which the father, for reasons before mentioned, may think proper to make.

83. Another passage of Nárada, restraining the father's power, forbids an unauthorized distribution made without sufficient cause.

83. But the text of Nárada, which expresses, that "A father, who is afflicted with disease, or influenced by wrath, or whose mind is engrossed by a beloved object, or who acts otherwise than the law permits, has no power in the distribution of the estate;"† relates to the case where the father, through perturbation of mind occasioned by disease or the like, or through irritation against any one of his sons, or through partiality for the child of a favourite wife, makes a distribution not conformable to law. Nevertheless, unequal partition is lawful, when grounded on [either of the four‡] reasons above mentioned.¶

84. A passage of Kátyáyana confirms this inference.

84. Thus Kátyáyana says: "But let not a father distinguish one son at a partition made in his lifetime, nor on any account exclude one from participation without sufficient cause."

85. Exposition of the text.

85. Let him not distinguish one by the allotment of a greater portion, nor exclude one from participation by depriving him of his share, without sufficient cause. [This

ANNOTATIONS.

85. Since the meaning is even one son.] The particle must be here understood, being inferred from reasoning. Achyuta and Çríkṛshṇa.

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* Nárada, 13. 4. † Nárada, 13. 16. ‡ Maheçvara. ¶ §

It does not relate to authorized specific deductions.

does not relate to specific deductions :*] for the distinguishing of sons by allotting to them the prescribed deductions [of a twentieth, and half or a quarter of a twentieth,†] extends to many [viz. eldest, middlemost and youngest ;‡] and is not confined to one. One son should not be distinguished without cause. But, for a sufficient reason, it may be done. Since the meaning is "even one son." The distinguishing of one, [as here forbidden,]• has no reference to specific deduction; but intends a distribution made according to the father's mere pleasure, as before explained.

86. When partition is made by desire of the sons, no unequal distribution should be made.

86. However, when sons request partition in the father's lifetime, an unequal allotment should not be granted by him. Manu declares it. "Among undivided brethren if there be an exertion in common, the father shall on no account make an unequal distribution in such case."§

So Manu.

87. The regular specific deductions should, however, be allowed.

87. But the regular deduction ought in this instance to be allowed by the father. For it is not of the nature of an unequal distribution; and the allotment of greater or less shares is alone forbidden.

88. Conclusion.

88. Thus partition made by a father [has been explained.]

ANNOTATIONS.

86. Manu declares it.] The passage of Manu here cited is understood otherwise by his commentator Kullúka Bhaṭṭa, and by numerous compilers. Çríkṛshṇa supports the interpretation, which Jímúta-váhana had in view in this citation.

† Ç

Maheçvara.

§ Manu, 9. 215.

CHAPTER III.

Partition by Brothers.

SECTION I.

Partition improper in the Mother's life-time—Management of the affairs during the continuance of the family partnership—Any one co-parcener may insist on separation—Right by representation admitted as far as the third degree.

1. Partition among brothers, after the demise of the father, is next explained. That partition is pronounced to be not lawful, among brothers of the whole blood, while the mother lives, although the ownership of wealth be vested in them by the death of their father. For the text ("after the father and the mother," &c.*) propounds a division of the paternal estate among brothers of the whole blood subsequent to the demise of both parents.

1. Partition among whole brothers, after the death of the father, is not right while the mother lives. As hinted by Manu.

2. It does not intend a distribution of the mother's goods, after her demise. For partition of the patrimony only is suggested by the term paternal; and there is no authority for interpreting it parental.

2. The text, which supposes her previous demise, does not relate to her particular property.

3. Besides, it would be a repetition: for the division of the maternal estate, on the death of the mother, is subsequently noticed by Manu in a separate text.†

3. The partition of that is separately noticed by the same author.

4. Thus Yájñavalkya says "Let sons divide equally the effects and the debts, after the death of both parents. But daughters share the residue of their mother's property, after payment of her debts; and the [male] issue in default of daughters."‡

4. A passage of Yájñavalkya confirms this inference.

ANNOTATIONS.

1. That partition is not lawful.] The partition is valid, but is not morally right.

Partition is not lawful while the mother survives. If it be nevertheless made, a share is ordained for the mother. Ragh. Dáya-tatva.

By declaring it unlawful, it is intimated, that partition is not laudable, while the mother is living; not that it is null. Káçiráma on the Dáya-tatva.

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* Manu, 9. 104. Vide C. I. § 14.

† Manu, 9. 192. Vide C. 4.

‡ Yájñavalkya, 2. 118. Vide supra. C. 1. § 48.

5. Since the latter half of this passage shows, that sons have no right of participation in the mother's goods, if daughters exist; but, if none exist, then sons have the right of succession, being intended by the term "issue;" the father's estate only can be meant, in the former half of the text, by the word "parents:" for otherwise there would be tautology.

5. For, unless it be so interpreted, there would be tautology.

6. The author, declaring that brothers may divide after the death of the father and mother, propounds a time subsequent to the demise of both as a fit period of partition; and the association [of their deaths] appears therefore to be designedly express-

6. The author has designedly associated the deaths of father and mother as requisite to a lawful partition by brothers.

7. Accordingly Çankha and Likhita say, "Since the family is supported on the inheritance, sons are not independent: but as it were under the authority of a father, so long as the mother lives." They are not independent of their mother; they are not competent to make a partition.

7. Çankha and Likhita deny the independence of sons, while their mother lives.

8. Vyása very explicitly declares it. "For brethren a common abode is ordained, so long as both parents live: but, after their decease, religious merits of separated brethren increase."

8. Vyása clearly forbids separation of co-heirs during the life of both parents.

9. Since the author forbids the separation of brethren by commanding them to live together, and prohibits partition with one whose father and mother are living, the association of their survival is not positively intended in the phrase "so long as both parents live." Therefore, if one parent be living, partition is not lawful; but it is so, when both are dead.

9. Thus partition is unlawful while either of them lives; but is lawful, when both are dead.

10. Thus Vṛhaspati says: "On the demise of both parents, partition among brothers is allowed: and, even while they are both living, it is right if the mother be past child-bearing."*

10. Vṛhaspati confirms this.

ANNOTATIONS.

6. The author, declaring.] In several copies of Jímúta-váhana, I find the name of Yájñavalkya here interpolated. But it appears from the remarks of Çríkṛshna, who refers to the particle "and" as marking the association of the terms, that Manu before cited is the author intended.

9. The association of their survival is not positively intended.] If the association, suggested by the dual member in the phrase, "so long as both live," were positive, dwelling together would not be requisite in consequence of the survival of one: partition might therefore take place while the mother was living, and might be even claimed on her death while the father was yet living. The author therefore declares it not to be positively intended. Çríkṛshṇa.

* Vide supra. C. 2. § 1.

11. Since partition while the mother is living cannot be relative to the mother's particular property, and since the authorized partition after the demise of both parents, which is indicated by the particle in the phrase "even while they are both living," is thus pronounced to be proper; partition among brothers after the death of parents is evidently relative to the father's wealth.

11. His text relates to partition of the father's estate.

12. Accordingly Vyásа propounds partition, in the mother's lifetime, made with reference chiefly to her: "If there be many sons of one man, by different mothers, but equal in number, and alike by class, a distribution among the mothers is approved." So Vṛihaspati says: "If there be many sprung from one, alike in number, and in class, but born of rival mothers, partition must be made by them, according to law, by the allotment of shares to the mothers."

12. Vyása and Vṛihaspati direct partition in the mother's life time to be made with reference chiefly to her, in certain circumstances.

13. Since there is no difference in the sons' share, for they are equally numerous and of the same tribe, partition is to be made by an allotment to the mother, not to the sons. Therefore, as in the case of other wealth of the mother's, so in this instance [of the father's wealth, which is become their property,*] sons have not independent power to make a partition among themselves, while the mother lives; but, with her consent, the partition is lawful.

13. Hence it is inferred, that sons have not power to divide while the mother lives, unless with her consent.

14. Hence, what is said by Gautama and others ("In partition there is increase of religious merit;"†) must be understood after the demise of the mother.

14. Separation is pronounced by Gautama, &c., to be laudable, supposing the mother's demise.

15. If then they desire to remain unseparated, the eldest brother, being capable of the care and management of the estate, may take the whole; and the rest should live under him, as under a father. Thus Manu says, "The eldest brother may take the patrimony entire; and the rest may live under him as under their father."‡ So Gautama: "Or the whole may go to the first-born; and he may support the rest as a father."§ From the

15. While the brethren choose to remain together, the eldest should [illegible] tama.

ANNOTATIONS.

13. For they are equally numerous and of the same tribe.] If they were of different tribes, the share would be unequal; viz. four, three, two, and one, in the order of the classes. If they were not equally numerous, inequality in their rights, as sons, might be apprehended. Chúḍámaṇi.

15. The analogy of the loaf and staff.] To gnaw the staff was difficult for the rat; but, if that were accomplished, the eating of the loaf, which was attached to it, was easy. So in other cases, according to the circumstances of them, if one of associated things be true, the other may be rightly inferred. Rag. Dáya-tatva. Vide supra. C. 2. § 25.

* Achyuta and Çríkṛishṇa. Manu, 9. 105.

† Gautama, 28. 4.

§ Gautama, 28. 3.

Nárada declares consent to be necessary. And a younger brother, being most capable, may have the charge of the estate and family.

particle "or" it appears, that they may either become separate or continue to dwell together; and their dwelling together must be by consent of all. Thus Nárada says, "Let the eldest brother, by consent, support the rest like a father; or let a younger brother, who is capable, do so. The continuance of the family depends on ability."* Even the youngest, being capable, may govern all the brethren. The middlemost of course may, being here inferred by the analogy of the loaf and staff.

16. Any one co-heir may require partition.

16. But partition takes place by the will of any one [of the co-heirs], as before intimated.

17. As appears from the provision in Kátyáyana's text, for securing the shares of minors and absentees, who of course have not consented.

17. Accordingly [since partition by the choice of one co-heir is lawful;†] Kátyáyana, treating of partition, says: "Let them deposit, free from disbursement, in the hands of kinsmen and friends, the wealth of such as have not attained majority; as well as of those who are absent." So a text expresses, "The property of minors should be so preserved until they attain their full age."‡

18. Partition extends to grandsons and great-grandsons in the male line.

18. The rule of distribution among sons extends equally to them and to grandsons and great-grandsons in the male line(*b*). There is not here an order of succession following the order of proximity according to birth. For those three persons, the son, grandson and great-grandson, do not differ, in regard to the presenting of two oblations at solemn obsequies, one which it was in-

ANNOTATIONS.

16. As before intimated.] For it was declared, in treating of partition, that any one person is complete owner of his own wealth. Chúḍámaṇi, Çríkṙshṇa, &c.

17. Such as have not attained majority.] Whose age does not exceed fifteen years. Çríkṙshṇa.

As well as those who are absent.] It is here evident, that partition takes place without their consent. Çríkṙshṇa, Chúḍámaṇi, &c.

18. In regard to the presenting of two oblations, &c.] Where two persons are connected by a common oblation, the one partakes of the oblation presented at the other's obsequies. (Vide infra. C. 11. Sect 1. § 38.) Mahcçvara.

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* Nárada, 13. 5. † Achyuta.

‡ In the Víramitrodaya, where the whole passage of Jímúta-váhana is quoted, this text is ascribed to Vishnu. It is not, however, found in Vishṇu's institutes.

(*b*) Accordingly where the proprietor of a ta'aluḳ in Benares died, leaving three sons and the first son died leaving a son, the plaintiff, and afterwards the second son died without leaving male issue and the plaintiff sued the defendant, the third son, for a partition and his share; and there were surviving besides the parties, two widows of the second son, it was held that the plaintiff and defendant each took a moiety by inheritance and that the widows should receive maintenance. *Duljeet Sing* v. *Sheomunook* [illegible], 1 S. D. A. Rep. 59, 1 Morl. Dig.—*Ed.*

By reason or benefits conferred by them on the manes of ancestors.

cumbent on the ancestor to present, and the other [illegible] is to be tasted by his manes. Hence it is, that Devala says, 'A father, a grandfather, and a great grandfather, assiduously cherish a newborn son, as birds the holy fig-tree,* [reflecting] "he will present to us a funeral repast with honey, meat, and herbs, with milk, and with rice and milk, in the season of rains, and under the asterism Maghá."

Devala hints this:

And so do Çankha, Likhita,

So Çankha, Likhita and Yama,† 'A father, a grandfather, and a great grandfather, welcome a new born son, as birds the holy fig-tree, [reflecting] "he will give us contentment with honey, and meat, and [especially the flesh of] rhinoceros, and with milk, and with rice and milk, in the season of rains, and under the asterism Maghá." From the mention of the great-grandfather, it appears, that "son" here intends a descendant as low as great-grandson. Thus, since such a descendant confers benefits on his ancestors up to the great-grandfather, by presenting oblations to the manes, the descendant within the degree of great-grandson has an equal right of inheritance.

19. Not however those, whose fathers are living: for they make no offerings to the manes.

19. Hence it is, that the son and grandson, whose own fathers are living, have no right of succession; for they do not present oblations to the manes, since they are incompetent to the celebration of solemn obsequies.

20. The arbitrary allotment, which a father may make, is not permitted among brothers.

20. After the death of parents, the special distribution, [which might have been] made by a father, cannot have effect among brethren. But all the rest, as before explained, must be here again admitted.

21. Grandsons, whose father is deceased, are entitled to just so much as would have been his share.

21. If there be one son living, and sons of another son [who is deceased,] then one share appertains to the surviving son, and the other share goes to the grandsons however numerous. For their interest in the wealth is founded on their relation by birth, to their own father; and they have a right to just so much as he would have been entitled to

ANNOTATIONS.

Hence it is &c.] The author adds this as a further proof, that the daughter's son, though within those degrees, does not inherit jointly with son's sons. Chūdámaṇi and Achyuta.

20. The special distribution.] The allotment of unequal portions on account of of piety and so forth. Chūdámaṇi and Achyuta.

All the rest.] Giving to the first born or withholding from him, the deduction of a twentieth part. (Vide C. 2. § 74.) Chudámaṇi and Achyuta.

21. For their interest is founded on their relation by birth.] The right of succession is not founded solely on the gift of a funeral oblation; but also on the relation by birth as son or grandson. Else the daughter's son might be supposed to have an equal title. Achyuta.

* Pippala. Ficus r

† This is the reading of all the collated copies of Jímūta-váhana; but the transcript of this passage in the Vivámitrodaya exhibits the name of Gautama.

A passage cited concerning allotment of shares to the fathers, does not relate to partition between uncle and nephew.

22. The text, which expresses "Among the issue of different fathers, the allotment of shares is according to the fathers,"* does not relate to this case [of partition between uncle and nephew†.] For the whole estate belonged to the uncle's father, and therefore the whole would belong to him, and no part of it, to his nephews. Or, if partition is to be made as between father and son, under the direction for the allotment of shares according to the fathers, the uncle would have two shares because a father has a right to a double portion: and the nephews would have a single share. But this is contrary to the approved usage of the wise.

23. But intends partition between cousins whose fathers died before their grandfather.

23. The purport of the text, however, is this. If there be a numerous issue of one brother and few sons of another, then the allotment of shares is according to the fathers.

SECTION II.

Partition with or without specific deductions—Provision for the Mother; and for the Sister.

24. Two modes of partition among brothers are authorized; one with, the other without, specific deductions.

24. In the next place, [after defining the periods, when partition among brothers may take place,‡] two modes of partition among brethren alike by class are propounded; namely, either with specific deductions of a twentieth and so forth, or else an equal division.

ANNOTATIONS.

22. The text does not relate to this case. Does it signify, that the same share, which would have been the father's, is the son's? or does it direct, that partition be made as between father and son? The author successively refutes both these interpretations. Çrík*ri*shna.

A variation in the reading of the text is noticed by Viçveçvara bha*tt*a in his commentary on the Mitákshará, which obviates all ambiguity: viz. "whose fathers are deceased" (Pramita-pitṛkáṇam) instead of "whose fathers are different" Aneka-pitṛkáṇam.)

24. Either with specific deductions.] Partition with regulated deductions has been already stated (Manu, 9. 112) Vide C. 2. § 37. The author proceeds to adduce authority for an equal division. (§ 25.)

* Yájñavalkya, 2. 121. † Maheçvara. ‡ Çrík*ri*shṇa.

25. Hárita ordains an equal distribution without deductions, in the following passage, after speaking of a father: "If he be dead, the partition of inheritance should be made equally." So Uçanas says, "This rule of partition is declared for brethren of various tribes, being born of women of classes below the father's; but the distribution among brothers born of women of the same tribe is ordained to be made equally." Thus Paiṭhínasi says, "When the paternal inheritance is to be divided, the shares shall be equal." Yájñavalkya also declares, "Let the sons divide equally the effects and the debts, after the death of both parents."* Thus, there are two modes of distribution; namely with or without specific deductions.

25. Equal shares are ordained by Hárita.

Uçanas.

Paiṭhínasi.

And Yájñavalkya.

26. It must not be argued, that the practice of equal partition is indispensable, as the only mode authorized by law. For the brethren may consent to the deductions by reason of great veneration [for eldest.] An option exists like that of making or omitting partition.

26. But equal distribution is not indispensable.

An option exists.

27. Accordingly, since persons of the present day [who are younger brother†] entertain not great veneration [for their elders,] equal distribution is alone seen in the world; as also because elder brothers deserving of deducted allotments are now rare(*a*).

27 Though a division with specific deductions be now rare.

28. If one of the co-heirs, through confidence in his own ability, decline his share of the wealth inherited from the father, grandfather or other ancestor, something should be given to him, be it only a prastha(*b*) of rice, on his separation, for the purpose of obviating any future cavil on the part of his son or other heir. Thus Manu says, "If any one of the brethren has a competence from his own occupation and desires not the property,

28. A co-heir may relinquish his share, taking some trifle to obviate future cavil on the part of his representatives.

ANNOTATIONS.

25. Two modes of partition § 24. Two modes of distribution § 25.] Constituting an optional alternative. Chūḍámani. A regulated not an optional alternative.

27. Like that of making or omitting partition.] Entrusting the estate to the management of the eldest brother, the rest live under him as under a father: this is omission of partition. Separation is the making of partition. Maheçvara.

28. Any future cavil on the part of his son.] Or recourse to litigation on the plea, that his father did not relinquish his share. Maheçvara.

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* Yájñavalkya, 2. 118. Vide supra. § 4.

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(*a*) See 1 Str. H. L. 133, 193. 2 Coleb. Dig. 551: 2 Macn. Princ. H. L. 17: 1 Morl. Dig. 305. 480.—*Ed.*

(*b*) Forty-eight double handfuls.-

As Manu and Yájñavalkya have provided.

he may be debarred from his share, giving him some trifle in lieu of a maintenance."* So Yájñavalkya; The separation of one who is able to support himself, and is not desirous of participation, may be completed by giving him some trifle."†

29. The mother shares equally with her sons after the father's demise. A text cited.

29. When partition is made by brothers of the whole blood, after the demise of the father, an equal share must be given to the mother. For the text expresses, "The mother should be made an equal share."‡

30. And expounded.

30. Since the term mother intends the natural parent, it cannot also mean a step-mother(*a*). For a word employed once cannot bear the literal and metaphorical senses at the same time.

31. If no separate property had been given to the woman, she has a share. At a partition by the father, all his wives partake. Yájñavalkya is authority for this.

31. The equal participation of the mother with the brethren takes effect, if no separate property had been given to the woman. But, if any have been given, she has half [a share.§] And, if the father makes an equal partition among his sons, all the wives [who have no issue‖] must have equal shares with his sons. So Yájñavalkya declares: "If he make the allotments equal, his wives, to whom no separate property has been given by their husband, or their father-in-law, must be rendered partakers of like portions."¶ "To a woman, whose husband marries a second wife, let him give an equal sum, as a compensation for the supersession, provided no separate property have been bestowed on her: but, if any have been assigned, let him allot half."**

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A different interpretation of the passages here cited, which is maintained by the author of the Prakáça, and which disagrees with the Mitákshará and other authorities, is confuted by Çríkṙshna and Achyuta.

31. But if any have been given, she has half.] Although this properly relate to the case of a superseded wife, yet it may be so assumed in the present case also; conformable with the maxim, that the sense of the law, as ascertained in one instance, is applicable in others also, provided there be no impediment. Chūḍámaṇi.

If the reasoning be equally applicable, an interpretation of law, ascertained in one case, is admitted in another. Therefore, a son must give, both to his mother and stepmothers, allotments equal to half his own share, if separate property have been bestowed on them, because that is ascertained to be the law in the case of partition made by the father. Maheçvara.

Provided no separate property have been bestowed on her.] This is the reading of the text, as it is cited by the author of the Tatva. In many copies of Jímūta-váhana, the reading is "them" (yásám) for "her" (yasyai). It is an error of the transscriber; for the context requires the singular number. Maheçvara.

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* Manu, 9. 207. † Yájñavalkya, 2. 117.

‡ Vṙhaspati. It is the sequel of the passage cited in Ch. 2. § 35.

§ Maheçvara. ‖ Çríkṙshna. ¶ Yájñavalkya, 2. 116. ** Yájñavalkya, 2 149.

(*a*) 1 Morl. Dig. 323. According to Bengal law a stepmother does not inherit to her stepson, *Narainee Dibeh* v. *Hirkishor Rai*, 1 S. D. A. Rep. 39; and other cases mention in 1 Morl. Dig. 323.

32. Wives of the father [meaning step-mothers*] who have no male issue, not those who are mothers of sons, [must be rendered*] equal sharers [with the son.*] So Vyása ordains "Even childless wives of the father are pronounced equal sharers; and so are all the paternal grandmothers: they are declared equal to mothers." Vishṇu likwise says, "Mothers receive allotments according to the shares of sons; and so do unmarried daughters."†

But those only, who have no male issue, take shares. Vyása and Vishṇu confirm this.

33. The wife's portion, like a son's, is according to her tribe.

33. According to the shares of sons.] As sons are entitled to four shares, three, two or one, in the order of the classes; so are the wives also.

34. So is the daughter's: and her share is a quarter of the son's: as declared by Vṛhaspati.

34. Unmarried daughters, likewise, following the allotments of sons, take a quarter thereof. Thus Vṛhaspati says, "Mothers are equal sharers with them; and daughters are entitled to a fourth part."

35. A son has three parts and a daughter one. So Kátyáyana declares: "For the unmarried daughter a quarter is allowed: and three parts belong to the son. But the right of the owner [to exercise discretion] is admitted when the property is small."

35. She has one part and he has three: as Kátyáyana ordains.

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Let him allot half.] The allotment of a moiety implies that the other moiety is completed by the woman's separate property. Else so much only should be given as will make her allotment equal to the son's. Maheçvara.

32. Childless wives of the father] A certain author supposes this to relate to partition made by sons, because the father's wives, whether mothers of sons or childless, take one share apiece at a distribution made by the father. But that is erroneous: for it is inconsistent with the remark, that the word mother does not signify step-mother (§ 30.) Çrîkṛshṇa and Achyuta.

Grandmothers.] When the father divides his own father's property with his sons, it is right that he should give to his own mother, on whom no separate property has been bestowed, a share equal to his own. But, if there be any childless step-mothers, he need not give them allotments out of the grandfather's estate, but food and raiment only; for they cannot be intended by the word grandmother, and the analogy of the step-mother holds good. Chūḍámaṇi.

Some says, that the word grandmother here signifies the father's natural mother: for the reasons before explained. But others infer from the use of the plural number, and the mention of "all," that all the wives of the grandfather shall have shares.

The first is Chūḍámaṇi's interpretation, which is refuted by Ma[illegible] who maintains the second opinion.

* Ragh. on Dáya-bhága.

† Vishṇu, 18. 34—35.

36. If the funds be small, sons must give a fourth part to daughters, deducting it out of their own respective shares. Thus Manu says, "To the maiden sisters let their brothers give portions out of their own allotments respectively: let each give a fourth part of his own distinct share: and they, who refuse to give it, shall be degraded."*

36. But, if the funds be small, the sons must contribute so much from their respective allotments.

37. Let each give.] From the mention of giving, and the denunciation of the penalty of degradation, if they refuse, it appears, that portions are not taken by daughters as having a title to the succession. For one brother does not give a portion out of his own allotment to another brother who has right of inheritance.

37. Daughters do not take portions in right of inheritance.

But because the brethren are bound to defray the charges of a sister's marriage and a brother's initiation: as declared by Yájñavalkya.

38. Thus Yájñavalkya, saying "Uninitiated brothers should be initiated by those for whom the ceremonies have been already performed; but sisters should be disposed of in marriage, giving them as an allotment, a fourth part of a brother's own share;"† declares the obligation of disposing of them in marriage, not their right of succession.

39. If the wealth be great, a sufficiency for the nuptials, and not a quarter part, is given.

39. Thus, [since the daughter takes not in right of inheritance;‡] if the wealth be great, funds sufficient for the nuptials should be allotted. It is not an indispensable rule, that a fourth part shall be assigned.

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36. If the funds be small.] If the property be not sufficient to defray the nuptials of a daughter with a fourth part of the amount receivable by a son, the funds are said to be small. In such a case a partition is made exclusively among the brethren; and afterwards the daughter's nuptials are defrayed with contributions from their respective allotments. Çrîkṙshṇa.

Out of their own allotments respectively.] This is according to the usual reading of the text. Váchespati Miçra reads and interprets svébhyaḥ svébhyaḥ 'taken from their own brothers,' instead of svébhyoḥ 'nçébhyaḥ 'out of their own allotments.' The author of a commentary on the Dáya-bhága, to which Raghunandana's name is affixed, censures that variation of the reading.

37. Not as having a title to the succession.] The doctrine of the Mitákshará, that the daughter has a right of inheritance like the son, is thus refuted. Ragh. on Dáya-bhága.

38. By those for whom the ceremonies have been performed.] Maheçvara quotes and refutes the author of the Tatva, as maintaining, on the authority of this text, that the charges of a sister's marriage are to be defrayed by those brothers only who have been initiated. But no passage of such an import has been found in the Dáya-tatva.

39. It is not indispensable that a fourth be assigned.] For a passage of Vishṇu‖ cited by [Váchespati] Miçra and the rest, provides, that "the son should defray the initiatory "ceremonies [of other sons] and nuptials of unmarried sisters, suitably to the wealth." The Ratnákara and the rest concur in this. Ragh. on Dáya-bhága.

* Manu, 9. 118. † Yájñavalkya, 2. 125. ‡ Maheçvara. ‖ Vishṇu, 15. 31.

40. This allotment of a fourth part if the funds be small*] must be understood as applicable only, where the number of sons and daughters is equal. For, if the number be unequal, either the daughter would have a greater portion, or the son would be entirely deprived of property. But that cannot be proper, since the son is principal [in relation to the inheritance.]

40. The allotment of a quarter implies an equal number of sons and daughters.

41. It is stated as an objection, that, as the defraying of the nuptials of a sister is an indispensable obligation under the text of Nárada, which expresses, "If no wealth of the father exist, the ceremonies must without fail be defrayed by brothers already initiated; contributing funds out of their own portions;"† the impoverishment of the brothers is no exceptionable consequence.

41. An argument in support of the specific allotment grounded on a passage of Nárada.

42. That is wrong. For the text is intended to provide for initiatory ceremonies of brother; and the reading of it, which expresses, that "the ceremonies of brethren must be defrayed by those who are already initiated," is unauthentic;‡ and the initiation of a brother was the subject treated of. It had been already said, "For those, whose forms of initiation have not been regularly performed by the father, these ceremonies must be completed by the brethren out of the patrimony."§ Here the pronouns "those" and "whose" are in the masculine gender. But this text immediately precedes the one before cited ("If no wealth of the father exist, &c.") That passage therefore relates to the initiation of brothers.

42. Refutation of that argument.

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40. If the number be unequal.] If there be four sons or a greater number, and only one daughter, she has a larger portion. If there be four daughters and one son he is deprived of wealth. Çríkṛishṇa.

42. The reading which expresses "ceremonies of brethren" is unauthentic] Some writers, who so read the text, interpret brethren as signifying brothers and sisters (the feminine word being merger in the masculine term;) and they infer that the ceremonies of both are intended. The author refutes that opinion. Chúḍámaṇi.

The passage relates to the initiation of brothers.] Is not then the defraying of a sister's nuptials enjoyed? Thou art mistaken in that supposition. The marriage of a sister is an indispensable obligation. What then? On the demise of the father, the obligation of completing the initiation of brothers devolves on the brethren. But, in regard to the marriage of a sister, the authority devolves on the grandfather by the death of the father; and on the brethren, if the grandfather be dead. Thus, in a case where the disposal rests with the grandfather, the brethren, though not competent to dispose of their sister in marriage, might be liable to impoverishment. Ragh. on

* Maheçvara.

† Nárada, 13, 34.

‡ The reading here censured occurs in the Ratnákara, Chintámaṇi, &c. viz., bhrátṛnám pūrva-sanskṛtaiḥ in place of bhrátṛbhiḥ purva-sanskṛtaiḥ. The latter is the reading in the Víramitrodaya, Dáya-tatva, &c.

§ Nárada, 13. 33.

43. Conclusion. **43. Thus partition of the wealth of the father, grandfather or other ancestor [has been fully explained.*]**

CHAPTER IV.

Succession to Woman's Property.

SECTION I.

Separate Property of a Woman defined and explained.

1. In the next place, for the purpose of teaching the distribution of a woman's separate goods, such property is first described. On this subject Vishṇu says, "What has been given to a woman by her father, her mother, her son, or her brother, what has been received by her before the nuptial fire, what has been presented to her on her husband's espousal of another wife, what has been given to her by kindred, as well as her perquisite, and a gift subsequent, are a woman's separate property."†

1. The peculiar property of a woman is of various sorts; as enumerated by Vishṇu.

2. Kátyáyana defines a gift subsequent. "What has been received by a woman from the family of her husband at a time posterior to her marriage, is called a gift subsequent; and so is that which is similarly received from the family of her kindred. Whatever is received by a woman after her nuptials, either from her husband or from her parents, through the affection of the giver, Bhṛgu pronounces to be a gift subsequent."

2. One sort, termed gift subsequent, is defined by Kátyáyana.

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In fact, after the demise of the father and grandfather, the brother also is bound to defray his sister's nuptials, as having the authority to dispose her in marriage. Therefore, as the brother may be impoverished by defraying the initiatory ceremonies of numerous brothers, so it is no exceptionable consequence that he may be impoverished by defraying his sister's nuptials. This should be considered by the wise. Çríkṛshṇa.

The ceremonies of brothers include marriage, according to some authors. But [Váchespati] Miçra here explains them as terminating at the investiture with the sacrificial thread. Ragh. on Dáya-bhága.

2. At a time posterior to her marriage.] It is thus evident, that presents given by her father, her mother, her brother, or her kindred, (§ 1.) intend what is given at any other time. Achyuta and Çríkṛshṇa.

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* Chúḍámani.

† Vishṇu, 17, 18.

3. By the word "kindred" her father and mother are denoted. Hence the meaning is this: any thing received subsequently to the marriage, from [maternal or paternal uncles or other*] persons who are related through the father or the mother, or from those two parents themselves; or so received from the husband, or from his family, namely, her father-in-law and the rest; is a gift subsequent. But the term 'kindred,' in the text of Vishṇu, intends maternal uncles and others; for the father and the rest are specified by the appropriate terms: either the husband, or the parents, inherit that which was received at the time of the nuptials, according to the difference between marriages denominated Bráhma, &c., and those called Açura and so forth.

3. Interpretation of his text.

4. Manu and Kátyáyana describe the separate property of a woman. "What was given before the nuptial fire, what was presented in the bridal procession, what has been conferred on the woman through affection, and what has been received by her from her brother, her mother, or her father, are denominated the sixfold property of a woman."† So Nárada says: "What was given before the nuptial fire, what was presented in the bridal procession, her husband's donation, and what has been given by her brother or by either of her parents, is termed the sixfold property of a woman.‡

4. Six sorts are specified by Manu and Kátyáyana;

And by Nárada.

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From the family of her kindred.] Several variations in the reading of the text have been remarked; the most material of which is at the close of it, here read, bandhu-kulát táthá 'similarly from the family of her kindred;' but in the Mitákshará, &c. Pitṛ-kulát tathá, 'from her father's family;' and in the Ratnákara and other compilations, Sva-kulát tathá, 'from her own family.' The text is cited again, Section 3. § 16.

3. From his family, namely her father-in-law, &c.] It thus appears, that a present given to a woman by her son, which is noticed in Vishṇu's text (§ 1.), is not [technically] included among gifts subsequent, since the son cannot be here comprehended under the terms "kindred" and "family of the husband," in the sense in which they are here used; for the son's relation is immediate. Çríkṛshṇa.

Either the husband or the parents inherit.] The meaning is this: the technical term "gift subsequent" is useful relatively to the brother's succession to property, under that denomination, left by a childless woman. But the brother is not heir to what was received by her at the time of her nuptials: since the husband is successor in the instance of a marriage celebrated in one of the five forms called Bráhma, &c., and the parents are so in the other three marriages named Açura, &c. or, on failure of them, the brother-in-law and so forth. Hence the term would be useless, if its signification were general. Or, if the contrary term were taken as comprehending it, a limitation must be argued in the text which specially declares the succession of the husband and the rest; because it would contradict the passage concerning the brother's right of succession. Thus, under the maxim "prevention is better than remedy;" (literally "better not touch mud than wash it off;") the use of a term which obviates that difficulty was proper. Çríkṛshṇa.

4. Conferred on the woman through affection.] This passage is read differently in most quotations of the text: "given in token of love," dattan cha príti karmani, in place of dattan cha prítitah striyai.

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* Çríkṛshṇa. † Manu, 9. 194. ‡ Nárada, 13, 8.

5. Kátyáyana explains this: "What is given to women at the time of their marriage, near the nuptial fire, is celebrated by the wise as the women's peculiar property bestowed before the nuptial fire. That again, which a woman receives while she is conducted from the parental [abode, to her husband's dwelling,] is instanced as the separate property of a woman, under the name of gift presented in the bridal procession."

5. Kátyáyana defines gift before the nuptial fire;

And gift presented in the bridal procession.

6. Since the term "parental" is derived from a complex expression, of which one member only is retained, the presents, which she receives from the family of either her father or her mother, while she is conducted to the house of her husband, are gifts presented in the bridal procession.

6. Exposition of the text.

7. "Her husband's donation" (dáya) is wealth given (datta) to her by her husband; [not, as the word might be supposed to signify, the heritage of her husband.*] For Manu and others [viz., Kátyáyana and Vishṇu†] notice that which is given (datta) to her by him, without mentioning his donation (dáya,) and Nárada specifies donation (dáya.) without any separate notice of given (datta.)

7. The word dáya, in the passage above cited, signifies not heritage, but gift.

8. In other instances also, "husband's donation" is used for wealth given by the husband. Thus Kátyáyana says, "Let the woman place her husband's donation as she pleases, when he is deceased: but, while he lives, she should carefully preserve it, or else [if unable to do so‡] commit it to the [illegible]"

8. Other instances occur of that use of the term; as in a passage of Kátyáyana.

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6. One member only is retained.] The term paitṛka may signify paternal, as derived from pitṛ, father; or parental, as deduced from the complex expression mátṛ pitṛ, father and mother, retaining the single term pitṛ, according to a grammatical rule for rejecting the feminine word in such instances. Pánini. 1. 2. 70.

This is according to a reading of the text, which is countenanced by the Ratnákara and Chintámaṇi: but the Smṛti-Chandriká and Mitákshará read pitur gṛhát 'from the father's house,' instead of paitṛkát 'from the parental [abode].'

From the family of either her father or her mother.] Is not the father's house properly signified by the word "parental?" For the mother's abode is the same with the father's. What use then is there in interpreting the term as signifying parental instead of paternal? The author shows the use of that interpretation. It comprehends the case of her being carried from the house of her paternal grandfather, or from that of her maternal grandsire and so forth. Maheçvara.

7. Her husband's donation.] Gift is the literal interpretation of the word dáya. Inheritance, or succession to the estate of a deceased person in right of relation to him, is a metaphorical sense of the same term. Ragh. on Dáya-bhága.

8. Thus Kátyáyana says.] The passage of Kátyáyana, here cited, is explained by Chandeçvara and Váchespati Miçra, conformably with the opinion of the author of the Prakáça, as intending property which has devolved on a widow by the death of her husband leaving no preferable heir; as well as property accruing to her, during his life-time, by his consent: the first part of the passage being referred to the one; and the second

* Achyuta, Çrikṛshṇa, &c. † Çrikṛshṇa. ‡ Achyuta, Çrikṛshṇa, &c.

(*a*) See 1 Morl. Dig. 312.

9. The meaning of the passage is this: wealth given to her by her husband, she may dispose of, as she pleases, when he is dead; but, while he is alive, she should carefully preserve it. This is intended as a caution against profusion.

9. Exposition of the text.

10. So the text of Vyása, concerning the limits of the value which may be given by her husband, [exhibits the same term.*] "A present, amounting to two thousand (paṇas) at the most, may be given to a woman, out of the wealth: and whatever property is given to her by her husband, let her use as she pleases."† As far as two thousand [paṇas] a present may be given to a woman, but not more. In answer to the question by whom given? the construction refers to the word husband contained in the text; and one not contained in it must not be assumed. Thus the term (deya) 'may be given' retains the literal sense of the verb (dá) to give. But, since so much as is her deceased husband's estate, belongs to the widow, the sense becomes metaphorical [under another interpretation;] and that is not reasonable.

10. Confirmed by a passage of Vyása;

In which the same term occurs and must be taken in the same sense.

11. And whatever property is given to her by her husband, let her use as she pleases.] Hence [since the text relates to a gift made by her husband, and not to an allot-

11. That passage does not li-

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to the other subject. The close of the passage is interpreted, as directing the widow to commit herself to the care of her husband's family, if there be no property left by him. Halâyudha and Párijaṭa are cited as authorities for the different interpretation adopted in the text.

Commit it to the family.] Entrust it to her husband's family; as her mother-in-law, sister-in-law, &c. Maheçvara.

If she herself cannot preserve it, let her commit it to, or place it with the family. Some authors interpret this, 'if she cannot subsist on that wealth, "let her commit herself to the family;" that is, taking refuge with the family, let her pass the time with them. Çrîkṛshṇa.

This is a wrong interpretation, for it is inconsistent with the premises. Achyuta.

10. A present amounting to two thousand at most.] Copies of this as of other compilations differ in the reading of the first words; which in some transcripts stand Dvisahasra-paṇo dáyaḥ; in others, Dvisahasraḥ paro dáyaḥ, or Dvisahasra-paro dáyaḥ, but in the text of the Mahábhárata, whence apparently the passage is taken, Trisahasra-paro dáyaḥ, 'three thousand at most.' The second is the reading, which agrees best with the remarks of Chandeçvara and Mitramiçra on the text.

So much as is her husband's estate.] The whole estate of her husband who dies leaving no male issue. Maheçvara.

11. Hence the alleged conclusion must be rejected.] A different interpretation of the first part of Vyása's text makes it relate to an annual allotment to a woman for her maintenance, which is restricted by that passsage not to exceed the sum specified. The Prakáça, quoted by Chaṇḍeçvara, and the Vîramitrodaya, give this construction to

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* Maheçvara.

† A passage nearly resembling this quotation occurs in the Mahábhárata, Dana-ḍarma, 46, 23.

mit a widow's participation of her husband's estate.

ment delivered to her by an umpire adjusting the succession ;*] the alleged conclusion, that the widow is competent to take so much of the property of her husband, who has died leaving no male issue, as amounts to two thousand [paṇas,] and not the whole estate, must be rejected by the wise.

12. This subject will be resumed in another place.

12. This and [the right of the widow to take the whole estate of her husband who leaves no male issue†] will be discussed at full length [under the head of succession to the estate of one who has no male issue.‡]

13. Yájñavalkya explains [a woman's property :§] "What has been given to a woman [before or after her nuptials,‖] by the father, the mother, the husband or a brother, or received by her at the nuptial fire, or presented to her on her husband's marriage to another wife, [as also any other separate acquisition,] is denominated a woman's property."¶

13. Yájñavalkya describes the separate property

14. That wealth, which is given to gratify a first wife by a man desirous of marrying a second, is a gift on a second marriage: for its object is to obtain another wife [with the assent of the first.](*a*)

14. Explanation of his text.

15. So Devala says ; "Her subsistence, her ornaments, her perquisite, and her gains, are the separate property of a woman. She herself exclusively enjoys it ; and her husband has no right to use it, unless in distress."**

15. A passage of Devala on a peculiar

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the text, and do not consider it as relating to a widow who has of course a provision out of her husband's estate. The interpretation, which Jímúta-váhana refutes, is not found in any of the compilations now received as authority.

15. Subsistence.] What remains of that which is given for her food and raiment.

Gains.] Interest on loans, and so forth. Chūdámani and Çríkṙshṇa, &c.

Perquisite.] This will be explained under the head of succession to a woman's separate property. Chūḍámani.

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* Maheçvara.

† Çríkṙshṇa and Achyuta.

‡ Chūḍámaṇi and Çríkṙshṇa, &c.—Vide C. 11.

§ Críkṙshṇa and Achyuta.

‖ Críkṙshṇa, &c.

¶ Yájñavalkya, 2. 144.

** The first term of this text is read Vṙddhi in the Smṙtichandriká and is interpreted 'wealth given by the father or other person for increase of prosperity.' The Madana-ratna and other authorities read and interpret, as here, Vṙtti 'wealth given by the father or others for subsistence.'

(*a*) See 1 Str. H. L, 53. 3 Coleb, Dig. 558.

16. Vyása also: "Whatever is presented at the time of the nuptials to the bridegroom, intending [the benefit of the bride;] belongs entirely to the bride; and shall not be shared by kinsmen."

16. And one of Vyása.

17. Intending.] Designing, that it shall appertain to the bride. It is not meant, that the property becomes her's, even without such intention. Accordingly the time of nuptials is here stated illustratively; and not as the sole motive. For the will of the giver is the cause of property. So the following authentic text does not specify, that it must be at the time of the nuptials. What is presented to the husband of a daughter, goes to the woman, whether her husband live or die; and, after her death, descends to her offspring." Here the giver's intention is not specified; because it is implied by the word daughter.

17. Exposition of this passage.

What is at any time delivered to the husband for the benefit of the wife, belongs to her.

18. Since various sorts of separate property of a woman have been thus propounded without any restriction of number, the number of six, [as specified by Manu and others,*] is not definitely meant. But the texts of the sages merely intend an explanation of woman's separate property. That alone is her peculiar property, which she has power to give, sell, or use, independently of her husband's control.

18. The number of six sorts (§ 4,) is not restrictive; whatever is at her sole disposal, is a woman's separate property.

19. Kátyáyana expresses this rather concisely: "The wealth, which is earned by mechanical arts, or which is received through affection from any other, [but the kindred,] is always subject to her husband's dominion. The rest is pronounced to be the woman's property."

19. Kátyáyana expresses this meaning

20. Over that, which has been received by her "from any other" but the family of her father, mother, or husband, or has been earned by her in the practice of a mechanical art, [as spinning or weaving,†(*a*)] her husband has dominion and full control. He has a right to take it, even though no distress exist. Hence, though the goods be her's, they do not constitute woman's property; because she has not independent power over them.

20. Exposition of his text.

The husband has power over wealth earned by his wife, or received in presents from any other but kindred.

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These terms are otherwise interpreted in the compilations of other schools, as the Ratnákara, &c. viz. Gains.] Wealth received from kindred. Ratn. Received from any person as an offering to gratify Gaurí, or some other goddess. Víramitr.

Perquisite.] Wealth given to a maiden on account of soliciting her in marriage. Ratnákara.

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* Vide § 4. Çríkṛshna,

† Maheçvara.

(*a*) 1 Morl. Dig. 259, 595, 596. 1 Strange's H. L. 26, 31,

21. But in other descriptions of property excepting these two, the woman has the sole power of gift, sale or other alienation. So Kátyáyana declares. "That which is received by a married woman or a maiden, in the house of her husband or of her father, from her husband or from her parents, is termed the gift of affectionate kindred. The independence of women, who have received such gifts, is recognised in regard to that property; for it was given by their kindred to soothe them, and for their maintenance. The power of women over the gifts of their affectionate kindred is ever celebrated, both in respect of donation and of sale according to their pleasure, even in the case of immoveables"(

The wife sole power over other descriptions of property.

Kátyáyana defines gift of affectionate kindred.

22. What is obtained from kind relations, [meaning persons of her father's family or her mother's,*] is the gift of affectionate kindred(*b*).

22. Explanation of the text.

23. But in the case of immoveables bestowed on her by her husband, a woman has no power of alienation by gift or the like(*c*). So Nárada declares: "What has been given by an affectionate husband to his wife, she may consume as she pleases, when he is dead, or may give it away, excepting immoveable property."† It follows from the specific mention of "given by a husband;" that any other immoveable property, except such as has been given to her by him, may be aliened by her. Else [if this text forbid donation in the case of immove-

23. Immoveables given to her by her husband may not be aliened by her.

A passage of Nárada proves this.

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21. From her husband.] This reading of the text is conformable to the quotation in the Kalpataru and other compilations. But the Mitákshará reads "from her brother," bhrátuḥ, instead of "from her husband" bhartuḥ, and is followed by Chandeçvara and many others. Another variation occurs in the first verse of this stanza, read by Chandeçvara Kanyayá sárdham "with a maiden," instead of Kanyayá vápi, "or by a maiden." It is censured as an erroneous reading by Váchespati Miçra.

23. From the specific mention of "given by a husband."] The author of a commentary, to which is affixed the name of Raghunandana, remarks in this place, 'Hence it is true, that a woman is entitled to give away even immoveable property received by the demise of her husband.' As the doctrine, which is here hinted, is opposed by the whole current of authorities, and receives no countenance from Raghunandana himself, in his undoubted work the Dáya-tatva, this passage cannot be considered as of weight to shake the opposite doctrine, which denies the widow's right of alienation unless under very peculiar circumstances. The authenticity of the commentary itself, as a work of Raghunandana, is more than doubtful. It is of no celebrity: and is suspected to be the work of some later writer, who has assumed Raghunandana's name and designation.

* Dáya-tatva.

† Not found in Nárada's institutes; but cited in the Mitákshará, Ratnákara, &c.

(*a*) See 1 Mad. H. C. Rep. 87: 1 Strange H. L. 28.—*Ed.*

(*b*) See 1 Morl. Dig. 260.—*Ed.*

(*c*) See 1 Mad. H. C. Rep. 91: 1 Morl. Dig. 259.—*Ed.*

32. Wives of the father [meaning step-mothers*] who have no male issue, not those who are mothers of sons, [must be rendered*] equal sharers [with the son.*] So Vyása ordains "Even childless wives of the father are pronounced equal sharers; and so are all the paternal grandmothers: they are declared equal to mothers." Vishṇu likwise says, "Mothers receive allotments according to the shares of sons; and so do unmarried daughters."†

32. But those wives only, who have no male issue, take shares. Vyása and Vishṇu confirm this.

33. According to the shares of sons.] As sons are entitled to four shares, three, two or one, in the order of the classes; so are the wives also.

33. The wife's portion, like a son's, is according to her tribe.

34. Unmarried daughters, likewise, following the allotments of sons, take a quarter thereof. Thus Vṛihaspati says, "Mothers are equal sharers with them; and daughters are entitled to a fourth part."

34. So is the daughter's: and her share is a quarter of the son's: as declared by Vṛihaspati.

35. A son has three parts and a daughter one. So Kátyáy declares: "For the unmarried daughter a quarter is allowed: and three parts belong to the son. But the right of the owner [to exercise discretion] is admitted when the property is small."

35. She has one part and he has three: as Kátyáyana ordains.

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Let him allot half.] The allotment of a moiety implies that the other moiety is completed by the woman's separate property. Else so much only should be given as will make her allotment equal to the son's. Maheçvara.

32. Childless wives of the father.] A certain author supposes this to relate to partition made by sons, because the father's wives, whether mothers of sons or childless, take one share apiece at a distribution made by the father. But that is erroneous: for it is inconsistent with the remark, that the word mother does not signify step-mother (§ 30.) Çrîkṛishṇa and Achyuta.

Grandmothers.] When the father divides his own father's property with his sons, it is right that he should give to his own mother, on whom no separate property has been bestowed, a share equal to his own. But, if there be any childless step-mothers, he need not give them allotments out of the grandfather's estate, but food and raiment only; for they cannot be intended by the word grandmother, and the analogy of the step-mother holds good. Chūḍámaṇi.

Some says, that the word grandmother here signifies the father's natural mother: for the reasons before explained. But others infer from the use of the plural number, and the mention of "all," that all the wives of the grandfather shall have shares. Çrîkṛishṇa.

The first is Chūḍámaṇi's interpretation, which is refuted by Ma[illegible] who maintains the second opinion.

* Ragh. on Dáya-bhága.

† Vishṇu. 18. 34—35.

36. If the funds be small, sons must give a fourth part to daughters, deducting it out of their own respective shares. Thus Manu says, "To the maiden sisters let their brothers give portions out of their own allotments respectively: let each give a fourth part of his own distinct share: and they, who refuse to give it, shall be degraded."*

36. But, if the funds be small, the sons must contribute so much from their respective allotments.

37. Let each give.] From the mention of giving, and the denunciation of the penalty of degradation, if they refuse, it appears, that portions are not taken by daughters as having a title to the succession. For one brother does not give a portion out of his own allotment to another brother who has right of inheritance.

37. Daughters do not take portions in right of inheritance.

38. Thus Yájñavalkya, saying "Uninitiated brothers should be initiated by those for whom the ceremonies have been already performed; but sisters should be disposed of in marriage, giving them as an allotment, a fourth part of a brother's own share;"† declares the obligation of disposing of them in marriage, not their right of succession.

38. But because the brethren are bound to defray the charges of a sister's marriage and a brother's initiation, as declared by Yájñavalkya.

39. Thus, [since the daughter takes not in right of inheritance;‡] if the wealth be great, funds sufficient for the nuptials should be allotted. It is not an indispensable rule, that a fourth part shall be assigned.

39. If the wealth be great, a sufficiency for the nuptials, and not a quarter part, is given.

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36. If the funds be small.] If the property be not sufficient to defray the nuptials of a daughter with a fourth part of the amount receivable by a son, the funds are said to be small. In such a case a partition is made exclusively among the brethren; and afterwards the daughter's nuptials are defrayed with contributions from their respective allotments. Çrîkṛishna.

Out of their own allotments respectively.] This is according to the usual reading of the text. Váchespati Miçra reads and interprets svébhyaḥ svébhyaḥ 'taken from their own brothers,' instead of svébhyoḥ 'mçébhyaḥ 'out of their own allotments.' The author of a commentary on the Dáya-bhága, to which Raghunandana's name is affixed, censures that variation of the reading.

37. Not as having a title to the succession.] The doctrine of the Mitákshará, that the daughter has a right of inheritance like the son, is thus refuted. Ragh. on Dáya-bhága.

38. By those for whom the ceremonies have been performed.] Maheçvara quotes and refutes the author of the Tatva, as maintaining, on the authority of this text, that the charges of a sister's marriage are to be defrayed by those brothers only who have been initiated. But no passage of such an import has been found in the Dáya-tatva.

39. It is not indispensable that a fourth be assigned.] For a passage of Vishṇu‖ cited by [Váchespati] Miçra and the rest, provides, that "the son should defray the initiatory "ceremonies [of other sons] and nuptials of unmarried sisters, suitably to the wealth." The Ratnákara and the rest concur in this. Ragh. on Dáya-bhága.

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* Manu, 9. 118. † Yájñavalkya, 2. 125. ‡ Maheçvara. ‖ Vishṇu, 15. 31.

40. This allotment of a fourth part if the funds be small*] must be understood as applicable only, where the number of sons and daughters is equal. For, if the number be unequal, either the daughter would have a greater portion, or the son would be entirely deprived of property. But that cannot be proper, since the son is principal [in relation to the inheritance.]

40. The allotment of a quarter implies an equal number of sons and daughters.

41. It is stated as an objection, that, as the defraying of the nuptials of a sister is an indispensable obligation under the text of Nárada, which expresses, "If no wealth of the father exist, the ceremonies must without fail be defrayed by brothers already initiated; contributing funds out of their own portions;"† the impoverishment of the brothers is no exceptionable consequence.

41. An argument in support of the specific allotment grounded on a passage of Nárada.

42. That is wrong. For the text is intended to provide for initiatory ceremonies of brother; and the reading of it, which expresses, that "the ceremonies of brethren must be defrayed by those who are already initiated," is unauthentic;‡ and the initiation of a brother was the subject treated of. It had been already said, "For those, whose forms of initiation have not been regularly performed by the father, these ceremonies must be completed by the brethren out of the patrimony."§ Here the pronouns "those" and "whose" are in the masculine gender. But this text immediately precedes the one before cited ("If no wealth of the father exist, &c.") That passage therefore relates to the initiation of brothers.

42. Refutation of that argument.

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40. If the number be unequal.] If there be four sons or a greater number, and only one daughter, she has a larger portion. If there be four daughters and one son he is deprived of wealth. Çríkṙshṇa.

42. The reading which expresses "ceremonies of brethren" is unauthentic.] Some writers, who so read the text, interpret brethren as signifying brothers and sisters (the feminine word being merger in the masculine term;) and they infer that the ceremonies of both are intended. The author refutes that opinion. Chúḍámani.

The passage relates to the initiation of brothers.] Is not then the defraying of a sister's nuptials enjoyed? Thou art mistaken in that supposition. The marriage of a sister is an indispensable obligation. What then? On the demise of the father, the obligation of completing the initiation of brothers devolves on the brethren. But, in regard to the marriage of a sister, the authority devolves on the grandfather by the death of the father; and on the brethren, if the grandfather be dead. Thus, in a case where the disposal rests with the grandfather, the brethren, though not competent to dispose of their sister in marriage, might be liable to impoverishment. Ragh. on Dáya-bhága.

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* Maheçvara.

† Nárada, 13, 34.

‡ The reading here censured occurs in the Ratnákara, Chintámaṇi, &c. viz., bhrátṙnám pūrva-sanskṙtaiḥ in place of bhrátṙbhiḥ purva-sanskṙtaiḥ. The latter is the reading in the Víramitrodaya, Dáya-tatva, &c.

§ Nárada, 13. 33.

Conclusion.

43. Thus partition of the wealth of the father, grandfather or other ancestor [has been fully explained.*]

CHAPTER IV.

Succession to Woman's Property.

SECTION I.

Separate Property of a Woman defined and explained.

1. In the next place, for the purpose of teaching the distribution of a woman's separate goods, such property is first described. On this subject Vishṇu says, "What has been given to a woman by her father, her mother, her son, or her brother, what has been received by her before the nuptial fire, what has been presented to her on her husband's espousal of another wife, what has been given to her by kindred, as well as her perquisite, and a gift subsequent, are a woman's separate property."†

1. The peculiar property of a woman is of various sorts; as enumerated by Vishṇu.

2. Kátyáyana defines a gift subsequent. "What has been received by a woman from the family of her husband at a time posterior to her marriage, is called a gift subsequent; and so is that which is similarly received from the family of her kindred. Whatever is received by a woman after her nuptials, either from her husband or from her parents, through the affection of the giver, Bhṛgu pronounces to be a gift subsequent."

2. One sort, termed gift subsequent, is defined by Kátyáyana.

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In fact, after the demise of the father and grandfather, the brother also is bound to defray his sister's nuptials, as having the authority to dispose her in marriage. Therefore, as the brother may be impoverished by defraying the initiatory ceremonies of numerous brothers, so it is no exceptionable consequence that he may be impoverished by defraying his sister's nuptials. This should be considered by the wise. Çríkṛshṇa.

The ceremonies of brothers include marriage, according to some authors. But [Váchespati] Miçra here explains them as terminating at the investiture with the sacrificial thread. Ragh. on Dáya-bhága.

2. At a time posterior to her marriage.] It is thus evident, that presents given by her father, her mother, her brother, or her kindred, (§ 1.) intend what is given at any other time. Achyuta and Çríkṛshṇa.

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* Chúḍámani.

† Vishṇu, 17, 18.

3. By the word "kindred" her father and mother are denoted. Hence the meaning is this: any thing received subsequently to the marriage, from [maternal or paternal uncles or other*] persons who are related through the father or the mother, or from those two parents themselves; or so received from the husband, or from his family, namely, her father-in-law and the rest; is a gift subsequent. But the term 'kindred,' in the text of Vishṇu, intends maternal uncles and others; for the father and the rest are specified by the appropriate terms: either the husband, or the parents, inherit that which was received at the time of the nuptials, according to the difference between marriages denominated Bráhma, &c., and those called Açura and so forth.

3. Interpretation of his text.

4. Manu and Kátyáyana describe the separate property of a woman. "What was given before the nuptial fire, what was presented in the bridal procession, what has been conferred on the woman through affection, and what has been received by her from her brother, her mother, or her father, are denominated the sixfold property of a woman."† So Nárada says: "What was given before the nuptial fire, what was presented in the bridal procession, her husband's donation, and what has been given by her brother or by either of her parents, is termed the sixfold property of a woman.‡

4. Six sorts are specified by Manu and Kátyáyana;

And by Nárada.

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From the family of her kindred.] Several variations in the reading of the text have been remarked; the most material of which is at the close of it, here read, bandhu-kulát táthá 'similarly from the family of her kindred;' but in the Mitákshará, &c. Pitṛ-kulát tathá, 'from her father's family;' and in the Ratnákara and other compilations, Sva-kulát tathá, 'from her own family.' The text is cited again, Section 3. § 16.

3. From his family, namely her father-in-law, &c.] It thus appears, that a present given to a woman by her son, which is noticed in Vishṇu's text (§ 1.), is not [technically] included among gifts subsequent, since the son cannot be here comprehended under the terms "kindred" and "family of the husband," in the sense in which they are here used; for the son's relation is immediate. Çríkṛshṇa.

Either the husband or the parents inherit.] The meaning is this: the technical term "gift subsequent" is useful relatively to the brother's succession to property, under that denomination, left by a childless woman. But the brother is not heir to what was received by her at the time of her nuptials: since the husband is successor in the instance of a marriage celebrated in one of the five forms called Bráhma, &c., and the parents are so in the other three marriages named Açura, &c. or, on failure of them, the brother-in-law and so forth. Hence the term would be useless, if its signification were general. Or, if the contrary term were taken as comprehending it, a limitation must be argued in the text which specially declares the succession of the husband and the rest; because it would contradict the passage concerning the brother's right of succession. Thus, under the maxim "prevention is better than remedy;" (literally "better not touch mud than wash it off;") the use of a term which obviates that difficulty was proper. Çríkṛshṇa.

4. Conferred on the woman through affection.] This passage is read differently in most quotations of the text: "given in token of love," dattan cha príti karmani, in place of dattan cha prítitah striyai.

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* Çríkṛshṇa. † Manu, 9. 194. ‡ Nárada, 13, 8.

5. Kátyáyana explains this: "What is given to women at the time of their marriage, near the nuptial fire, is celebrated by the wise as the women's peculiar property bestowed before the nuptial fire. That again, which a woman receives while she is conducted from the parental [abode, to her husband's dwelling,] is instanced as the separate property of a woman, under the name of gift presented in the bridal procession."

5. Kátyáyana defines gift before the nuptial fire;

And gift presented in the bridal procession.

6. Since the term "parental" is derived from a complex expression, of which one member only is retained, the presents, which she receives from the family of either her father or her mother, while she is conducted to the house of her husband, are gifts presented in the bridal procession.

6. Exposition of the text.

7. "Her husband's donation" (dáya) is wealth given (datta) to her by her husband; [not, as the word might be supposed to signify, the heritage of her husband.*] For Manu and others [viz., Kátyáyana and Vishṇu†] notice that which is given (datta) to her by him, without mentioning his donation (dáya,) and Nárada specifies donation (dáya.) without any separate notice of given (datta.)

7. The word in the passage above cited, signifies not heritage, but gift.

8. In other instances also, "husband's donation" is used for wealth given by the husband. Thus Kátyáyana says, "Let the woman place her husband's donation as she pleases, when he is deceased: but, while he lives, she should carefully preserve it, or else [if unable to do so‡] commit it to the family."*(a)*

8. Other instances occur of that use of the term; as in a passage of Kátyáyana.

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6. One member only is retained.] The term paitṛka may signify paternal, as derived from pitṛ, father; or parental, as deduced from the complex expression mátṛ pitṛ, father and mother, retaining the single term pitṛ, according to a grammatical rule for rejecting the feminine word in such instances. Pánini. 1. 2. 70.

This is according to a reading of the text, which is countenanced by the Ratnákara and Chintámaṇi: but the Smṛti-Chandriká and Mitákshará read pitur gṛhát 'from the father's house,' instead of paitṛkát 'from the parental [abode].'

From the family of either her father or her mother.] Is not the father's house properly signified by the word "parental?" For the mother's abode is the same with the father's. What use then is there in interpreting the term as signifying parental instead of paternal? The author shows the use of that interpretation. It comprehends the case of her being carried from the house of her paternal grandfather, or from that of her maternal grandsire and so forth. Maheçvara.

7. Her husband's donation.] Gift is the literal interpretation of the word dáya. Inheritance, or succession to the estate of a deceased person in right of relation to him, is a metaphorical sense of the same term. Ragh. on Dáya-bhága.

8. Thus Kátyáyana says.] The passage of Kátyáyana, here cited, is explained by Chaṇḍeçvara and Váchespati Miçra, conformably with the opinion of the author of the Prakáça, as intending property which has devolved on a widow by the death of her husband leaving no preferable heir; as well as property accruing to her, during his life-time, by his consent: the first part of the passage being referred to the one; and the second

Achyuta, Çrikṛshṇa, &c. † Çrikṛshṇa. ‡ Achyuta, Çrikṛshṇa, &c.

(*a*) See 1 Morl. Dig. 312.

9. The meaning of the passage is this: wealth given to her by her husband, she may dispose of, as she pleases, when he is dead; but, while he is alive, she should carefully preserve it. This is intended as a caution against profusion.

9. Exposition of the text.

10. So the text of Vyása, concerning the limits of the value which may be given by her husband, [exhibits the same term.*] "A present, amounting to two thousand (paṇas) at the most, may be given to a woman, out of the wealth: and whatever property is given to her by her husband, let her use as she pleases."† As far as two thousand [paṇas] a present may be given to a woman, but not more. In answer to the question by whom given? the construction refers to the word husband contained in the text; and one not contained in it must not be assumed. Thus the term (deya) 'may be given' retains the literal sense of the verb (dá) to give. But, since so much as is her deceased husband's estate, belongs to the widow, the sense becomes metaphorical [under another interpretation;] and that is not reasonable.

10. Confirmed by a passage of Vyása;

In which the same term occurs and must be taken

11. And whatever property is given to her by her husband, let her use as she pleases.] Hence [since the text relates to a gift made by her husband, and not to an allot-

11. That passage does not li-

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to the other subject. The close of the passage is interpreted, as directing the widow to commit herself to the care of her husband's family, if there be no property left by him. Halúyudha and Párijaṭa are cited as authorities for the different interpretation adopted in the text.

Commit it to the family.] Entrust it to her husband's family; as her mother-in-law, sister-in-law, &c. Maheçvara.

If she herself cannot preserve it, let her commit it to, or place it with the family. Some authors interpret this, 'if she cannot subsist on that wealth, "let her commit herself to the family;" that is, taking refuge with the family, let her pass the time with them. Çríkṛshṇa.

This is a wrong interpretation, for it is inconsistent with the premises. Achyuta.

10. A present amounting to two thousand at most.] Copies of this as of other compilations differ in the reading of the first words; which in some transcripts stand Dvisahasra-paṇo dáyaḥ; in others, Dvisahasraḥ paro dáyaḥ, or Dvisahasra-paro dáyaḥ, but in the text of the Mahábhárata, whence apparently the passage is taken, Trisahasra-paro dáyaḥ, 'three thousand at most.' The second is the reading, which agrees best with the remarks of Chandeçvara and Mitramiçra on the text.

So much as is her husband's estate.] The whole estate of her husband who dies leaving no male issue. Maheçvara.

11. Hence the alleged conclusion must be rejected.] A different interpretation of the first part of Vyása's text makes it relate to an annual allotment to a woman for her maintenance, which is restricted by that passsage not to exceed the sum specified. The Prakáça, quoted by Chaṇḍeçvara, and the Víramitrodaya, give this construction to

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* Maheçvara.

† A passage nearly resembling this quotation occurs in the Mahábhárata, Dana-ḍarma, 46, 23.

mit a widow's participation of her husband's estate.

ment delivered to her by an umpire adjusting the succession;*] the alleged conclusion, that the widow is competent to take so much of the property of her husband, who has died leaving no male issue, as amounts to two thousand [paṇas,] and not the whole estate, must be rejected by the wise.

12. This subject will be resumed in another place.

12. This and [the right of the widow to take the whole estate of her husband who leaves no male issue†] will be discussed at full length [under the head of succession to the estate of one who has no male issue.‡]

13. Yájñavalkya explains [a woman's property:§] "What has been given to a woman [before or after her nuptials,‖] by the father, the mother, the husband or a brother, or received by her at the nuptial fire, or presented to her on her husband's marriage to another wife, [as also any other separate acquisition,] is denominated a woman's property."¶

13. Yájñavalkya describes the separate property

14. That wealth, which is given to gratify a first wife by a man desirous of marrying a second, is a gift on a second marriage: for its object is to obtain another wife [with the assent of the first.](*a*)

14. Explanation of his text.

15. So Devala says; "Her subsistence, her ornaments, her perquisite, and her gains, are the separate property of a woman. She herself exclusively enjoys it; and her husband has no right to use it, unless in distress."**

15. A passage of Devala on a peculiar

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the text, and do not consider it as relating to a widow who has of course a provision out of her husband's estate. The interpretation, which Jímúta-váhana refutes, is not found in any of the compilations now received as authority.

15. Subsistence.] What remains of that which is given for her food and raiment.

Gains.] Interest on loans, and so forth. Chūdámani and Çríkṙshṇa, &c.

Perquisite.] This will be explained under the head of succession to a woman's separate property. Chūḍámani.

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* Maheçvara.

† Çríkṙshna and Achyuta.

‡ Chūḍámaṇi and Çríkṙshṇa, &c.—Vide C. 11.

§ Crikṙshṇa and Achyuta.

‖ Crikṙshṇa, &c.

¶ Yájñavalkya, 2. 144.

** The first term of this text is read Vṙddhi in the Smṙtichandriká and is interpreted 'wealth given by the father or other person for increase of prosperity.' The Madana-ratna and other authorities read and interpret, as here, Vṙtti 'wealth given by the father or others for subsistence.'

(*a*) See 1 Str. H. L, 53. 3 Coleb, Dig. 558.

16. Vyása also: "Whatever is presented at the time of the nuptials to the bridegroom, intending [the benefit of the bride;] belongs entirely to the bride; and shall not be shared by kinsmen."

16. And one of Vyása.

17. Intending.] Designing, that it shall appertain to the bride. It is not meant, that the property becomes her's, even without such intention. Accordingly the time of nuptials is here stated illustratively; and not as the sole motive. For the will of the giver is the cause of property. So the following authentic text does not specify, that it must be at the time of the nuptials. What is presented to the husband of a daughter, goes to the woman, whether her husband live or die; and, after her death, descends to her offspring." Here the giver's intention is not specified; because it is implied by the word daughter.

17. Exposition of this passage.

What is at any time delivered to the husband for the benefit of the wife, belongs to her.

18. Since various sorts of separate property of a woman have been thus propounded without any restriction of number, the number of six, [as specified by Manu and others,*] is not definitely meant. But the texts of the sages merely intend an explanation of woman's separate property. That alone is her peculiar property, which she has power to give, sell, or use, independently of her husband's control.

18. The number of six sorts (§ 4,) is not restrictive; whatever is at her sole disposal, is a woman's separate property.

19. Kátyáyana expresses this rather concisely: "The wealth, which is earned by mechanical arts, or which is received through affection from any other, [but the kindred,] is always subject to her husband's dominion. The rest is pronounced to be the woman's property."

19. Kátyáyana expresses this meaning.

20. Over that, which has been received by her "from any other" but the family of her father, mother, or husband, or has been earned by her in the practice of a mechanical art, [as spinning or weaving,†(*a*)] her husband has dominion and full control. He has a right to take it, even though no distress exist. Hence, though the goods be her's, they do not constitute woman's property; because she has not independent power over them.

20. Exposition of his text.

The husband has power over wealth earned by his wife, or received in presents from any other but kindred.

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These terms are otherwise interpreted in the compilations of other schools, as the Ratnákara, &c. viz. Gains.] Wealth received from kindred. Ratn. Received from any person as an offering to gratify Gaurí, or some other goddess. Víramitr.

Perquisite.] Wealth given to a maiden on account of soliciting her in marriage. Ratnákara.

* Vide § 4. Çríkṙshṇa,

† Maheçvara.

(*a*) 1 Morl. Dig. 259, 595, 596. 1 Strange's H. L. 26, 31,

21. The wife has sole power over other descriptions of property.

21. But in other descriptions of property excepting these two, the woman has the sole power of gift, sale or other alienation. So Kátyáyana declares. "That which is received by a married woman or a maiden, in the house of her husband or of her father, from her husband or from her parents, is termed the gift of affectionate kindred. The independence of women, who have received such gifts, is recognised in regard to that property; for it was given by their kindred to soothe them, and for their maintenance. The power of women over the gifts of their affectionate kindred is ever celebrated, both in respect of donation and of sale according to their pleasure, even in the case of immoveables"(*a*).

Kátyáyana defines gift of affectionate kindred.

22. Explanation of the text.

22. What is obtained from kind relations, [meaning persons of her father's family or her mother's,*] is the gift of affectionate kindred(*b*).

23. Immoveables given to her by her husband may not be aliened by her.

23. But in the case of immoveables bestowed on her by her husband, a woman has no power of alienation by gift or the like(*c*). So Nárada declares: "What has been given by an affectionate husband to his wife, she may consume as she pleases, when he is dead, or may give it away, excepting immoveable property."† It follows from the specific mention of "given by a husband;" that any other immoveable property, except such as has been given to her by him, may be aliened by her. Else [if this text forbid donation in the case of immove-

A passage of Nárada proves this.

ANNOTATIONS.

21. From her husband.] This reading of the text is conformable to the quotation in the Kalpataru and other compilations. But the Mitákshará reads "from her brother," bhrátuḥ, instead of "from her husband" bhartuḥ, and is followed by Chandeçvara and many others. Another variation occurs in the first verse of this stanza, read by Chandeçvara Kanyayá sárdham "with a maiden," instead of Kanyayá vápi, "or by a maiden." It is censured as an erroneous reading by Váchespati Miçra.

23. From the specific mention of "given by a husband."] The author of a commentary, to which is affixed the name of Raghunandana, remarks in this place, 'Hence it is true, that a woman is entitled to give away even immoveable property received by the demise of her husband.' As the doctrine, which is here hinted, is opposed by the whole current of authorities, and receives no countenance from Raghunandana himself, in his undoubted work the Dáya-tatva, this passage cannot be considered as of weight to shake the opposite doctrine, which denies the widow's right of alienation unless under very peculiar circumstances. The authenticity of the commentary itself, as a work of Raghunandana, is more than doubtful. It is of no celebrity: and is suspected to be the work of some later writer, who has assumed Raghunandana's name and designation.

* Dáya-tatva.

† Not found in Nárada's institutes; but cited in the Mitákshará, Ratnákara, &c.

(*a*) See 1 Mad. H. C. Rep. 87: 1 Strange H. L. 28.—*Ed.*

(*b*) See 1 Morl. Dig. 260.—*Ed.*

(*c*) See 1 Mad. H. C. Rep. 91: 1 Morl. Dig. 259.—*Ed.*

Other immoveables may be alienated.

ables in general,*] the preceding passage concerning the power of women in respect of donation and of sale, "according to their pleasure, even in the case of immoveables," would be contradicted.

24. In distress, a husband may use his wife's property: as declared by a passage of Yájñavalkya.

But in no other case.

Kátyáyana directs a woman's property to be restored, with or without interest; according as it was taken by her consent or against it.

24. However, if the husband have no means of subsistence, without using his wife's separate property, in a famine or other distress, he may take it in such circumstances: but not in any other case(*d*). So Yájñavalkya declares: "A husband is not liable to make good the property of his wife, taken by him in a famine, or for the performance of a duty, or during illness, or while under restraint."† Kátyáyana, again, denies the right of the husband to do so in any other circumstance: "Neither the husband, nor the son, nor the father, nor the brothers, can assume the power over a woman's property to take it or to bestow it. If any one of these persons by force consume the woman's property, he shall be compelled to make it good with interest, and shall also incur a fine. If such person, having obtained her consent, use the property amicably, he shall be required to pay the principal, when he becomes rich. But, if the husband have a second wife and do not show honor to his first wife, he shall be compelled by force to restore her property, though amicably lent to him. If food, raiment and dwelling be withheld from the woman, she may exact her due supply, and take a share [of the estate] with the co-heirs."

25. If she be neglected by her husband, she may exact a provision from him.

25. If the husband, having taken the property of his wife, live with another wife and neglect her, he shall be compelled to restore the property taken by him. If he do not give her food, raiment, and the like, that also may be exacted from him by the woman.

26. Conclusion.

26. Thus a definition of woman's property has been propounded.

ANNOTATIONS.

24. She may exact her due supply.] She may take wealth (for the term sva signifies wealth) sufficient for food and raiment, &c. She shall obtain from her husband so much as may be ordered by the king. But, if her husband be dead, let her receive an allotment from his co-heirs. Maheçvara.

She may exact her own; that is, her due supply of food and raiment. She may take from the co-heirs of her husband, that is, from her brother-in-law and the rest, a share, or the portion appertaining to her husband. Some interpret the text; 'She may exact from her husband's co-heirs her own allotment, consisting of food, raiment, &c.' This is, however, an erroneous interpretation; for the same meaning is deducible from the single term sva, "her own." Çrikṛshṇa.

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* Çrikṛshṇa.

† Yájñavalkya, 2, 148.

(*d*) See 1 Strange II. L. 27,—*Ed.*

SECTION II.

Succession of a woman's children to her separate property.

1. Manu pronounces the succession to a woman's property.

1. In the next place partition of woman's property is explained. On that subject Manu says, "When the mother is dead, let all the uterine brothers and the uterine sisters equally divide the maternal estate."*

2. It is inherited by her sons and daughters conjointly.

2. Since this suggests the participation of brother and sister, connected in the sentence by reciprocation, although the conjunctive compound do not there occur, by means however of the conjunctive particle, which bears the same import [and is contained in the text,] the meaning of the passage must be this; 'Let sisters and brothers of the whole blood share the estate.'

3. So Vṛhaspati declares.

3. Vṛhaspati likewise expresses assemblage by the conjunctive particle in the following passage. "A woman's property goes to her children; and the daughter is a sharer with them, provided she be unaffianced; but, if married, she shall not receive the maternal wealth."

4. Çankha and Likhita ordain their equal participation.

4. Here the term children intends sons: and they share their mother's goods with unbetrothed daughters. So Çankha and Likhita say, "All uterine brothers are entitled to the wealth equally; and so are unmarried sisters."

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2. By reciprocation.] The grammatical terms here employed, and the author's reasoning, will be better understood after consulting a note subjoined to the Mitáksharà on inheritance (2. 11.), where the very doctrine is asserted which Jímūta-váhana controverts.

The conjunctive particle.] The particle cha, with which the conjunctive compound corresponds in import; according to Pánini (2. 2. 9.)

3. She shall not receive the maternal wealth.] The close of the stanza is read differently in other compilations, labhate mána-mátrakam, "She receives a mere token of respect," instead of na labhen máṭṭkan dhanam, "She shall not receive the maternal wealth." This reading, which is peculiar to Jímūta-váhaṇa, is disapproved by his commentator Achyuta, who gives reasons for preferring the other; supported as it is by the authority of the Ratnâkara, Smṛti-Chandriká, &c.

* Manu, 9. 192.

5. Since the son is mentioned first in all these passages, he has a right to the succession to his mother's wealth, whatever be his state [initiated or uninitiated*] : and the conjunctive particle, which likewise occurs in every one of those texts, denotes assemblage.

5. The son inherits whether initiated or uninitiated.

6. A passage of Devala is conclusive against one who persists in the controversy notwithstanding the foregoing reasons. It is as follows : "A woman's property is common to her sons and unmarried daughters, when she is dead ; but, if she leave no issue, her husband shall take it, her mother, her brother, or her father."

6. The text of Devala is conclusive against the supposition, that unmarried daughters and sons inherit successively.

7. Here it is expressly declared, that the mother's goods are common to the son and unmarried daughter : and if the maiden daughter were exclusively entitled to the whole of her mother's estate, [notwithstanding the existence of her brother,†] the special texts of Manu and others, [which will be cited,‡] concerning the (Yautuka) wealth given at the nuptials, would be unmeaning; since she would have the right in all cases indiscriminately.

7. Else the special right of the maiden daughter in a particular case would not be declared.

8. But if one should propose this solution : 'the ordaining of equal partition is fit, if the brother and sister have alike a right of succession to their mother's property ; but, if sisters only inherit equally, or, on failure of them, brothers only, the declared equality would be impertinent, since it might be deduced, without such declaration, from reasoning, because no exception to it has been specified :' he might be thus answered [by an obstinate antagonist :§] 'It is no less impertinent to declare equality, on the assumption, that brother and sister inherit ; since their parity may be in like manner deduced from reasoning.' [The antagonist might proceed to say||] 'Besides, how is it impertinent ? since, in the case of brothers inheriting alone, [upon failure of sisters,¶] the term "equal" is unquestionably pertinent, as it obviates the supposition, that deductions of a twentieth and the like shall be allowed in the instance of the mother's estate, as in that of the father's.' Therefore, the half learned person [who argues, that the declaration of equality would be impertinent,**] must be disregarded by the wise, as unacquainted with the letter of the law, and with the reasoning [which has been here set

8. A different argument rejected.

ANNOTATIONS.

6. A passage of Devala is conclusive, &c.] Literally, is a choker for an obstinate wrestler.

8 With the letter of the law.] With the text above cited. (§ 6.) Çrîkṛshṇa.

* Çrîkṛshṇa and Achyuta. † Çrîkṛshṇa and Achyuta. ‡ Çrîkṛshṇa and Achyuta. Maheçvara. || Ibid. ¶ Ibid. ** Ibid. †† Çrîkṛshṇa.

9. But for the cause above stated, the son and maiden daughter have a like right of succession. On failure of either of them, the goods belong to the other. On failure of both of them, the succession devolves, with equal rights, on the married daughter who has a son, and on her who may have male issue. For, by means of their sons, they may present oblations at solemn obsequies.

9. On failure of eithers, the other is heir. On failure of both, a daughter, who has, or may have

10. Hence, [since the right is founded on the presenting of oblations at solemn obsequies,*] the daughter's son is entitled to the property, on failure of the daughters above described: for the text of Manu expresses, "Even the son of a daughter delivers him in the next world, like the son of a son."† Neither a barren nor a widowed daughter inherits; for these present not oblations at solemn obsequies, either in person or by means of their offspring. Accordingly [since the daughter's right of succession is founded on benefits conferred through the means of her male issue;‡ or since neither the barren nor the widowed daughter's right of equal succession is recognized;§] Nárada says, "On failure of the son, the daughter inherits; for she equally continues the lineage."‖

10. The daughter's son inherits, in their default.

11. But, if there be a son's son and a daughter's son claiming the succession, the son's son has the exclusive title; for it is reasonable, since the married daughter is debarred from the inheritance by the son, that the son of the debarred daughter shall be excluded by the son of the person who bars her claim.

11. After the son's son.

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9. For the cause above stated.] Because the word "equally" is not impertinent. Ragh. on Dâya-bhâga.

On failure of both of them.] Both the son and maiden daughter. Maheçvara.

The succession devolves—on the married daughter.] And not, as in the instance of wealth given at nuptials, according to a subsequent definition of it, devolving in default of a maiden daughter, on one betrothed; or for want of such, on a married daughter: since there is no authority for that order of succession in this case. Chūḍámaṇi and Çríkṙshṇa.

10. The daughters above described.] A daughter who has a son; and one who may have male issue. Maheçvara.

Delivers him in the next world.] Since the parity of reasoning holds, the masculine gender is not here exclusive. Maheçvara.

11. Debarred from the inheritance by the son.] The prior right of a daughter's son, in the case of wealth which was given at nuptials, is thus indicated; for, in that instance, the son is debarred from the inheritance by the married daughter. Çríkṙshṇa.

* Çríkṙshṇa.
† Manu, 9. 139. Vide infra. C. 11. Sect. 6. § 31.
‡ Çríkṙshṇa.
§ Achyuta.
‖ Nárada, 13. 50.

12. On failure of all these abovementioned, including the daughter's son [and the son's grandson,*] the barren and the widowed daughters both succeed to their mother's property; for they also are her offspring; and the right of others to inherit is declared to be on failure of issue.

12. Next the barren or widowed daughter succeeds.

13. But the text of Gautama, "A woman's separate property goes to her daughters unaffianced, and to those not actually married;"† that of Nárada, "Let daughters divide their mother's wealth; or, on failure of daughters, her male issue;"‡ a passage of Kátyáyana, "But, on failure of daughters, the inheritance belongs to the son;" as also one of Yájñavalkya, "Daughters share the residue of their mother's property, after payment of her debts; and the male issue succeeds in their default;"§ relate only to the (yautuka) wealth given at nuptials; for these passages contradict the text of Devala above cited (§ 6.) Accordingly [since it is in the case of wealth given at nuptials, that the unmarried daughter has the prior right of succession;‖ or has the exclusive right;¶] Manu says, "Property given to the mother on her marriage "(yautuka,) is the share of her unmarried daughter."**

13. Passages, seemingly declaratory of the daughter's succession, to the exclusion of the son, relate to wealth received by the mother at her nuptials.

Manu is explicit.

Here yautuka signifies property given at a marriage: the word yuta, derived from the verb yu to mix, imports "mingling;" and mingling is the union of man and woman as one person; and that is accomplished by marriage. For a passage of scripture expresses "Her bones become identified with his bones, flesh with flesh, skin with skin."†† Therefore what has been received at the time of the marriage, is denominated Yautuka.‡‡

Derivation and meaning of the term yautuka.

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12. Including the daughter's son.] And the son of the son's son; for the right devolves on him, next after the daughter's son, since he confers great benefits on his ancestor. Çríkṛshṇa.

14. Here yautuka signifies, &c.] This interpretation is opposed by the author to that which is proposed by the Kalpataru, where the term is explained as signifying 'Savings effected by her good management out of what has been given to the woman, for the purpose of providing bread, potherbs, &c.' Achyuta.

This alleged interpretation is not found in the Kalpataru: but the term is there explained 'Wealth given to a woman by her father and the rest, at the time of her nuptials.'

* Çríkṛshṇa. † Gautama, 28. 22. ‡ Nárada, 13. 2.
§ Yájñavalkya, 2. 118. ‖ Çríkṛshṇa.
¶ Achyuta. ** Manu. 9. 131.
†† Véda. ‡‡ This is written both Yautuka, and Yautaka, Víramitrodaya.

15. Accordingly [since the term signifies wealth received at the time of the marriage ;*] Vasishṭha says, "Let the females share the nuptial presents (páriṇáyya) of their mother."† For páriṇayya signifies wealth received at a marriage

15. Answering to páriṇáyya in Vasishṭra's text.

16. As for a passage of Manu, "The wealth of a woman, which has been in any manner given to her by her father, let the Bráhmaṇi damsel take; or let it belong to her offspring;"‡ since the text specifies "given by her father," the meaning must be, that property, which was given to her by her father, even at any other time besides that of the nuptials, shall belong exclusively to her daughter: and the term Brahmaṇi is merely illustrative [indicating, that a daughter of the same tribe with the giver inherits.§] Or, lest the term should be impertinent, the text may signify that the Bráhmaṇi damsel, being daughter of a contemporary wife, shall take the property of the Kshatriyá and of other wives dying childless, which had been given to them by their fathers. The precept, which directs, that "the property of a childless woman shall go to her surviving husband;" does not here take effect. Such is the meaning of the passage; for else [according to the preceding interpretation‖] all the texts [which declares the equal right of the son and daughter, to inherit their mother's property in certain cases,¶ would be incongruous.

16. A passage of Manu explained.

17. It must not be argued, that the succession of the daughter's sons, on failure of the daughter, is shown by Nárada and others [as Yájñavalkya, &c.**] because the word "issue" is connected in construction with daughter, which is the nearest term. For the word daughter, as signifying a distinct [viz. female††] progeny, requires a parent for its correlative, and must not be connected in construction with "son" another progeny suggested by the term "issue": since [both terms] alike [need a correlative indicating the parent.‡‡

17. The daughter's son is not meant, where it is said, that issue male succeeds on failure of daugh-

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15. Wealth received at a marriage.] And not, as the term is interpreted in the Kalpataru and other compilations, 'furniture, mirrors, combs, and the like.' Çríkṙshṇa.

According to the Víramitrodaya, the word, as read by the authors of the Kalpataru and Vivádа-chintámaṇi, is different from Jímúta-vahana's reading, viz. páriṇáyyam, for párinayyam. But Jímúta-váhana's commentators have remarked no difference in the reading, but only in the interpretation.

17. For the word daughter, as signifying progeny, requires a correlative.] The single term daughter cannot, in the same phrase, successively signify the progeny and the parent; namely progeny in respect of the mother, and parent in respect of the male issue. Çríkṙshṇa, &c.

* Achyuta. † Vasishṭha, 17. 40. ‡ Manu, 9. 198.
§ Maheçvara. ‖ Çríkṙshṇa. ¶
** Maheçvara. Vide § 13. †† Çríkṙshṇa and Achyuta. ‡‡ Ibid.

18. Such an interpretation cannot be supported by the metaphorical sense of terms.

18. Nor should [the word*] "issue" be expounded metaphorically, from the appropriate sense, [as signifying male, and "daughter" female; neglecting the relation to a parent indicated by these terms.†] For all the terms [viz. "daughter," repeatedly occurring in various texts;‡ or issue, or other equivalent word;§ or daughter, and issue, and, in the text of Kátyáyana, son;‖] may be taken in their literal acceptation by connecting them with "mother:" and the word "daughter" is acknowledged to bear the literal sense as connected with the term "mother."

19. Nor by construction.

19. Neither should the construction of the sentence be alleged to be 'issue of the daughter' suggested by the pronoun in the phrase "her issue." (§ 13.) For the pronoun would refer to her as daughter, [not as mother;] since the meaning of the original term is such.

20. The other interpretation is reasonable.

20. Besides, the word "daughter," in the text of Yájñavalkya (§ 13), having the termination of the first or nominative case, and the pronoun ("their") having that of the fifth ablative, cannot be connected with the term "issue," by construction which requires the sixth or relative case. But this term governs the word "mother" notwithstanding the intervention of mediate terms. Thus then, with the certainty, that "issue of the mother" is here intended, it is reasonable to interpret issue of the mother [as signifying son¶] in the texts of Nárada and Kátyáyana: for there can be no contradiction [since the passage must be presumed to be grounded on the same revelation.**]

21. It is right, that the son should inherit before the daughter's son.

21. Moreover, conformably with the text of Baudháyana "Male issue of the body being left, the property must go to them;"†† and because [the son, as immediate issue of the mother, is] nearer of kin [that the daughter's son, who is a mediate descendant;‡‡] it is reasonable, that the son born of her body should have the right of succession to his mother's property, and not the daughter's son, who is a mediate descendant not born of her person.

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21. A mediate descendant, not born of her person.] This is according to the common reading of the text, ná'nangaja-vyavahita-dauhitra; as interpreted by Maheçvara. But he notices a variation of the reading, ná'ngaja-vyavahita-dauhitra, which he expounds 'A mediate descendant through the daughter born of her person.'

* Maheçvara.
Ragh. on Dáya-bhága.
Çríkṛishṇa.
Çríkṛishṇa and Chuḍámaṇi.

† Çríkṛishṇa, Chuḍámaṇi Achyuta.
§ Chuḍámaṇi.
¶ Maheçvara.
†† Vide infra. C. 11. Sect. 1 § 37.

22. Hence a woman's separate property, received by her at her nuptials, goes to her daughter; and not to her sons [if there be a daughter:*] and the text of Gautama (§ 13.) is intended to explain the order of succession in this case [of an inheritance devolving on the female issue.†]

22. Nuptial presents go to the daughters.

23. First, the woman's property goes to her unaffianced daughters. If there be none such, it devolves on those who are betrothed. In their default, it passes to the married daughters [as indicated by the conjunctive particle in the text.‡] For the right of the female issue generally is suggested by the term "daughters" [in Gautama's text § 13.]; and the special mention of "unaffianced" and "unmarried," which follows, is pertinent as declaratory of the order of succession [and not as a limitation of the preceding general term.§]

23. First unaffianced; next betrothed; lastly married daughters.

24. Thus Yájñavalkya says, "The separate property of a childless woman married in the form denominated Bráhma or in any of the four [unblamed forms of marriage] goes to her husband: but if she leave progeny it will belong to her daughter: and in other forms of marriage, [as the Açura, &c.,] it goes to the father [and mother, on failure of issue."]||

24. A passage of Yájñavalkya cited.

25. Here, in certain forms of marriage termed Bráhma, &c., what has been received by a woman at the nuptial fire, goes after her death, first to her daughters [not, like property received at any other time but that of her nuptials, to her sons as well as her daughters¶]. Again, the right devolves first on the maiden daughter [conformably with the text above cited;**] if there be none, it descends to the betrothed daughter; or for want of such, it goes to a married daughter [including even a barren or a

25. And explained.

ANNOTATIONS.

22. The text is intended to explain the order of succession.] Not to exclude the affianced and married daughters. Achyuta.

23. Pertinent as declaratory of the order of succession.] Both Çríkṛshna and Achyuta notice a variation in the reading of Jímúta-váhana's text in this place; but they deduce the same import, though in different ways.

The order of succession is this: first the property goes to the maiden daughter; then to one betrothed; for she is superior to the married daughter, because she belongs to the same original family (gotra) with her parents. On failure of such, the property devolves on the married daughter; that is, on one who has a son, or who may be expected to have offspring. If there be none such, it goes to any other daughter. Çríkṛshṇa and Achyuta.

24. Or in any of the four.] Including that denominated Bráhma, in any of five unblamed forms of marriage. Çríkṛshṇa.

* Çrikṛshṇa and Maheçvara. † Çríkṛshna and Achyuta. ‡ Achyuta.
§ Achyuta. || Yájñavalkya, 2. 146. ¶ Çríkṛshṇa.
** Achyuta and Çríkṛshṇa.

widowed one :*] or, on failure of all daughters, it devolves on the son. For the husband's right of succession is relative to property of a wife who leaves no issue whatever.

26. The married daughter's right is even hinted in a former text (§ 3.)

26. The right of the married daughter, too, on failure of the unaffianced one and the rest, has been hinted by Vṛihaspati using the term "unaffianced" (§ 3.)

27. The preding passage (§ 22.) does not relate to woman's property, in general; but to nuptial presents in [illegible] forms.

27. It should not be alleged, that this text of [Yájñavalkya† above cited § 24.] does not relate exclusively to wealth received at nuptials; but is applicable to any property, whether obtained then or at any other time, and appertaining to a woman espoused by such forms of marriage. For the preceding passage,‡ [which is declaratory of a brother's right of succession,§] would have no pertinency, [since, even in that case, the husband or the father would inherit under the text in question :||] and it would disagree with Manu; for he says, "It is admitted, that the property of a woman married by the ceremonies called Bráhma, Daiva, Ársha, Gándharba and Prájápatya, shall go to her husband, if she die without issue. But her wealth, given to her on her marriage in the form called Ásura or either of the other two (Rákshasa and Paisácha,) is ordained, on her death without issue, to become the property of her mother and of her father."¶ Here, the subsequent terms, "wealth given to her," are understood in the preceding sentence. Therefore, by thus connecting the terms, "wealth given to her at the nuptial ceremonies, &c," the text appears to relate to property received at her marriage, and not generally to any property whatever.

28. This interpretation is confirmed by a pas- of Yama.

28. So Yama, saying "Wealth, which is given at the marriages called Ásura, &c. [is acknowledged to belong to the parents, if the woman die without issue,"**] appears to intend nuptial presents exclusively: that is, wealth which is given while the marriage ceremony lasts, having been commenced but not being finished.

29. The texts do not relate to

29. It must not be argued, that the denominations of Bráhma, &c. regard the woman [who is married by such ceremonies;†† and that the text concerns any property be-

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27. Any property appertaining to a woman espoused by such forms.] The author is here opposing the doctrine of the Mitákshará; as is remarked by Çríkṛishna.

* Chūḍámaṇi.
† Çríkṛishṇa, Chūḍámaṇi, &c.
‡ Yájñavalkya, 2, 145. Vide Sect. 3 § 10.
§ Çríkṛishṇa, &c.
|| Çríkṛishṇa and Achyuta.
¶ Manu, 9. 196 and 197.
** Maheçvara.
†† Maheçvara.

any property belonging to a woman married in such a form; but to property given to her at a marriage celebrated in such form.

longing to her; the designations being relative to the person :*] because there is no other rule provided for the descent of a childless woman's property received by her before her nuptials, or after them. For the rule of succession, in the case of property received before or after marriage, will be fully stated, conformably with express laws.

SECTION III.

Succession to the separate property of a childless Woman.

1. Succession to a childless woman.

1. The heirs of the property of a woman who dies childless are next propounded.

2. A passage of Yájñavalkya again cited.

2. "The separate property of a childless woman married in the form denominated Bráhma, or in any of the four [unblamed forms of marriage,] goes to her husband."†

3. And expounded.

3. The four forms of marriage, at the head of which is that called Bráhma, are here intended. Those four are the Daiva, Árṣha, Prájápatya, and Gándharba. With the Bráhma, they make five. For Manu has specified five: namely "the ceremonies called Bráhma, Daiva, Árṣha, Gándharba and Prájápatya."‡ Wealth, which has been received by a woman while her marriage in any of those forms is celebrated, devolves on her husband, if she die without issue. Here issue signifies progeny.

The nuptial presents are inherited by the husband in some cases.

4. A different interpretation refuted.

4. It is not right to interpret the text as signifying, that any property of whatever amount, which belongs to a woman married by any of those ceremonies termed Bráhma, &c., whether received by her before or after her nuptials, devolves wholly on her husband by her demise. For the terms employed in the text (§ 2.), signifying 'at mar-

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3. Progeny.] Intending the giver of a funeral oblation. Chúḍámaṇi.

4. For the terms employed in the text indicate time.] To make the reasoning in this place more intelligible, it is necessary to remark, that, in the original of the passage under consideration, the word has a termination (that of the seventh or locative case,) which properly denotes the site or place of the act. Now a wedding cannot strictly be

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* Achyuta. † Yájñavalkya, 2. 146. Vide Sect. 2 § 24.

‡ Manu, 9. 196. Vide Sect. 2 § 27.

in the form denominated Bráhma, &c.' indicate time: and, if the word Bráhma, &c., [in Manu's text:*] intended the woman [who is espoused in such form,†] those terms [as expressive of the married person‡] would have been exhibited in the singular number and sixth or relative case: for the pronoun, denoting the woman, is exhibited in that case and number, in the [subsequent] passage; "But her wealth, given to her on her marriage, &c."§ If the time of nuptials be indicated the term as the metaphorical sense from relation to [time‖] present. But, if the woman be intended, it has the metaphorical meaning from relation to the past ceremony of marriage. Now this, being a less approved mode of construction, is not the proper one. Neither is it true, that the terms Bráhma, &c., do signify the woman who is espoused; for they are used by Manu and the rest as importing the marriage celebrated in such form. Thus Manu, having premised these words "Now learn compendiously the eight forms of the nuptial ceremony;"¶ enumerates "the ceremony of Bráhma, of the Devas, of the Ṛshis, of the Prajápatis, of the Asuras, &c."** So Nárada says, "Eight forms of marriage are ordained for the perfecting of the several tribes: the first of them is the Bráhma."†† Vishṇu in like manner says, "Marriages are of eight sorts, the Bráhma, the Daiva, &c."‡‡

5. Viçvarúpa's exposition of the text confirmed.

5. Therefore the observation of Viçvarúpa, that the text relates to woman's property received at the time of the nuptials, should be respected.

6. In other cases, the mother inherits the nuptial presents; and, in her default, the father.

6. But a woman's property, received at a marriage in the form called Ásura and the like, her mother may take on her demise, though her husband be living; and, on failure of the mother, the father. For that order of succession results from the text, "Her wealth is ordained to become the property of her "mother and of her father."§§ If then joint succession were intended, the author would have said, "become the property of her two parents." And, as the father's right of inheritance is declared to be on failure of the mother in the case of a maiden's property, the same is fitting in this instance also.

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the site of the gift; and therefore, conformably with the syntax of the language, the author considers time to be indicated as a secondary or metaphorical meaning of the inflected word He supports his interpretation by an argument which may be thus stated: the relation of the marriage to the time of its celebration renders this, metaphorically, the site of the donation; and that is an easier construction than making the moral relation, which results from the celebration of a marriage, the site of the eventual succession.

6. Her mother may take on her demise.] It must be consequently understood, that the term father, in a passage of Yájñavalkya, "In other forms of marriage, it goes to the father,"‖‖ signifies parents; one term only being retained of the phrase 'father and mother.' Çrí kṛshṇa and Achyuta.

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* Vide Sect. 2. § 24. † Çrí kṛshṇa. ‡ Maheçvara. § Vide Sect. 2. § 27.
‖ Çrí kṛshṇa. ¶ Manu, 3. 20. ** Manu, 3. 21. †† Nárada, 12. 39.
Vishṇu, 24 18. §§ Vide Sect. 2. § 27. ‖‖ Sect. 2. § 24.

7. A passage of Baudhá́yana on succession to a maiden's property.

7. Accordingly Baudhá́yana says, "The of a deceased damsel let the uterine brethren selves take. On failure of them, it shall belong to the mother; or, if she be dead, to the father.

8. Is sufficient on the subject.

8. The property of a maiden has been thus explained, [and the subject will not be resumed under a distinct head.*]

9. The brother does not inherit preferably the nuptial present, as he does a maiden's property.

9. It must not be argued, that, in this case [of wealth received at nuptials†] as in that of a maiden's property, the brother has the prior right. For no text ordains it: and the succession of the mother and father only [not the brother‡] is expressly declared.

10. But he does inherit presents received by her after marriage; gifts of kindred, and her fee (çulka) according to Yájñavalkya.

10. But wealth received by a woman after her marriage, from the family of her father, of her mother, or of her husband, goes to her brothers, [not to her husband;§] as Yájñavalkya declares: "That which has been given to her by her kindred, as well as her fee or gratuity, and any thing bestowed after marriage, her kinsmen take, if she die without issue."‖

11. Explanation of the text.

11. Given by her kindred.] Presented to her by her father or mother [during her maidenhood.¶] Hence [since the words "given by kindred" intend given by the father and mother;**] their sons, who are her brothers, are the kinsmen here signified.

12. The interpretation is supported by a passage of Kátyáyana concerning immoveables.

12. That is confirmed by Vṛiddha Kátyáyana, who says "Immoveable property, which has been given by parents to their daughter, goes always to her brother, if she die without issue." For it appears, that the brother's right of succession is founded simply on her leaving no issue [which is the case equally of a maiden, as of a

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10. Received after her marriage from the family of her father, &c.] Property intended by the term Anvadheya or 'gift subsequent' is here described by circumlocution. Chúḍamaṇi and Çríkṛishṇa.

11. Their sons, who are her brothers, are the kinsmen here signified.] Conformably with the etymology of the term bándhava kinsmen, or offspring of (bandhu) kindred, explained as signifying her father and mother. Çríkṛishṇa and Achyuta.

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* Çríkṛishṇa and Achyuta.
† Ibid.
‡ Ibid.
§ Çríkṛishṇa &c.
‖ Yájñavalkya, 2. 145.
¶ Chūḍámaṇi and Çríkṛishṇa.
** Chūḍámaṇi.
†† Çríkṛishṇa and Chūḍá

13. In general, as affirmed by Viçvarúpa, the brother inherits a woman's property.

13. The remark of Viçvarúpa, that property of a childless woman married by any form of nuptials, from that of Bráhma to that of the Piçáchas, (as hinted by the term "always,") goes to her brother, should therefore be respected.

14. Since he inherits the immoveables, he must a fortiori succeed to moveables.

14. Under the term "immoveables," the same must be true of other property [such as described in the passage of Yájñavalkya above cited;*] by the argument a fortiori, exemplified in the loaf and staff.†

Presents given to the woman, when a maiden, are included in the preceding text (§ 10.)

15. By the phrase "given by her kindred" (§ 10.) is signified that which was given to her by her parents during her maiden state. For any thing received by her, subsequently to her nuptials, is comprehended under the denomination of (anvádheya) 'gift subsequent:' and either the husband, or the parents, inherit that which was presented at the time of the wedding.

16. Kátyáyana's definition of a gift subsequent.

16. Kátyáyana describes a gift subsequent: "What has been received by a woman from the family of her husband, and a time posterior to her marriage, is called a gift subsequent; and so in that which is similarly received from the family of her kindred."‡

17. Exposition of the text.

17. From the family of her husband.] From her father-in-law and the rest. From the family of her kindred.] From that of her father and mother.

18. Another definition of gift subsequent.

18. The same author gives another definition: "Whatever is received by a woman after her nuptials, either from her husband, or from her parents, through the affection of the giver, Bhṛgu pronounces to be a gift subsequent."

19. Explanation of fee or perquisite by the same authority.

19. He likewise explains the fee or perquisite (Çulka.) "Whatever has been received, as a price, of workmen on houses, furniture and carriages, milking vessels and ornaments, is denominated a fee."

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19. Received of workmen.] The passage is translated conformably to the interpretation of Jímúta-váhana and his commentators, Çríkṛshṇa, Achyuta and Maheçvara: and it seems to have been understood in the same sense by the authors of the Ratnákara and Vivádа-chandra. But it is difficult to reconcile this meaning with the construction of the sentence. The passage is accordingly explained in quite a different sense by the authors of the Smṛti-chandriká, Madanaratna, &c. 'The price of house, furniture, carriages, &c. received in trust for the bride, is her fee or perquisite.' There is a variation in the reading of the text adapted to these different interpretations. Jímūtaváhana reading karminám 'workmen;' and the Smṛti-chandriká, &c. karmaṇám, 'works.'

* Chūḍámani. † Ch. 2. § 25. ‡ Cited before: Section 1 § 2.

20. What is given to a woman by artists constructing a or executing other work, as a bribe to send her hu... or other person [of her family] to labour on such particular work, is her fee. It is the price [of labour;] since its purpose is to engage [a labourer.]

20. Interpretation of the passage.

21. Or a fee is that which is described by Vyása, "What given] to bring the bride to her husband's house, is denominated her fee." That is, what is given by way of bribe or the like to induce her to go to the house of her husband*(b)*.

21. A different explanation by Vyása.

22. This fee, [as described in both the above cited,*] occurs indiscriminately in any form of marriage, whether that termed Bráhma or another. Such, or any similar property of a childless woman, her brothers inherit.

22. Either way, property of such description occurs under every form of marriage.

23. But it does not intend a gratuity (Çulka) presented to damsels at marriages called Ásura and the rest For that gratuity is restricted to the particular form denominated Ásura [and does not occur in the rest.†] Accordingly it is said, "The Ásura marriage is grounded on the receipt of wealth; the Gándharba, on reciprocal connexion; the Rákshasa, on seizure in war; and the Paiçácha is where the bride is obtained by fraud."‡

23. The term (Çulca) is not employed in its sense of price, as intending a gratuity for the purchase of a bride: such as is given at an A'sura marriage.

24. Hence, since there is no gratuity at the Rákshasa marriage, nor at the other [viz., the Paiçácha marriage,§] the conclusion, deduced from association with nuptial gratuity, that only such property goes to the brother as was received under the Ásura and other similar marriages, must be rejected: as also because that is not the separate, property of the woman; for only wealth received by the father or other person [who gives the girl in marriage] is denominated a gratuity. Thus Manu says, "Let no father, who is wise, receive a gratuity however small, for giving his daughter in marriage; since the man, who through avarice, takes a

24. A proposed restriction of the text (§ 10.) to the case of A'sura and similar marriages refuted.

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20. It is the price of labour.] Çulka properly signifies price: though it has become necessary to translate it fee, perquisite, or gratuity.

21. What is given to bring the bride.] Chūḍámani notices a variation in the reading of Vyásá's text; ánítam for ánétum, "what is brought [while the bride is going] to her husband's "house;" instead of "what [is given] to bring her to husband's house."

22. Occurs indiscriminately in any marriage.] The term fee does not here denote the gratuity (Çulka) received at an A'sura marriage. (Vide § 23.) Çríkṛshṇa.

23. It does not intend a gratuity at marriages called A'sura.] The author here refutes the ancient doctrine as set forth by Chandeçvara. Çríkṛshṇa.

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* Chūḍámani.

† Çríkṛshṇa, &c.

‡ Yájñavalkya, 1. 61. Vide Manu, 3. 31—34.

§ Chūḍámani.

(*a*) 1 Str. H. L. 31.—*Ed.*

(*b*) Ibid. 29.—

gratuity, is a seller of his offspring."* Father is here a general expression [intending the person who gives away the damsel.†] Therefore, a brother, or any other person, accepting a present [for giving a girl in marriage,] is a receiver of a gratuity. Consequently, a gratuity (Çulka) is that which is accepted by the father or other person [so disposing of the damsel.]

25. Hence [since the gratuity belongs to the giver of the damsel, and not to the damsel herself,‡] the argument is refuted, which has been thus proposed; that, as a woman's separate property received in the form of a gratuity (Çulka) is possible only in an Ásura marriage, therefore the gifts of kindred and a gift subsequent, which are specified in the same passage (§ 10.), shall be inherited by the brother, provided they are relative to an marriage.

25. And the restriction of it to the single case of marri-

26. But, since property, received as a fee or perquisite (Çulka) in the manner described (§ 18 and 21), is possible under every form of marriage, the brother is heir in all such instances; conformably with the text [of Yájñavalkya.§] For it contains no restriction [to any particular form of marriage,‖ not to that called Ásura in particular.¶]

26. The brother is heir to the fee or perquisite, under every form of marriage.

27. Thus the text of Gautama also conveys the same import with that of Kátyáyana. (§ 12.) It is as follows: "The sister's fee belongs to the uterine brothers; after them, it goes to the mother; and next to the father. Some say, before her."**

27. A passage of Gautama confirms this.

28. The meaning of the passage is this: in the first place that property goes to her brother of the whole blood. But, on failure of them, it belongs to the mother. *In her default, it devolves on the father.*†† Some say before her. This is stated as the doctrine of others.

28. Exposition of the passage.

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27. And next, to the father.] Jímúta-váhana reads and interprets this passage of Gautama differently from other compilers, by whom it is cited. The clause "and next, to the father," which Çríkṛshṇa reads in Jímúta-váhana's quotation, is not found in Gautama's text as exhibited in his institutes; nor is it noticed by his scholiast; nor inserted in ancient quotations of this passage; nor read by Achyuta in Jímúta-váhana's text. The scholiast, with Haláyudha, Chandéçvara and others, expounds this passage 'The sister's gratuity belongs to the uterine brothers, after [the death of] the mother; some say before [her demise:'] an interpretation, which, as Achyuta observes, is rejected by Jímúta-váhana.

28. Some say before her.] Some hold, that it devolves on the father next after brothers; and on the mother after him.

* Manu, 3. 51.
† Çríkṛshṇa and Achyuta.
‡ Çríkṛshṇa.
§ Chúḍámaṇi. Vide § 10.
‖ Maheçvara.
¶ Çríkṛshṇa.
** Gautama, 28, 23, &c.
†† This sentence is wanting in some copies of Jímúta-váhana.

29. On failure of brothers, the gifts of kindred go to the mother; or to the husband.

So Kátyáyana ordains.

29. Therefore, the property goes first to the whole brothers; if there be none, to the mother; if she be dead, to the father: but, on failure of all these, it devolves on the husband. Thus Kátyáyana says, "That, which has been given to her by her kindred, goes, on failure of kindred, to her [husband]."

30. By saying "on failure of the kindred," [or of the father and mother,*] the failure of brothers is likewise indicated. For, since the parent's right of succession is in default of brothers, [the failure of the preferable claim] must be concluded by the argument a fortiori exemplified in the case of the loaf and staff.†

30. Explanation of the text.

31. On failure of heirs above-mentioned, collaterals inherit.

A passage of Vṛihaspati cited.

31. On failure of heirs down to the husband, this rule again is provided, which Vṛihaspati thus delivers, "The mother's sister, the maternal uncle, the father's sister, the mother-in-law, and the wife of an elder brother, are pronounced similar to mothers. If they leave no issue of their bodies, nor son [of a rival wife,] nor daughter's son, nor son of those persons, the sister's son and the next shall take their property."

32. Both son and daughter are here signified by the terms "issue of the body." For they bar every other claimant. By "son" is meant the child of a rival wife. For a passage of law expresses, "If, among all the wives of the same husband, one bring forth a male child, Manu has declared them all, by means of that son, to be mothers of male issue."‡ Nor is the term "son" an epithet of "issue of the body:" for it would be superfluous; and the sister's son or other remote heir would have the right of succession, though a son [or a grandson§] of a contemporary wife be living.

32. And explained.

33. The daughter's son succeeds on failure of the daughter and of male issue.

33. If there be no legitimate son or daughter, nor a grandson in the male line, nor a son of a rival wife, the right of succession devolves on the daughter's son.

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Haláyudha's interpretation 'Some hold, that it devolves on the brothers, the mother be living,' is thus set aside. Achyuta.

29. Given to her by her kindred.] Given by her father and mother. Achyuta.

32. The child of a rival wife.] The son of such a wife; including also the sister of such son: for the gender is here employed indefinitely; and, by means of her offspring, she becomes the giver of funeral oblations to the husband of the woman and his ancestors to the third degree. Çrí́kṛ́shṇa.

Including also adopted sons. Achyuta, &c.

33. Nor a grandson, nor a son of a rival wife, the succession devolves on a daughter's son.] This passage is censured by Çrí́kṛ́shṇa; who shows by very satisfactory

* Raghunandana, &c. † Vide C. 2 § 25. ‡ Manu, 9. 183. § Achyuta, Maheçvara.

34. By the pronoun in the phrase " sons of those persons" (§ 31.) the woman's own issue and the child of a rival wife are signified. Therefore, their sons have a right to inherit; not the son of a daughter's son also, for he is excluded from the oblation of food at obsequies.

34. Nor the son of the daughter's son.

35. For want then of sons and other linear heirs as here specified, and in default of brothers or other preferable claimants, including the husband, the inheritance passes to the sister's son and the rest, although kinsmen, as the father-in-law, the husband's elder brother, or the like, be living. For the text (§ 31.) bears no other import; and the chief purpose of indicating, under the head of inheritance, the competency to present funeral oblations, as is done by describing the women as similar to mothers, and certain persons as standing in the relation to them of sons, is to suggest the right of succession to their property.

35. That passage does relate to the right of succession.

36. Hence, since the text enumerates " sister's son," &c. if the order of succession consequently be, first the sister's son, then the husband's sister's son, next the child of the husband's younger brother, afterwards the child of the husband's elder brother, then the son of the brother, after him the son-in-law, and subsequently the younger brother-in-law, the right would devolve last of all on the younger brother of the husband, contrary to the opinion and practice of venerable persons. Therefore, the text is propounded, not as declaratory of the order of inheritance, but as expressive of the strength of the fact, [namely of the benefits conferred.*] Thus it is declared by Manu, under the head of inheritance, " To three ancestors must water be given at their obsequies; for three is the funeral oblation of food ordained: the fourth is the giver of oblations; but the fifth has no concern with them."† In like manner Yájñavalkya shows succession to property in right of the funeral oblation: " Among these [sons of various descriptions,] the next in order is heir, and giver of oblations, on failure of the preceding."‡ The son's preferable right too appears to rest on his presenting the greatest number of beneficial oblations, and on his rescuing his parent from hell. And a

36. But not to the order of succession.

Passages of Manu, Yájñavalkya shows succession in right of benefits conferred.

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reasoning, that the daughter's son ought to inherit before the son of a contemporary wife. Achyuta considers the reading of the text to be questionable; and Maheçvara pronounces it to be spurious. He also rejects the words "nor a grandson" as unnecessary and improperly introduced in this place. Raghunandana, in the Dáya-tatva, copying Jímúta-váhana's argument, omits this passage altogether; and the author of the Víramitrodaya has substituted one of quite different import.

34. By the pronoun .... the woman's own issue and the child of a rival wife are signified.] The pronoun refers not to the nearest term "daughter's son," but to the remote terms "issue of the body" and "son of a contemporary wife." Víramitrodaya.

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* Çríkṛishṇa and Chúḍamani. [1 Strange, H. L. 128.—*Ed.*]

† Manu, 9. 186.

‡ Yájñavalkya, 2. 133.

passage of Vṛddha Çátátapa expressly provides for the funeral oblations of these women : " For the wife of a maternal uncle or of a sister's son, of a father-in-law and of a spiritual parent, of a friend and of a maternal grandfather, as well as for the sister of the mother or of the father, the oblation of food at obsequies must be performed. Such is the settled rule among those who are conversant with the Vedas."

37. This then is the order of succession, according to the various degree [of benefit to the owner of the property*] from the oblation of food at obsequies. In the first place, the husband's younger brother is entitled to the woman's property; for he is a kinsman (Sapiṇḍa,) and presents oblations to her, to her husband, and to three persons to whom oblations were to be offered by her husband. After him, the son either of her husband's elder or of his younger brother, is heir to the separate property of his uncle's wife; for he is a kinsman, and presents oblations to her, to her husband, and to two persons to whom oblations were to be offered by her husband. On failure of such, the sister's son, though he be not a kinsman (Sapiṇḍa,) inherits the separate property left by his mother's sister, because he presents oblations to her, and to three persons, (her father and the rest,) to whom oblations would have been offered by her son. In default of him, the son of her husband's sister (for it is reasonable, since the husband has a weaker claim than the son, that persons claiming under them should have similar relative precedence ;) is heir to the property of his uncle's wife; because he presents oblations to three persons to whom they were to be offered by her husband, and also presents oblations to her and to her husband. On failure of him, the brother's son is the successor to his aunt's property, for he presents oblations to the father, to her grandfather, and to herself. If there be no nephew, the husband of her daughter is heir to his mother-in-law's property, since he presents oblations to his mother-in-law and father-in-law.

37. The order of succession is as follows.

First the husband's younger brother.

Then the son of the brother-in-law.

Next the sister's son.

Afterwards the husband's sister's son.

Then the brother's son.

Lastly the in-law.

38. This order of succession must be assumed: and the mention of "a sister's son" and the rest (§ 31) was intended merely for an indication of the heirs, without specifying the order in which they succeed.

38. The text (§ 31.) indicates heirs, not their order of succession.

39. Again, on failure of these six, it must be understood, that the succession devolves on the father-in-law, the husband's eldest brother and the rest, according to their nearness of kin [the nearest Sapiṇḍa being the heir.†]

39. If those fail, the husband's father, elder brother, &c. inherit.

40. It must not be supposed, that this text (§ 31.) is applicable where a failure of kinsmen (Sapiṇḍa) exists: for, in this chain of successors, the husband's younger brother, and his son, and the son of the husband's elder

40. The failure of these heirs was

Maheçvara.

not implied in the text.

brother, have been specified; and the husband's and elder brother, who are nearer of kin, have omitted.

41. Therefore, the practice [of preferring the father-in-law to the younger brother-in-law,* or of regulating the succession in the order specified in the passage above cited, § 31.†] which has been introduced for want of comprehending the text [of Vṛihaspati, § 31.‡ or those of Manu and Yájñavalkya,§] and of understanding the true sense

41. A contrary practice must be rejected as unauthorized.

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SUMMARY.

The settled order of succession to the separate property of a woman is as follows.

In the case of property left by a maiden, the right devolves first on the uterine **brother; or,** if there be none, on the mother; but, if she be dead, on the father.

It is the same in respect of property left by a betrothed damsel, excepting what was given by the bridegroom: for he has a right to whatever he gave.

In regard to the property of a married woman, which was received at her marriage, her maiden daughter has the first claim; and next, a betrothed one; but, on failure of both these, her married daughters, who have, or are likely to have, male issue, inherit together; or, on failure of either of them, the other takes the succession: if there be none of either description, the barren and the widowed daughters have an equal right; and, on failure of one, the other succeeds. Next the right devolves, in order, on the son, the daughter's son, the son's son, the great-grandson in the male line, the son of a contemporary wife, her grandson and her great-grandson in the male line, with this difference, that, according to the author of the work (Jímúta-váhana,) the right of the daughter's son follows that of the contemporary wife's son.

In the next place, if the property were received at the time of nuptials celebrated in one of the five forms denominated Bráhma, &c., the order of successors is husband, brother, mother and father. But, if it were received at nuptials in one of the three forms called Asura, &c., the order is mother, father, brother and husband.

Then the husband's younger brother; after him, the son of the husband's younger brother, and the son of his elder brother; next, the sister's son; afterwards, the husband's sister's son; then the brother's son; after him, the son-in law; next, the father-in-law; subsequently, the elder brother in-law. In the next place, kinsmen allied by funeral oblations (sapiṇḍas,) in the order of proximity; after them, kinsmen connected by family (sakulyas;) and, lastly, such as are allied by similar oblations of water (samánodakas.)

In the case of property given by the father at any other time but the wedding, a maiden daughter succeeds in the first instance; next a son; then a daughter who has, and one who is likely to have, male issue; after them, the daughter's son, the son's son, the great-grandson in the male line, the son of a contemporary wife, and her grandson and great-grandson in the male line: next to these, the barren and widowed daughters inherit together: afterwards the succession proceeds as before described in the case of property received at nuptials denominated Bráhma, &c.

But, in the instance of property not received at a wedding, and other than such as is given by the father, the son and unmarried daughter inherit together; or, on failure of both of them, the daughters, who have, or may have, male issue, and, afterwards, the son's son, the daughter's son, the great-grandson in the male line, the son of the contemporary wife, her grandson and great-grandson in the male line, are rightful claimants in succession; next to these, the barren and widowed daughters inherit together: and lastly the order is, as before, the same with that of property received at Bráhma nuptials.

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* Maheçvara. † Çríkṛishṇa. ‡ Maheçvara. § Çríkṛishṇa.

of the law, must be rejected as destitute of reason and authority, by those who [like us *] submit to demonstration.

42. Conclusion.

42. Thus has succession to the separate property of a childless woman been explained.

CHAPTER V.

Exclusion from Inheritance.

1. Who are competent to inherit may be known from the specified exception of such as are not.

A passage of A'pastamba quoted.

1. In the next place, persons incompetent to inherit are specified, for the purpose of making known, by the exception, competent heirs. On this subject Ápastamba says, "All co-heirs, who are endued with virtue, are entitled to the property. But he, who dissipates wealth by his vices, should be debarred from participation, even though he be the first born."

2. A different reading of it condemned.

This passage is read by Báloka in a confused manner and contrary sense: "But he, who acquires wealth by his virtuous conduct, being the eldest son, should be made an equal sharer with the father." That reading is unauthorized.

3. Another passage.

A man expelled for crimes is incapable of inheriting.

3. So "The heritable right of one who has been expelled from society, and his competence to offer oblations of food and libations of water, and are extinct."† One, who has been expelled from society, is a person excluded from drinking water in company(

ANNOTATIONS.

3. Expelled from society.] Deemed unworthy of intercourse. In consequence of offences, or degradation from class, water is not drunk in company with him. Chūḍamaṇi and Çrîkṛishṇa.

Formally banished, with the ceremony of kicking down a jar of water, as described by Yájñavalkya. Achyuta.

Excluded on account of wickedness, by all his kinsmen, from the oblation of food and libation of water. Maheçvara.

* Maheçvara.

† Cited in the Víramitrodaya as a passage of A'pastamba; but, in the Vivádа-Chintámaṇi and Smṛti-sara, it is referred to Çankha; and in the Ratnákara, Smṛti-Chandriká, &c., to Çankha and Likhita.

(*a*) Sec 1 Morl. Dig. 338.—

4. So Vṛhaspati says, "Though born of a woman of equal class, a son destitute of virtue is unworthy of the paternal wealth. It is declared to belong to such kinsmen, offering funeral oblations [to the owner,*] as are of virtuous conduct. A son redeems his father from debt to superior and inferior beings. Consequently there is no use for one who acts otherwise. What can be done with a cow which neither gives milk, nor bears calves? For what purpose was that son born, who is neither learned nor virtuous? A son, who is devoid of science, courage and good purposes, who is destitute of devotion and knowledge, and who is wanting in conduct, is similar to urine and excrement."

4. Vṛhaspati excludes the vicious from inheritance.

5. Á́pastamba says, "A son, who diligently performs the obsequies of his father and other ancestors, is of approved excellence, even though he be uninitiated: not a son who acts otherwise, be he conversant even with the whole Veda."

5. A passage of Ápastamba.

6. "Since a son delivers his father from the hell called *put* therefore he is named *puttra* by the self-existent himself."†(*a*) By this and similar passages, great benefits are stated, as effected by means of a son. His connexion with the property is therefore the reward of his beneficial acts. If then he neglect them, how should he have his hire? Accordingly Manu says, "All those brothers, who are addicted to vice, lose their title to the inheritance."‡

6. A son's right of succession is the reward of benefits conferred on his father; as appears from passages of Manu.

7. So [the same author:] "Impotent persons and outcasts are excluded from a share of the heritage; and so are persons born blind and deaf; as well as madmen, idiots, and dumb, and those who have lost a sense [or a limb."§]

7. Manu enumerates disqualified persons.

8. The impotent person is described by Kátyáyana: "The man is called impotent, whose urine froths not, whose feces sink in water, and whose virile member is void of erection and of semen."

8. Kátyáyana defines impotency.

9. The term 'born' is connected in construction with the words 'blind' and 'deaf.' One, who is incapable of articulating sounds, is dumb. An idiot is a person not susceptible of instruction.

9. Exposition of the text of Manu (§ 7.)

ANNOTATIONS.

4. Destitute of devotion and knowledge.] Some copies of Jimūta-váhana read generosity (dána) in place of knowledge (jñána or vijñána,) which is the reading of other copies, as well as of the quotations occurring in various compilations.

7. Those who have lost a sense or a limb.] Literally an organ; explained by some a sense as that of smelling, or of sight, &c., but by others a limb, as the hand, foot and so forth.

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* Maheçvara. † Manu, 9. 138. Vishṇu, 15. 43. Vide Infra. C. 11. Sect. 1. § 31.

‡ Manu, 9. 214. § Manu, 9. 201. [1 Morl. Dig. 338.]

(*a*) Putra or puttra is formed from the root Pu (whence the Latin *pu-er*) by the suffix [illegible]

10. Yájñavalkya says, "An outcast and his issue, an impotent person, one lame, a madman, an idiot, a blind man, a person afflicted with an incurable disease, [as well as others similarly disqualified,] must be maintained; excluding them however from participation."* One, who cannot walk, is lame.

10. A similar passage of Yájñavalkya.

11. Although they be excluded from participation, they ought to be maintained, excepting however the outcast and his son. That is taught by Devala: "When the father is dead [as well as in his lifetime†] an impotent man, a leper, a madman, an idiot, a blind man, an outcast, the offspring of an outcast, and a person wearing the token [of religious mendicity,] are not competent to share the heritage. Food and raiment should be given to them, excepting the outcast. But the sons of such persons, being free from similar defects, shall obtain their father's share of the inheritance." A person wearing the token of mendicity is one who has become a religious wanderer or ascetic.

11. Those debarred from inheriting should be maintained; excepting the outcast and his son.

A passage of Devala cited and explained.

12. By the term outcast, his son also is intended; for he is degraded, being procreated by an outcast. That is confirmed by Baudháyana, who says, "Let the co-heirs support with food and apparel those who are incapable of business, as well as the blind, idiots, impotent persons, those afflicted with disease and calamity, and others who are incompetent to the performance of duties: excepting however the outcast and his issue."

12. A son born after the degradation of his father is an outcast.

Baudháyana cited.

13. On this subject, Nárada says, "An enemy to his father, an outcast, an impotent person, and one who is addicted to vice [or has been expelled from society,] take no shares of the inheritance even though they be legitimate: much less, if they be sons of the wife by an appointed kinsman."‡

13. Nárada's enumeration of disqualified persons.

ANNOTATIONS.

10. As well as others.] This is a part of the text as read by the Mitákshara, Smṛiti-chandriká and Ratnákara. But Jímúta-váhana and Váchespati Miçra read arta 'afflicted,' in place of ádya 'others.'

11. Excepting the outcast and his son.] Meaning a son begotten after the degradation of the father. Çríkṛishṇa.

Wearing the token of mendicity.] The term lingi is understood by Jímuta-váhana as signifying a person who has entered into a religious order, of which he wears the symbol. But other compilers (as the authors of the Ratnákara, Smṛiti-chandriká, &c.) explain it a hypocrite and impostor, or a sectary and heretic.

13. One who is addicted to vice.] So the term, as read by Jímúta-váhana, is explained by his commentator Maheçvara. In the Prakaça it is read upapátací instead of aupapática, and is similarly explained, according to the quotation in the Ratnákara.

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* Yájñavalkya, 2. 141. † Smṛiti-chandriká. ‡ Nárada, 13. 21.

14. Kátyáyana ordains, that "The son of a woman married in irregular order; and begotten on her by a kinsman, is unworthy of the inheritance; and so is an apostate from a religious order."

4. Kátyáyana specifies others.

15. If a woman of superior tribe be espoused after marrying one of inferior class, both marriages are contrary to regular order. The son of either of these women, being cshétraja, or issue of the wife, procreated by a kinsman authorized to raise up issue to the husband, is unworthy of the inheritance. But a son begotten by the husband himself, being of the same tribe, on his wedded wife espoused in irregular order, is heir to the estate: so likewise is a son begotten by the husband on a wife dissimilar in class but espoused in regular gradation.

15. Interpretation of his text.

16. That is declared by Kátyáyana: "But the son of a woman married in irregular order, may be heir provided he belong to the same tribe with his father: and so may the son of a man, belonging to a different [but superior*] tribe, by a woman espoused in the regular gradation. The son of a woman married to a man of inferior tribe, is not heir to the estate. Food and raiment only are considered to be due to him by his kinsmen. But, on failure of them, he may take the paternal wealth. The kinsmen shall not be compelled to give the wealth received by them, not being his patrimony."

passage of Kátyáyana.

17. A possibility exists of an impotent man, and the rest as above enumerated (§ 7), espousing wives. "If the eunuch and the rest should at any time desire to marry, the offspring of such as have issue, shall be capable of inheriting."† Issue signifies offspring.

17. Disqualified persons may have issue.

ANNOTATIONS.

But the reading, which is there preferred, as well as in the Kalpataru, is apapátrita, signifying 'expelled from society for heinous crimes;' and the word is written avapatáka in the Smṛti-chandriká, but interpreted in the same sense. Raghunandana reads, as Jímúta-váhana, aupapática, and expounds it 'one stained with sins.'

14. Son of a woman married in irregular order, and begotten on her by a kinsman.] This version is conformable to Jímúta-váhana's interpretation (§ 15.), which is copied in the Víramitrodaya. But in the Smṛti-chandriká, Ratnákara and Chintámaṇi, the members of the sentence are separated: "The son of a woman married in irregular order is unworthy of the inheritance; and so is the son of a woman espoused by her kinsman, as well as an apostate from a religious order."

Is unworthy of the inheritance.] The Ratnákara and Chintámaṇi read narikṭhan téshu karhichit, "the inheritance never goes to them," instead of narikṭhan teshu chárhati, "the inheritance is not fit to go to them:" that is, as observed in the Smṛti-chandriká, "they are unworthy of it."

15. Begotten on a wife dissimilar in class, but espoused in regular gradation.] Begotten by a man of superior tribe on a woman of inferior class. Çríkṛshna.

16. Food and raiment only.] This is Jímúta-váhana's reading, grásáchhádanamátram. But the Smṛti-chandriká and Ratnákara read grásáchhádanam atyantam "food and raiment for life."

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* Chúḍámaṇi.

† Manu, 9. 203.

18. It must not be objected, how can they contract marriages, since the eunuch, not being male, is incapable of procreation, and the dumb man and the rest [or those born deaf or blind] are degraded for want of initiation and investiture, because they are unapt for [the preparatory] study? The eunuch may obtain issue from his wife by means of another man; and a person unfit for investiture with the sacerdotal string is not degraded from his tribe for want of that initiation, any more than a Çúdra.

18. An objection answered.

19. Therefore the sons of such persons, being either their natural offspring or issue raised up by the wife, as the case may be, are entitled, provided they be free from similar defects, to take their allotments according to the pretensions of their fathers. Their daughters must be maintained until married, and their childless wives must be supported for life. It is so declared by Yájñavalkya:

19. Sons of disqualified persons inherit, if free from similar defects.

"Their sons, whether legitimate or the offspring of the soil, are entitled to allotments if free from similar defects. Their daughters also must be maintained until provided with husbands. Their childless wives, conducting themselves aright, must be supported: but such as are unchaste, should be expelled; and so indeed should those who are perverse."*

This is confirmed by a passage of Yájñavalkya.

20. Thus it has been explained, who are persons incompetent to inherit.

20. Conclusion.

ANNOTATIONS.

Not being his patrimony.] The commentators, Çríkṛshṇa and Achyuta, state another reading in the first instance; svapitryam "[their] own patrimony" instead of apitryam "not [his] patrimony." They notice, however, this last reading, as one which may have been intended by the author. It is that which the Smṛti-chandriká, Ratnakara and other compilations exhibit. Çríkṛshṇa and Achyuta deduce the same meaning in both ways of reading the text. But Maheçvara understood the passage differently; 'The kinsmen shall not be compelled to give up to him wealth received by them being his own patrimony:' they shall not be compelled to share it with him; but he must be maintained by them with food and raiment. Chúḍámaṇi, again, follows the other reading, but with a different interpretation: 'The kinsmen shall not be compelled to give up his father's wealth, received by them, though not their patrimony.'

19. As the case may be.] A dumb man or the like may have either natural offspring or issue raised up to him by his wife. But the impotent can only have issue so raised. Çríkṛshṇa.

Allotments according to the pretensions of their fathers.] Such allotment as their fathers would have had if capable of inheriting. Achyuta.

Such share as should have belonged to their respective fathers, according as these may be either sons of a Bráhmaṇí woman, or of a Kshatriyá, or of a woman of another tribe.

* Yájñavalkya, 2. 142 and 143.

CHAPTER VI.

Effects liable, or not liable, to Partition.

SECTION I.

1. In the next place, effects which may be divided, and such as are exempted from partition, are here explained. On that subject Kátyáyana says, "What belonged to the paternal grandfather, or to the father, and any thing else [appertaining to the co-heirs, having been] acquired by themselves; must all be divided at a partition among heirs."

1. The patrimony and joint stock may be divided: As is declared by Kátyáyana.

2. And any thing else.] Here the particle 'and' is connected, in the sentence, with the term 'themselves;' viz., 'acquired by themselves;' or, as implied by the conjunctive particle, acquired by another person: but his acquisition must have been made through the common property [or else by joint personal labour*]. Such is the meaning.

2. Exposition of his text.

3. Manu and Vishṇu declare indivisible what is gained without expenditure. "What a brother has acquired by his labour, without using the patrimony, he need not give up without his assent; for it was gained by his own exertion."†

3. Separate acquisitions are not to be shared: according to Manu and Vishṇu.

4. Since the patrimony is not used, there is no exertion on the side of the others, through the means of the common property: and, since it was obtained by the man's own labour, there is no corporeal effort on the part of the rest: it is, therefore, the separate property of the acquirer alone; for the phrase "it was gained by his own exertion," is stated as a reason.

4. Reason of the exception from participation.

5. So Vyása ordains: "What a man gains by his own ability, without relying on the patrimony, he shall not give up to the co-heirs; nor that which is acquired by learning."‡

5. It must be an acquisition effected without use of the joint funds: as Vyása declares.

ANNOTATIONS.

1. To the paternal grandfather.] Meaning any relation in general. and Achyuta.

* Chūḍámaṇi and Çríkṛishna.

† Manu, 9. 208. Vishṇu, 18. 42. Vide Infra. § 31. The second half of the stanza is read otherwise in the Mitákshará, Ch. 1. Sect. 4. § 10.

‡ Vide infra. § 35.

6. Since it is expressed in general terms, 'what he gains solely by his own ability,' all property, so acquired, being his own, is not common. But, as the gains of science, though obtained by the man's own ability, are shared by parceners equally or more proficient in knowledge, the phrase "nor that which is acquired by learning," is subjoined for the sake of excluding illiterate or less learned parceners.

6. Exposition of the text.

The gains of science are excepted.

7. So Yájñavalkya directs: "Whatever else is acquired by the co-parcener himself, without detriment to the father's estate, as a present from a friend, or a gift at nuptials, does not appertain to the co-heirs."*

7. Other separate gains instanced by Yájñaval-

8. Here, the mention of "a present from a friend" and so forth is intended for illustration only; since it is in such modes that acquisitions are usually made without expenditure.

8. Explanation of his text.

9. So Manu likewise says: "Wealth, however, acquired by learning, belongs exclusively to him, who acquired it; and so does any thing given by a friend, received on account of marriage, or presented as a mark of respect."†

9. A passage of Manu quoted.

10. Vyása [delivers a similar precept:] "Wealth gained by science, or earned by valour, or received from affectionate kindred, belongs at the time of partition, to him [who acquired it;] and shall not be claimed by the co-heirs."

10. One of Vyása.

11. What is obtained through favour or the like, from a father, uncle, or other kind relations, is received from affectionate kindred.

11. Gift of affectionate kindred explained.

ANNOTATIONS.

6. His own.] Acquired with his own wealth and by his own labour only. Çríkṛshna.

Not common.] Not liable to be shared with the rest of the brothers. Çríkṛshna.

9. Exclusively.] An illiterate person, and one of inferior learning, are thus excepted. Çríkṛshna.

On account of marriage.] Received from a father-in-law, on account of becoming his son-in-law. Çríkṛshna.

As a mark of respect.] Obtained by officiating as a priest. Çríkṛshna.

As a mark of respect at the time of giving a madhuparka. The interpretation of the word mádhuparkika, by Médhátiṭhi and Góvinda-rája, who explain it 'wealth gained by officiating as a priest,' is erroneous, since that is gained by science (See Kátyáyana‡.) Kullúka Bhaṭṭa.

11. Received from affectionate kindred.] Since property, termed Saudáyika, is exempt from partition as being the separate property of a woman (C. 5. Sect. 1. § 21.), the author expounds the term otherwise. Maheçvara.

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* Yájñavalkya, 2. 119. Vide infra. § 33. † Manu, 9. 206. Vide infra. § 31.

‡ Vide Sect. 2. § 1.

12. Nárada similarly says, "Excepting what is gained by valour, the wealth of a wife, and what is acquired by science, which are three sorts of property exempt from partition; and any favour conferred by a father."*

12. A passage of Nárada cited.

13. What was received at the time of obtaining a wife is here called the "wealth of a wife;" meaning effects obtained on account of marriage. Excepting these acquisitions (§ 12), let him divide other property: for this phrase is here understood, as expressed in another sentence.†

13. Exposition of the text. Excepting the above, other property may be divided.

14. By these and other similar passages, the circumstance of the property having been acquired by valour or the like, is not stated as a sufficient reason for its being exempt from participation; since a distribution even of property so acquired, is expressly ordained in certain cases. Thus Vyása directs a partition of effects so gained, with the use of the common goods. "The brethren participate in that wealth, which one of them gains by valour or the like, using any common property, either a weapon or a vehicle. To him two shares should be given: but the rest should share alike." So Nárada ordains: "He, who maintains the family of a brother studying science, shall take, be he ever so ignorant, a share of the wealth gained by science."‡

14. Such gains are sometimes liable to be shared: as declared by Vyása; and Nárada.

15. Since the term "maintained" is exhibited in the singular number, if the family of the brother, who is studying science, be made to prosper by another brother at the expense of his own wealth, or by the labour of his body, then he also has a title to property gained by that science.

15. Especially the gains of science.

ANNOTATIONS.

12. The wealth of a wife.] Since the separate wealth of a wife cannot be supposed liable to partition, (for it is her peculiar property,) the author expounds the text otherwise. Çríkṛishṇa.

14. Ignorant.] Illiterate. Çríkṛishna.

15. Since the term is exhibited in the singular number.] For it may be inferred from the use of the singular number, that the act is independent of any thing else. This independency is an independence of the common property, as well as of the separate property of their brothers or co-heirs. Hence, if the support were afforded by two, or by three, unlettered co-heirs, all these shall participate.

By exhibiting the term in the singular number, an exception to the joint property is indicated, and not exclusion of other brothers supporting the family by their labour, or by the expenditure of their own wealth. Hence two such brothers would also take a share of the property gained through science. Maheçvara.

* Nárada, 13. 6. Vide infra. § 33. † Nárada, 13. 4.
‡ Nárada, 13. 10.

16. So [the same legislator says,] "A learned man need not give a share of his own acquired wealth, without his assent, to an unlearned co-heir: provided it were not gained by him using the paternal estate."*

16. Another passage of Nárada.

17. The word "paternal" intends joint property. What has been gained by him without using that, a learned man need not give up, against his will, to an unlearned co-heir. But to a learned or instructed co-heir, he must give a share of any thing acquired by him, even without the use of joint property. Accordingly Gautama says, "His own acquired wealth, a learned man need not give up, against his inclination, to unlearned co-heirs."†

17. The gains of science need not, however, be shared with an unlearned co-heir.

So Gautama declared.

18. What is gained by his personal labour on his separate funds, being his own acquired property, he need not give up, if he be unwilling to surrender it, unto unlearned co-heirs: but he must yield it to learned brethren.

18. Interpretation of the text.

19. This, however, relates only to the gains of science. So Kátyáyana declares: "No part of the wealth, which is gained by science, need be given by a learned man, to his unlearned co-heirs: but such property must be yielded by him, to those who are equal or superior in learning."

19. It relates to the gains of science; agreeing with a passage of Kátyáyana. They are shared with such as are equally or more learned.

20. The word learning, expressed in the text, [and occurring there once only‡] is connected with both terms, "equal" and "superior." Therefore, it must be yielded to such as are equal or superior in learning: but those who are less learned, or who are unlearned, have no right to participate.

20. Exposition of the text.

21. Since it appears from these and other texts, that partition does or not take place, in the case of wealth acquired by science, valour or the like, according as joint property is or is not employed; and since this alone is the reason; a revealed maxim, containing that term only, must be inferred in words such as these, 'divide

21. The essential condition is, that no use have been made of joint funds.

ANNOTATIONS.

16. Using the paternal estate.] This regards the employment of funds ..... than for food and raiment: for wealth must be used for such purposes even by a person remaining at home. Chúḍámaṇi and Çrí́kṛshṇa.

17. Intends joint property.] Else, there would be no partition, if the estate of the grandfather or other ancestor were used.

19. This relates only to the gains of science.] For any other property, acquired by himself, need not be surrendered, either to learn or unlearned co-heirs. Çrí́kṛshṇa.

21. Since this alone is the reason.] Since the making of the acquisition without the use of such property is alone the reason: since acquisition with the use of it is a ground of partition; and without such use, a ground of exemption from partition. Çrí́kṛshṇa.

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* Nárada, 13. 11. † Gautama, 28. 28. ‡ Çrí́kṛshṇa.

A passage of scripture, to that effect, may be supposed.

that, which is acquired by use;' not one containing also the terms 'gained by valour' and so forth: for the purpose is accomplished by the general maxim, which must necessarily be inferred.

22. This is confirmed by the Mimánsá.

22. This is precisely the object of the reasoning taught [in the Mimánsá] under the head of Holáká.

23. Or the rule may be grounded on reason:

23. Or the same meaning may be deduced from reasoning [without the trouble of inferring the origin of the rule from a lost passage of scripture*]. That, which is acquired by a person, belongs exclusively to him, so long as he lives; if there be no special rule [to the contrary]: but, where the exertion of one is merely through the joint property, and the other contributes to the acquisition by his person and wealth, it is a rule suggested by reason, that the one shall have a single share, and the other two. Hence likewise it follows, that, if the joint stock be used, shares should be assigned to each person in proportion to the amount of his allotment, be it little or much, which has been used.

And shares of the gain should be proportionate to shares of the stock.

24. Kátyáyana provides a rule concerning reunited parceners.

24. Moreover the text of Katyáyana [is similarly founded on reason.] "When brethren separated in regard to the patrimony, and subsequently living anew together, make a [second] partition, he, from whom an acquisition has proceeded, shall again take a double share."

ANNOTATIONS.

The general maxim which must be inferred.] One, as above stated, which does not contain the terms 'gained by valour, &c.' For it would be needless trouble to assume a maxim containing these terms, in such form as follows; 'divide that which is gained by valour or the like without use.' Çrík*ri*shṇa.

22. Reasoning taught under the head of Holáká.] It is the 8th topic (adhikaraṇa) of the 3rd chapter of the 1st book. The purport of it may be thus stated: the Holáká or festival of the spring (Vasantotsava) is celebrated by the Práchyas or eastern Indians; and, in like manner, other observances are peculiar to other people: that is, (as remarked by commentators,) Udvr*i*shabha-yajnya, which consists in driving a bull after worshipping him, is practised by the Udíchyas or northern Indians; and the A'hnínaibuka or worship of certain trees, or other particular objects, as deities, by the Dakshinátyas or southern Indians. These local usages are concluded to be founded on some precept; and the precept is inferred to be a general one, not a special one restricted to the particular people among whom the usage prevails. Vide C. 2. § 40.

23. In proportion to the amount of his allotment.] In the case of wealth gained with the use of the common stock of brothers ranking in different tribes, the use has been of four shares appertaining to the son of the Bráhmaní wife, and three, two and one shares belonging to the sons of the Kshatriyá and the rest. In such an instance, their shares of the gain should be assigned in exact proportion to their respective allotments of the stock. Çrík*ri*shṇa.

* Maheçvara, Achyuta, &c.

25. This is expounded by Çríkara as signifying, that, 'a re-united parcener, who has made an acquisition with the use of the joint stock, shall have two shares; and the rest, one apiece.'

25. Çríkara's exposition of the text.

26. Hence it appears to be the opinion both of the saint and of the commentator, that wealth, gained with no use of the common funds, appertains exclusively to the acquirer, even in the instance of a reunion of co-parceners; and that such wealth is not joint property: since no special allotment is directed in the case of a gain made without use of joint stock.

26. A gain, made on separate funds, is several property.

27. Such being their meaning, the same is equally proper for the unseparated co-parcener, as for the reunited one: because residence in the same abode [which implies junction of property*] is equally pertinent as a reason, when separation has not yet taken place, as when it has been annulled. Since the text is likewise pertinent, as directing, that the acquirer shall have two shares of an acquisition made with the use of common property, it is not right to restrict it to the case of reunited parceners: for the reasoning, taught under the head of Holáká,† opposes that restriction.

27. The same is proper before a first partition.

28. Besides, it is an uncontested rule, that an acquirer, as such, shall have two shares of wealth gained by the use of joint funds(*a*): for that allotment has been ordained by a text [of Vyása] above cited (§ 14) in the single case of the use of common stock. It is not reasonable to assign two shares only in the instance of an acquisition made by personal exertion upon separate funds: but something more [than two shares‡] would be reasonable; either the whole, or something less [than the whole.§] Here, since something less [than the whole‖] has not been directed either by sages or by

28. An acquirer using joint stock has two shares. Not using it, he should have the whole.

ANNOTATIONS.

26. Of the saint and of the commentator.] Of the saint; that is, of Kátyáyana: for, after specifying residence in the same abode, he propounds a double share, if the joint stock have been used; and does not direct an allotment in the case of wealth acquired with no use of common funds. Of the commentator; that is, of Çríkara: for he has expressly so interpreted the text. Çríkṛshṇa.

27. For reasoning opposes that restriction.] As a precept of revelation is inferred in these terms, 'the Holáká should be performed,' to authorize the observance of that festival; and not one containing the term Práchya indicating the particular people who practise it: so a precept of revelation is inferred in these terms 'the acquirer shall take two shares of wealth gained with the use of common property;' not one containing the term 'reunited parcener,' as a restrictive epithet of the acquirer. Çríkṛshṇa.

28. Where that does not exist.] Where neither the use of the joint funds, nor a common exertion of the rest of the brethren, exists; either of which would be a reason for the participation of the co-heirs.

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* Çríkṛshṇa and Achyuta. † Vide § 22. ‡ Chūḍámani and Çríkṛshṇa.

§ Ibid. ‖ Ibid. (*a*) See 1 Morl. Dig. 480.–

compilers; and since it appears, that the rest of the brethren participate [in one case] on account of the employment of their common stock; it is fit, that their participation should be null [in another case] where that does not exist.

29. The rule is founded in reason;

29. The rule, that the acquirer shall have twice as much as the rest, must be grounded on reasoning: otherwise, [if its foundation in a passage of scripture is to be assumed,* and reasoning is not to be taken as its ground;†] it would be necessary either to insert in the maxim of revelation in question, the condition of a gain made [by the father who is declared entitled to two shares;‡] or else to establish separately the title [of an acquirer to a double share.§]

30. And the conclusion is true.

30. It is therefore true, that wealth gained without use of joint stock belongs to the acquirer alone, not to the rest of the co-parceners.

31. It is no general rule, that gains, made before partition, shall be shared.

A passage of Manu cited.

31. Moreover, a general maxim [of scripture‖] to this extent, 'Let all share what is gained by an unseparated co-parcener,' cannot be inferred. For an exception to wealth acquired by valour or the like [without use of the joint stock¶] does occur. Thus Manu says, "Wealth, however, acquired by learning, belongs exclusively to him, who acquired it: and so does any thing given by a friend, received on account of marriage, or presented as a mark of respect."** So Manu and Vishṇu

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29. Otherwise it would be necessary to insert, &c.] If it be not founded on reasoning; the condition, that he be the acquirer, must be inserted in the revealed maxim 'Let the father reserve two shares for himself.' If then a passage of scripture be assumed in this form; 'let the father, who has made an acquisition, reserve two shares:' a father, who had not made an acquisition, would not have a double share; nor would a brother or other co-heir, who was the acquirer of the property, have a double allotment. The author therefore adds, 'or else to establish separately the title.' The distinct right of an acquirer, independently of paternity or other particular relation must be separately established. Consequently, since it would be troublesome to infer a foundation in scripture on both points, it is right to ground the rule on reasoning.

31. Moreover a general maxim, &c., cannot be inferred] If the rule were founded on reasoning, the acquirer's allotment should be proportionate to his exertion: and a general direction for his taking a double share would consequently be improper. Hence it is right, that the acquirer's double portion should be grounded on a general maxim of revelation in these terms, 'the acquirer has two shares of what is gained before partition, and the rest have one apiece:' accordingly, it is seen in the practice of the world, that, in the instance of wealth accepted as a present, though it be gained without use of joint stock, all participate on the sole ground of its being acquired by an unseparated co-parcener. Weighing this opinion of Çrícara's, the author censures it. Çríkṙshṇa.

* Maheçvara. Ibid. † Çríkṙshṇa. ‡ Çríkṙshṇa, Chūḍámaṇi, &c. ‖ Maheçvara. ¶ Çríkṙshṇa and Chūḍámaṇi.

** Manu, 9. 206. Vide supra. § 7.

nd of Manu and Vishṇu.

ordain, "What a brother has acquired by his labor, without using the patrimony, he need not give up without his assent; for it was gained by his own exertion."*

32. Without using.] This is connected likewise with wealth acquired by learning: for, in such instance also, a precept, ordaining partition of joint funds be used, does occur.

32. Exposition of those texts.

33. Thus Yájñavalkya says: "Whatever else is acquired by the co-parcener himself, without detriment to the father's estate, as a present from a friend, or a gift at nuptials, does not appertain to the co-heirs. Nor shall he, who recovers hereditary property, which had been taken away, give it up to the co-parceners: nor what has been gained by science."† So Nárada: "Excepting what is gained by valour, the wealth of a wife, and what is acquired by science, which are three sorts of property exempt from partition; and any favour conferred by a father."‡ Likewise Vyása: "Wealth gained by science, or earned by valour, or received from affectionate kindred, belongs, at the time of partition, to him [who acquired it,] and shall not be claimed by the co-heirs."§

33. Passage of Yájñavalkya.

Nárada,

and Vyása.

34. Received from affectionate kindred.] Obtained from kind relations.

34. Interpretation of the text.

35. What is given by the paternal grandfather, or by the father, as a token of affection, belongs to him [who receives it;] neither that, nor what is given by a mother, shall be taken from him. What a man gains by his own ability, without relying on the patrimony, he shall not give up to the co-heirs, nor that which is acquired by learning."‖

35. Another passage of Vyása.

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32. With wealth acquired by learning.] With the gains of science mentioned in the preceding text. (Manu, 9. 206). Çríkṛshna.

The term, 'gains of science,' contained in the preceding passage of Manu, is here understood. Maheçvara.

One commentator reads in Jímúta-váhana's text anushajyate "is understood," where the other reads sambadhyaté "is connected." Hence a difference in their manner of stating the same meaning.

A precept ordaining partition does occur.] Alluding to a passage above cited (§ 16) containing the reservation, "provided it were not gained by him using the paternal estate." Chúḍámani and Çríkṛshna.

33. Hereditary property.] This comprehends any common property. The same rule consequently holds good in regard to the wealth of the brethren, which they themselves acquired. Çríkṛshṇa.

34. Obtained from kind relations.] This is not tautology; but merely intended to remind the reader of a preceding remark. (Vide § 11). Maheçvara.

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* Manu, 9. 208. Vishṇu, 18. 42. Vide supra. § 3.

† Yájñavalkya, 2. 119 and 120. Vide supra. § 7.

‡ Nárada, 13. 6. Vide supra. § 12. § Vide supra. § 16. ‖ Vide supra. § 5.

36. By thus excepting, under these and other texts, in regard to all the tribes and all the classes of mixed or of mediate origin, wealth acquired, without use of the joint stock, by the acquirer's own ability; whether effected by means of any science; or received from affectionate kindred (being given by a relative;) or obtained from a friend, or at nuptials, or with a token of respect; or gained by valour (that is, by combat or the like;) or earned by labour (that is, by agriculture, service, merchandize, &c.); every acquisition [made without use of joint funds*] is excepted: therefore, since there can be none other, the [alleged] precept has no pertinence.

36. The supposition of such a rule (§ 31) is erroneous.

37. Or a case or two [of acquisition made without use of the common stock†] may be, in some manner, assumed, to which the precept may relate. Still those cases should have been declared by express words: since it would have been easy for the sages to have said, 'divide certain property gained by an unseparated co-parcener:' and such property would be readily understood under its own name; better too than by using a long and circuitous expression, like this ['wealth acquired before partition,‡] other than the gains of valour, &c. [acquired without use of joint funds;'§] for it is burdensome. And, if the present be intended as an exception, all the sages ought to specify every excepted term: for, without that, the meaning of "other than such" would be unexplained; and the restrictive words of the sages would consequently appear as idle as the prattle of children. But, if it be intended for illustration, then some one instance is negligently propounded by one author; and another by another writer; and the omission of specifying the whole is right.

37. For reasons here stated.

38. Therefore the maxim is, 'divide wealth acquired with the use of the common stock:' and particular terms, as the gains of valour, &c., are inserted in the texts as insta

38. Property gained on the joint stock is divided.

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36. The tribes.] The four tribes, Bráhmana, &c.

Class of mediate origin.] The Ambashṭha, the Karana, &c.

Class of mixed origin.] Rathakára, &c. Çríkṙshṇa and Achyuta.

The alleged precept has no pertinence.] The precept alleged by the opponent must run thus; 'divide what is gained by an unseparated co-heir, other than the several specified sorts acquired by valour and so forth without use of joint funds.' But that has no pertinence. It has no such object as required a precept to reach it. The reason is stated: "'Since there is none other:" that is, since there is no case which was not provided for by reasoning. The partition of wealth gained by the use of joint stock, being deducible from reasoning, was not a case unprovided for. Çríkṙshṇa.

37. A case or two may be assumed.] A treasure, found by an unseparated co-parcener, is one instance; and the receipt of any thing given by a stranger, through commiseration, occurs as another. Since a partition of these gains is not deducible from reasoning, for they were not obtained by the use of joint property, how can it be said, that the precept has no pertinence? The author proposes this doubt. Çríkṙshṇa.

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* Çríkṙshṇa and Chūḍámaṇi. † Achyuta. ‡ Çríkṙshṇa. § Çríkṙshṇa.

39. Not any property acquired before separation.

39. Hence the declaring of property common, merely because it was gained by an unseparated coparcener, is not grounded on authority.

40. A passage of Yájñavalkya explained.

40. Besides, the text of Yájñavalkya, ("Nor shall he who recovers hereditary property, &c." § 33) is acknowledged by you likewise, as signifying, that, if one recover the property of the father, grandfather, or other ancestor, which has been taken away by any person, it appertains to him alone, not to the rest. Thus, [the author] denying the right of unseparated co-heirs in the property, because it has been recovered, although a trace of the former right exist, denies the remoter title of the rest to wealth originally gained by the man himself.

41. Çríkrishṇa's opinion.

41. It has been said by Çríkara, 'If wealth, acquired without using the patrimony, belong exclusively to the acquirer, then effects, received in a present, can never be shared with another brother; for the receipt of a present cannot be attended with expenditure of paternal wealth. It is indeed alleged, that valuables are employed, at the receipt of gifts, for the gratification of the donor; as a heifer or the like in the purchase of sacrificial materials; or as milk for the support of life, during the sacrifice denominated Jyotishṭoma. Here the valuables are not employed for the gratification of the giver, since his gratification, by the receipt of other effects, is not requisite for a donation, the intention of which is spiritual; and, as the act of receiving is momentary, nourishment for the person, who accepts the present, is not requisite, as it is during the tedious celebration of the Jyotishṭoma, for him who by that ceremony seeks celestial bliss.'

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Idle as the prattle of children.] If it be severally declared 'divide wealth other than the gains of science;' 'divide acquisitions other than those of valour;' and so forth; a knowledge is not thus obtained of what is meant by 'property acquired before partition, other than particular specified sorts,' so as to distinguish what is liable to partition. Consequently, since it does not determine the proposed question whether a partition of such property shall or shall not take place, it is unmeaning, and therefore similar to the prattle of children. Çríkṛishṇa.

40. Denying.] If the reading be nirákurvat (in the neuter,) the text of Yájñavalkya is the agent in the sentence. But, if nirákurvan (in the masculine,) Yájñavalkya himself is so. Maheçvara.

Unseparated co-heirs.] For the text, containing no restriction, relates to co-heirs whether separated or not separated. Çríkṛshṇa and Achyuta.

For, since the construction of the text is 'He shall not give up, at the time of partition, that which he recovers;' unseparated co-heirs are of course inferred, from its being understood to precede partition. Chúḍamaṇi.

Originally.] With no trace of a former right. Çríkṛishṇa and Maheçvara.

41. As a heifer or the like.] A heifer, one year old, is directed by rituals to be given for the purchase of the Sóma or moon plant (Aselepias acida) required for a sacrifice at which the juice of that plant is drunk.

As milk during the Jyotishṭoma.] A Bráhmaṇa is allowed to drink milk during the celebration of the Jyotishṭoma, which lasts five days. This sacrifice is performed by followers of the Vedas, for the specific reward of happiness in heaven.

42. That is futile: for instances often do occur, in the world, of expenditure of wealth, by giving presents to induce a donation; and, in the present age, wealth received in gifts is similar to that which is earned by service. *Accordingly it is said, "In the Kali age, [gifts are made] to a follower."*

42. Refuted.

43. And as for what is alleged [by the same author], that 'gratification is no cause of receipt of presents, having no such operation, since long attendance is the cause; and wealth, therefore, is not the occasion of such receipt 'through the medium of gratification;' that is still more futile: for long attendance and the rest become causes of the receipt of presents, through the medium of gratification; and, according to the diversity of men's dispositions, [gratification*] is seen to arise, in the mind of one, from pecuniary gifts; of another, from long attendance or the like; of some, from the mere evincing of particular qualities. If the effect be not produced, for want of an attendant circumstance, it must not be thence concluded to be no cause; since, as is observed accordingly, gratification is produced by means which are not invariable.

43. His reply answered.

44. It has been further urged [by the same author,] 'If [it be alleged,] that wealth mediately accomplishes the receipt of presents, being employed during attendance; since receipt cannot take place without contiguity;

44. His further arguments.

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42. Expenditure of wealth by giving presents.] By presenting agreeable things, &c. or, if the reading be upadána (instead of upahára,) by giving bribes, &c. Çríkṛshna.

Wealth received in gifts is similar to that earned by service.] Since a donation is obtained by long attendance, the expenditure of wealth is sometimes requisite for the support of life. Çríkṛshṇa.

A follower.] One constant in attendance; an earnest solicitor. This is connected with the terms 'gifts are made;' for it is said 'In the first age, gifts are made by going to seek an accepter; in the second, they are presented to one invited for the purpose; in the third, to one who solicits them; in the fourth to a constant follower."

43. Since long attendance is the cause.] Since presents are also seen to be obtained by long attendance, gratification does not operate towards the receipt of presents; and consequently is not the cause. Çríkṛshṇa.

Through the medium of gratification.] Only through that medium; not by their own independent power. Therefore gratification is not unoperative. Çríkṛshṇa.

If the effect be not produced, &c.] The particular disposition of the person is a concomitant circumstance. If the proper disposition be wanting, gratification is not produced. There is consequently no unoperativeness of it as a cause. But some say, this is an answer to the question, how can gratification be a cause of receipt of presents, since, in some instances, no present is obtained, though gratification be produced? Çríkṛshṇa.

By means which are not invariable.] It is effected by various means, which are independent of each other. Çríkṛshṇa.

44. If it be alleged.] In some copies of the text, 'if' (yadi) is found; and that reading is right. In other copies it is omitted; but must be supplied. Maheçvara.

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* Çríkṛshṇa and Maheçvara.

nor can this be without nourishment: that is denied; for nourishment, used for the support of life, previous to the celebration of a Jyotishṭoma or other religious ceremony, would immediately serve for that ceremony, since the Jyotishṭoma could not take place without previous support of life: all food would, therefore, be intended for religious ends, not for human purposes: and consequently wealth, which supplies it, would be designed for sacrificial uses; and the means of acquiring it would also be meant for the same end; and thus the maxim, that the acquisition of wealth itself, and food, are adapted to human purposes, would be contradicted.'

45. That is most futile; for, although it mediately contributes to the celebration of the Jyotishṭoma, food obviously serves the immediate purpose of satisfying hunger; and being designed for human uses, it contributes to religious ends; but there is no proof of its being intended for such ends; nor does its so contributing operate towards such a result. How then should it follow, that acquisition of wealth, wealth itself, and food, are adapted to religious purposes?

45. Repelled.

46. Hence, [because it was not intended for that purpose, though it contribute to the result,* or for the reason which will be stated,†] there is no room for the reproach, 'If wealth be acknowledged to contribute to the receipt of presents, by means of nourishment previous to such receipt, then, since no acquisition of wealth can be made without nourishment from the time of the receiver's birth, every mode of gain would be accompanied with detriment to the patrimony; and the restriction, "without using the patrimony," (§ 3.) would therefore not be inserted.' For, lest the restriction become superfluous, the text is understood to signify employment of wealth other than an expenditure of it adapted to nourishment and similar use.

46. An objection obviated.

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45. There is no proof of its being intended for such ends.] Of its being meant for such purposes; of its being designed for sacrifices. Çrikṛshṇa.

For there is no proof of food being intended for such ends; that is, for sacrifices. Maheçvara.

No proof of the acquisition of wealth being intended for such ends; that is, for sacrificial uses. Achyuta.

The commentator proceeds to notice variations in the reading of the text, which do not, however, materially alter the sense.

46. Hence] Because it was not intended for that purpose, though it contributes towards it. But some interpret "hence" for the reason subsequently stated; that is, lest the restriction become superfluous, &c. Çríkṛshṇa.

Achyuta is the author who so interprets it. Chūḍámaṇi gives the other explanation.

The text is understood to signify.] Maheçvara remarks with disapprobation a different reading, (vachanárṭhatvát for vachanárṭhatvam;) from which, however, by supplying a sentence, he deduces the same meaning.

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* Chūḍámaṇi and Çríkṛshṇa. † Achyuta and Maheçvara.

47. Moreover, an expenditure of wealth for nourishment or other use, must necessarily be made even by a person remaining at home; and such expenditure is not designed for the acquisition of wealth: but its having been actually intended for that purpose is a requisite [to its being the cause of the gain:*] consequently the supposition does not go too far.

47. What is expended for necessaries, is no cause of an acquisition.

48. Accordingly [since its being actually intended for the purpose is positively required; its merely contributing to that end is not sufficient;†] Viçvarúpa has said, 'When wealth is not acquired by giving [or using] paternal property, it is declared [by the sages‡] not to be common, any more than wealth received on account of marriage: it becomes not common, merely because property may have been used for food or other necessaries; since that is similar to the sucking of the [mother's] breast.

48. Viçvarúpa's opinion is consonant to this.

49. Hence, [because its being actually intended for that purpose is a requisite to its being the cause of the acquisition,§] though much wealth, belonging to the father, have been expended in festivity at the son's initiation, or at his wedding, what is obtained by him in alms during his austerities as a student, or received on account of his marriage, is not common; for that expenditure of wealth was not made with a view to gain.

49. So other expenditures without a view to gain.

50. It is, therefore, demonstrated, that wealth, acquired by means of joint stock used for the express purpose of gain, is common property; and no other is so.

50. The purpose must have been gain, to render the acquisition com-

51. The same import may be deduced by abridging the substance of what has been expressed, after various disquisitions, by Jitendriya, who says, 'Whatever is acquired on separate funds is several property. For the sake of perspicuity, [gains of science and other particular sorts‖] are specified by way of example, in these and other words,

51. The same results from Jitendrya's arguments.

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47. The supposition does not go too far.] There is not ground for supposing, that wealth, expended for nourishment, is the cause of an acquisition. Maheçvara.

48. Not acquired by giving paternal property.] It is thus expressly declared, that the expenditure must have been actually intended for that purpose. Crík*ri*shna.

51. But even these sorts of wealth become common.] Such sorts of wealth, being gained by science, valour, or the like, are joint property, if attended with a sufficient cause of a joint right. Though the wealth be of such sort, it is common property. Çrík*ri*shna.

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* Maheçvara. † Crík*ri*shṇa, &c. ‡ Maheçvara.

§ Maheçvara. ‖ Çrík*ri*shṇa.

" Wealth, however, acquired by learning, belongs exclusively to him who acquired it."* Such sorts of property are exempted from partition, because they are separate: but even these sorts of wealth become common, if there be a sufficient cause of a joint right. This also has for the sake of a ready comprehension, been in certain instances described [in the writings of sages†] by the circumstance of joint stock used; in others, by that of united exertion made; in some, by that of common relation.'

52. Baloka indicates a like opinion.

52. It has been, likewise, said by Báloka, 'The rest cannot have a right to wealth gained by one brother through science, or similar means; [being acquired without use of joint funds, and independently of the exertions of the rest :‡] since there is no argument for it'.

53. The practice of dividing all presents accounted for.

53. The practice of dividing wealth gained by receipt of presents without, expenditure of joint property, which is observed to prevail among virtuous people, is not unsuitable, whether founded on the mutual affection of the brethren, or on a manly sentiment. Or [it may be thus accounted for :] people, observing the partition of wealth received in presents, (for presents are in general gains of science; and, as such, the participation of co-heirs equally or more learned is ordained by a passage of law, though the property have been acquired without use of joint funds;) and not knowing, that this partition of the gains of learning is made under a special rule respecting science, but erroneously supposing the partition to take effect because the wealth was gained by an unseparated co-heir, have done so of their own accord. It is not, however, founded on uniform practice. There is consequently nothing incongruous.

54. A text of Manu expounded.

But, as for the text of Manu, (" After the death of the father, if the eldest brother acquire any wealth, a share of that belongs to the younger brothers; provided they have duly cultivated science."§) the meaning of it is this; under another text, placing the eldest and younger brothers in the

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By the circumstance of joint stock used.] For example, 'The brethren participate, &c.' (Vyása). Vide § 14.

By that of united exertion made.] As in the text, 'If all of them, being unlearned, &c.' (Manu, 9. 20[illegible].)

By that of common relation.] For instance, 'After the death of the father and the mother.' (Manu, 9. 104.) Vide C. 1. § 14.

And thus, if any thing be given to one, expressly in consideration of his being the son of a person named; all the sons of that person are entitled to partake. Çríkṙshṇa and Achyuta.

54. If the eldest brother acquire any wealth.] If he alone acquire it by his labour with a separate stock. Çríkṙshṇa.

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* Manu, 9. 206. Vide § 9. † Achyuta. ‡ Çríkṙshṇa. § Manu, 9. 204.

rélation of father and son, ("As a father should protect his sons, so should the firstborn cherish his younger brothers; and they should behave to their elder brother, like children to their father, conformably with their duty respectively."*) the younger brothers have a title in the wealth of the eldest, though obtained without use of joint stock, as they have in their father's acquisitions. But there is this difference: that even the unlearned sons are entitled to their father's acquired property; but the learned brothers only have a right to participate in the wealth gained by the eldest.

55. Confirmation of that exposition.

55. This interpretation is right; for the terms of the text would else become unmeaning; expressing 'after the death of the father' 'if the eldest brother, &c.,' 'provided they have duly cultivated science.'

56. Conclusion. Gains are not shared on the simple ground of parcenery.

56. Consequently it was an inaccurate assertion, that another unseparated brother participates, on the sole ground of the acquisition being made by an unseparated co-heir.

SECTION II.

Definitions of the various sorts of acquisitions, &c., exempt from partition.

1. Gains of science described by Kátyáyana.

1. On this [occasion, or among topics hinted,†] the gains of science are explained. Upon that subject Kátyáyana says, "What is gained by the solution [of a difficulty], after a prize has been offered, must be considered as acquired through science, and is not included in partition [among co-heirs]. What has been obtained from a pupil, or by officiating as a priest, or for [answering] a question, or for determining a doubtful

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Placing brothers in the relation of father and son.] After the death of the father; for the text occurs under that head.

Younger brothers have a title in the wealth of the eldest.] Not in that which is acquired by the middlemost. Çríkṛshna.

55. For the terms of the text would else become unmeaning.] They would be superfluous, if the younger brothers had a right, simply as such, to the gains of the eldest generally. Çríkṛshna.

After the death of the father.] Hence it appears, that the younger brothers do not participate in the separate acquisitions of the eldest, made while the father was living. Crikṛshṇa, &c.

1. On this.] Among those sorts of partible property. If the reading be atra, "here" instead of tatra "there," the sense is, 'on this opportunity.' Çríkṛshṇa.

* Manu, 9. 108.

† Çríkṛshna.

point, or through display of knowledge, or by [success in] disputation, or for superior [skill in] reading, the sages have declared to be the gains of science and not subject to distribution. The same rule likewise prevails in the arts; for the excess above the price [of the common goods], and that which is gained through skill by winning from another a stake at play, must be considered as acquired by science, and not liable to partition. So Vṛhaspati has ordained."

2. First sort. A prize for the solution of a difficulty.

2. 'If you solve this well, I will give you so much money:' after such an offer, if one solve the difficulty and obtain the prize, it is not subject to distribution.

3. Second sort. Fee for instructing a pupil.

3. From a pupil.] From a person instructed by the acquirer.

4. Third sort. Fee for officiating at religious rites.

4. By officiating as a priest.] Received as a fee or gratuity from a person employing him to officiate at a sacrifice.

5. These are dues, not gratuities.

5. These are fees, not presents; for they are similar to wages or hire.

6. Fourth sort. A reward for solving a question.

6. So, a question relative to science being resolved, if any one, through satisfaction, give anything which had not been previously offered.

7. Fifth sort. A reward for clearing a doubtful point or for deciding a litigated question.

7. Also what is obtained by clearing the doubts of one, by whom an offer has been thus made: "To him, who removes my doubts on the meaning of this passage, I will give this gold." Or [it may signify a fee, such as] the sixth part or the like, received for a correct decision between two litigant parties, who apply for the determination of a dubious and contested point.

8. Sixth sort. A reward for display of science.

8. Likewise, what is received in a present or the like for displaying his knowledge in the sacred ordinances and so forth.

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The excess above the price.] Having taken gold or the like belonging to the joint stock, and having made bracelets or similar things, the value, which is thus superadded by the skill of the artist to the price of the gold, &c., is an acquisition made through science. Çrík*ṛ*shna.

By winning a stake at play.] A wager, previously staked, which is won by superior skill in play. Çrík*ṛ*shṇa.

5. These are fees.] To obviate the seeming tautology in the subsequent mention of a present obtained through the display of learning, after noticing a reward for resolving well a difficult question; the author says 'it is a fee, not a present.' It is not obtained by the mere acceptance of a gift. Çrík*ṛ*shṇa.

6. A question relative to science being resolved.] A proper answer having been given to a question proposed.

9. Seventh sort. A prize gained or stake won in a disputation.

9. So, in a contest between two persons respecting their knowledge of sacred ordinances, or in any other controversy whatsoever concerning their respective attainments, what is gained by surpassing the opponent.

10. Eighth sort. A prize for reading.

10. Likewise, where a single article is to be given, and there are many competitors, what is received for reading in a superior manner.

11. Ninth sort. The gain of a skilful artist.

11. Also, what is gained by painters, goldsmiths and other artists, through skill in the arts and so forth.

12. Tenth sort. A stake won by skill in play.

12. In like manner, what is won by beating another at play.

13. They are in general exempt from partition

13. All this is exempt from being shared with the rest of the co-parceners. The meaning is as follows: whatever is acquired by any [skill or] science, belongs to the acquirer, not to the rest. For illustration only, it has stated at large by Kátyáyana, to obviate the error of Çríkara and others.

14. So is any present to a learned man.

14. Hence, [since it is enumerated by Kátyáyana among the gains of science;*] what is obtained in a present by displaying and making known his own knowledge, is also an acquisition made by science; for a present is given to a learned man on account of his learning.

15. Yama describes a person worthy of gifts.

15. So Yama; "A man endowed with science, regular in [the performance of his] duties, contented, patient, with subdued passions, of strict veracity, grateful, disinterested, kind to cows, careful of them, generous, a performer of sacrifices, and a priest, the sages pronounce to be a worthy object. But a present should not be conferred on such as neglect rigid observances, or are ignorant of holy texts, or merely live by their class: for a stone transports not a stone [over the stream]."

ANNOTATIONS.

9. Gained by surpassing the opponent.] Receiving [ascertaining the contest by demonstrating the proposition: having been previously staked by the disputant, or being generously given by the king. Çríkrishna.

13. For illustration.] For an example of wealth gained by science without use of joint funds. Çríkṛshna and Achyuta.

The error of Çríkara and others.] Their mistake in supposing an acquisition to be subject to partition simply because it was obtained by an unseparated co-parcener. Çríkṛshṇa.

* Çríkṛshṇa and Achyuta.

16. The present is given on account of learning.

16. For, it is in right of his learning, that he is a fit object of gifts; and unlearned men are unworthy objects.

17. A different construction refuted.

17. Hence, what has been alleged by some one, that the gains of science signify such gifts [only]* as are received on account of teaching; must be rejected as having been said for want of seeing the text above cited: and because the word science *(vidyá)* being derived from the root *vid* to know, signifies any knowledge [or skill.]

18. Çríkara's objection repelled.

18. As for what is objected by Çríkara, that 'by pronouncing wealth received in presents to be the earning of science, receipt of presents, instruction of pupils, and assistance in sacrifice, are confounded:' that is very futile; since, although presents and the rewards of teaching and assisting in sacrifices, and other particular sorts, be connected as being equally gains of science; yet the several sorts are not confounded: for still the rewards of teaching and of sacrificing are not presents; and it is an uncontested truth, that a black bull, a red or a pied one, or other individuals, though equally bulls, are not confounded.

19. His argument refuted.

19. Accordingly, [as they are not confounded,† or because things generically similar are specifically different;‡ therefore,] since [it may be asked] 'how does the sage, by pronouncing what is received from a pupil or for officiating as a priest to be the earning of science, fail in discriminating the rewards of teaching and of sacrificing?' the allegation [of their being confounded,§] merely by way of offering an objection, must be rejected.

20. Gains of valour described by Kátyáyana.

20. Kátyáyana propounds the gains of valour, &c. "When [a soldier] performs a gallant action, despising danger; and favour is shown to him by his lord pleased with that action; whatever property is then received by him, shall be considered as gained by valour. That and what is taken under a standard, are declared not to be subject to

ANNOTATIONS.

17. For want of seeing the text above cited.] Meaning the text of Kátyáyana. (§ 1.) Çríkrshna.

It must be rejected as inconsistent with the sense of the above cited text of Yama. (§ 15.) Maheçvara.

This commentator appears to have read vachanárthádarçanát 'from seeing the purport of the text;' in place of vachanádarçanát 'for want of seeing the text.'

18. By pronouncing wealth received in presents to be the earning of science.] Çríkara's meaning is, that, if the fee for assistance in sacrificing be a gain made through science, because it is by science that the man was fitted for officiating; and if the reward of teaching and the receipt of presents be so likewise; then all three, being the gains of science, are confounded.

* Çríkṛshṇa. † Achyuta. ‡ Çríkṛshṇa. § Çríkṛshṇa

distribution. What is seized [by a soldier] in war, after risking his life for his lord and routing the forces of the enemy, is named spoil taken under a standard."

21. Nuptial presents explained by the same author.

21. "But wealth received on account of marriage is considered to be that which has been accepted with a wife.

22. Exposition of the text.

22. The meaning is, received at the time of accepting a bride.

23. Other sorts, not liable to partition, enumerated by Manu and Vishnu.

23. So Manu and Vishnu state other sorts of property exempt from partition. "Clothes, vehicles, ornaments, prepared food, water, women and furniture for repose or for meals, are declared not liable to distribution.*"

24. Explanation of the passage.

24. Clothes.] Personal apparel and raiment intended to be worn at assemblies.

Vehicles.] Carriages or horses and the like.
Ornaments.] Rings and so forth.
Prepared food.] Sweetmeats, &c.
Water.] Contained in a pond or well; as suited to use.
Women.] Other than female slaves.

Furniture for repose or for meals.] Beds and vessels used for eating and sipping [or drinking] and similar purposes.

ANNOTATIONS.

A black bull.] Níla, the term here used, signifies blue, and is frequently employed in the sense of black; but the sort of bull intended by that term, in the selection of a steer to be consecrated and let loose at obsequies and on certain other occasions, is one of a red colour, with brown head and tail, and with white hoofs and horns.

A red one.] Kapila: When applied to a cow, this term signifies one of the colour of lac dye, with black tail and white hoofs.

22. Received at the time of accepting a bride.] This is indefinite: for the same must be likewise understood of other property received in consequence of becoming a son-in-law. Çríkṛshṇa.

24. Suited to use.] Adapted to employment. As much should be taken by each person as will supply his wants. There is not, in this instance, a restriction of equal shares. Çríkṛshṇa.

Other than female slaves.] Since the partition of a female slave is directed by Vṛhaspati, ("A single female slave should be employed in labour, in the house of the several co-heirs successively, &c."†) the author says, 'other than female slaves.'

Female slaves.] Meaning women kept for enjoyment. Maheçvara.

Accordingly Gautama says, "No partition is allowed in the case of women connected [with one of the parceners]."‡ Achyuta.

Furniture for repose, &c.] The words are yoga-kshema-pracháran cha. The Rat-

* Manu 9, 219. But not found in Vishnu's Institutes. † Vide C. 1. § 10.
‡ Vide Mitákshará, C. 1. Sect. 4. § 22.

25. So Vyása: "A place of sacrifice, a field, a vehicle, dressed food, water and women, are not divisible among kinsmen, though [transmitted] for a thousand generations.

25. Vyása enumerates exempted articles.

26. A place of sacrifice.] The spot, where sacrifices are performed; or else an idol: not wealth obtained by sacrificing; for that has been noticed as being the earning of science.

26. Interpretation of the text.

27. Thus Kátyáyana: "The path for cows, the carriage road, clothes, and any thing which is worn on the body, should not be divided; nor what is requisite for use, or intended for arts: so Vṛihaspati declares."

27. Kátyáyana specifies other exempted articles.

28. Requisite for use.] What is fit for each person's use; as books and the like in the study of the Vedas, &c. That shall not be shared by ignorant brethren. So what is adapted to the arts, belongs to artists; not to persons ignorant of the particular art.

28. Meaning of the passage.

29. Also Çankha and Likhita: "No division of a dwelling takes place; nor of water pots, ornaments, and things not of general use, nor of women, clothes, and channels for draining water. Prajápati has so ordained."

29. Çankha and Likhita exempt certain articles.

30. A house, garden or the like, which one of the co-heirs had constructed within the site of the dwelling place, during the father's life-time, remains his indivisible property: for his father has assented by not forbidding the construction of it.*(a)*

30. Explanation of the text.

31. So, even property inherited from the paternal grandfather, which has long been lost, and is not recovered by the rest through inability, or through aversion from [the efforts requisite for its] recovery, belongs exclusively to the father, if recovered by him on his own funds, and by his own labour; and is not common property.

31. Hereditary property recovered is in certain cases exempt.

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nákara expounds yoga-kshema the counsellor and priest; and prachára the path for cows and other cattle, &c. Achyuta.

These terms are otherwise explained in the Mitákshará. C. 1. Sect. 4. § 23.

28. As books, &c.] If there be other effects of equal value with the books, these shall be retained by the learned brethren; and other chattels shall be taken by the illiterate co-heirs. This must be inferred. Else, if the hereditary property consist in books only, the illiterate heirs might be deprived of subsistence, if they had no right of participation. Çríkṛishṇa.

29. Things not of general use.] As books for illiterate persons and so forth. Çríkṛishṇa.

Channels for draining water.] Raghunandana reads apám prachára-rathyánám 'water, vessels and roads;' in place of apám prachárárthánám, 'channels for draining water.'

(a) See 1 Morl. Dig. 486.—*Ed.*

32. As declared by Manu.

32. Thus Manu ordains: "If a father recover the property of his father, which remained unrecovered, he shall not, against his will, share it with the sons, since in fact it was acquired by himself."*

Such property belongs to the person recovering it.

33. Property appertaining to his father, not recovered by the sons; not retrieved by them. The other readings, anavápya and anavápyam [in place of anaváptam,] are unfounded.

33. Explanation of the text.

34. Vṛihaspati says, "Over the grandfather's property, which has been seized [by strangers] and is recovered by the father through his own ability, and over [any thing] gained by him through science, valour or the like, the father's full dominion is ordained. He may give it away at his pleasure, or he may defray his consumption with such wealth; but, on failure of him, the sons are pronounced entitled to equal shares."

24. Vṛihaspati declares property gained or recovered exempt from partition: but, after the demise of the acquirer, it is equally divided.

35. Through his own ability.] The author thus indicates a separate personal exertion.

35. Exposition of the text.

36. In both texts, the term "father" is indefinite for a reason [of the precept] is stated; "since in fact it was acquired by himself." (§ 32.)

36. And of the preceding passage (§ 32.)

37. Thus the rule must be understood in the instance of any such hereditary property, other than land, exactly as in the case of property not hereditary, but acquired by the man himself.

37. The rule is the same in regard to property recovered and acquired. Except land.

38. Çankha propounds a special rule regarding land. "Land, inherited in regular succession, but which had been formerly lost, and which a single [heir] shall recover solely by his own labour, the rest may divide according to their due allotments, having first given him a fourth part."

38. Çankha provides a rule for one case of land.

ANNOTATIONS.

33. The other readings are unfounded.] For, according to one reading, something must be understood; and according to the other, a term must be taken in a secondary acceptation. Çríkṛishṇa.

34. Equal shares.] The specifying of equal shares forbids the deduction of a twentieth part for the eldest. Chūḍámaṇi and Çríkṛishṇa.

He may defray his consumption with such wealth.] All the copies, which have been collated, agree in reading bhogan chaiva tato dhanát 'he may defray his consumption with that wealth.' But, in every other compilation, as the Ratnakara, Smṛiti-chandriká, Kalpataru, &c., the reading is bhágan instead of bhogan: 'He may make a distribution of such wealth.'

* Manu, 9. 209.

39. By the term "solely" the author intimates, that neither common funds were used nor joint personal exertions made. Still it does not become the separate property of the person retrieving it; but a fourth part of the land recovered must be given to him in addition [to his regular allotment:] by force of the word land; and because there is no reason for supposing it to be vague.

39. The acquirer has a fourth part in addition to his own regular share.

40. Thus have been explained both, what is divisible and what is exempt from partition.

40. Consumption.

CHAPTER VII.

On the participation of sons born after a partition.

1. The share of a son born after the partition of the estate is now declared. On that subject Manu and Nárada say, "A son, born after a division, shall alone take the paternal wealth; or he shall participate with such [of the brethren,] as are reunited with the [father."]*

Manu, &c. declare, that a son born after partition is heir to his father; or shares with re-united brethren.

2. If the father, having separated his sons, and having reserved for himself a share according to law, die without being re-united with his sons; then a son, who is born after the partition, shall alone take the father's wealth; and that only shall be his allotment. But, if the father die after re-uniting himself with some of his sons, that son shall receive his share from the re-united co-heirs.

2. Interpretation of the text.

3. Thus Gautama says: "A son, begotten after partition, takes exclusively the wealth of his father."†

3. Gautama also pronounces him heir to his father's share.

ANNOTATIONS.

39. In addition. The meaning of the text is, 'having given a fourth part of the land in addition, to the person who recovered it, all the co-heirs, together with him, shall take equal shares.' It is not understood from the term "the rest," that a fourth part only shall be given to him: for it would be an unequal rule, since the person, recovering the land, would receive less than his co-heir, if there be one or two sharers unconcerned in the recovery. Çríkṛishṇa.

2. Having reserved a share according to law.] It is thus hinted, that, if the father, through ignorance of the law, have made a partition in which he took a very small share for himself, his son, afterwards begotten, shall receive a due allotment from the brethren. Çríkṛishṇa.

* Manu, 9. 216. Nárada, 13. 43. † Gautama, 28. 27.

4. He, of whom the conception was subsequent to the division of the estate, is a son begotten after partition; being procreated by a person, who is separated [from coparceners:] for, without conception, there is no procreation. Therefore, if the sons were separated [from the father,] while his wife was pregnant but not known to be so, the son, who is afterwards born [of that pregnancy,] shall receive his share from his brothers.

4. Exposition of the passage.

5. Not one only, but even many sons, begotten after partition, shall take exclusively the paternal wealth. Thus Vṛihaspati says: "The younger brothers of those, who have made a partition with their father, whether children of the same mother, or of other wives, shall take their father's share. A son, born before partition, has no claim on the paternal wealth; nor one, begotten after it, on that of his brother."

5. The same holds good, if there be more than one such son. A passage of Vṛihaspati cited.

6. One, born previously to the partition, is not entitled to the paternal estate: nor one begotten by the separated father, to the estate of his brother. So the same author declares: "All the wealth, which is acquired by the father himself, who has made a partition with his sons, goes to the son begotten by him after the partition. Those, born before it, are declared to have no right; as in the wealth, so in the debts likewise, and in gifts, pledges and purchases.

6. And explained. A further passage quoted.

7. Under the term "all," wealth, however considerable, which is acquired by the father, goes to the son begotten by him after partition.

7. And expounded.

8. "They have no claims on each other, except for acts of mourning and libations of water."

8. A further passage cited.

ANNOTATIONS.

4. Shall receive his share from his brothers.] This must be understood where the father remains separate, having reserved for himself what ought to be reserved by him, and having given the residue to his sons. But, if the father be dead, the shares of him and of the brethren must be thrown together, and divided, according to law, by all the brothers. However, Chūdámani directs a new partition by mixing the whole of the effects, although the father be living; because the double share, or other allotment reserved by him, was not according to law. In the case supposed, if a share were previously set apart for the child in the womb, the wife's pregnancy being known, all shall participate in the father's allotment [after his demise,] provided there be no son begotten after the partition. But, if the father himself, though apprized of the pregnancy, have given shares to his sons, in virtue of his power as owner; the child in the womb has no right to participate, since their property in those shares is complete: he has a right only to the father's allotment; and, if there be a son begotten after the partition, he is entitled to partake equally with him. Çrîkṛshna.

6. Which is acquired by himself.] It is thus intimated, that what is acquired, through personal labour, on separate funds, by the father who is re-united after partition with another son, belongs also to the son begotten after the partition, and not to the re-united parceners. Çrîkṛshna.

9. And explained.

9. By specifying "Acts of mourning and libations of water" only the author excludes the remoter pretensions to a participation in wealth.

10. If land, &c. have been divided, and the son subsequently born takes nevertheless a share.

10. This is applicable only to the case of wealth acquired by the father. But, if property inherited from the grandfather, as land or the like, had been divided, he may take a share of such property from his brothers: for partition of it is authorized, [only] when the mother becomes incapable of bearing more children. [Consequently, since the partition is illegal, having been made in other circumstances, it ought to be annulled.*]

11. Vishnu authorizes his participation.

11. That is declared by Vishṇu: "Sons, with whom the father has made a partition, should give a share to the son born after the distribution."†

12. Yájñavalkya directs an allotment to be given out of the property forthcoming.

12. So Yájñavalkya: "When the sons have been separated, one afterwards born of a woman equal in class, shares the distribution. His allotment must positively be made out of the visible estate corrected for income and expenditure."‡

13. That must relate to hereditary property.

13. Since it disagrees with the ordinance, that "he shall alone take the paternal wealth," (§ 1.) it must relate to hereditary property, for the reason abovementioned.

ANNOTATIONS.

10. Land or the like.] A corrody and shares are intended by the terms "or the like;" for gems, pearls, &c., are similar to a man's own acquired wealth. Çríkṛshṇa.

11. Must positively.] The particle vá is affirmative; and what has been consumed is consequently excepted. Çríkṛshṇa, &c.

The particle signifies 'or' and denotes a regulated alternative. If there be evidence of the income and expenditure, the allotment shall be made, out of the 'visible estate;' if not, it must be grounded on a reference to the amount originally distributed. Maheçvara.

The visible estate.] The wealth forthcoming. Achyuta.

The remainder after allowing for income and expenditure: or that which is forthcoming. Maheçvara.

13. For the reason abovementioned.] That which was stated; 'because distribution is authorized when the mother becomes incapable, &c.' Therefore, whether pregnancy were known or not; the partition being illegal, which has been made, of the grandfather's estate, without the mother's being incapable of bearing more children, it ought to be annulled; and the two last cited passages will relate to the distribution of such property: but the preceding texts of Manu and the rest regard the father's own acquired wealth. The contrary must not be supposed. Çríkṛshṇa.

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* Çríkṛshṇa. † Vishṇu, 17. 3. ‡ Yájñavalkya, 2, 123.

CHAPTER VIII.

On the allotment of a share to a co-parcener returning from abroad.

1. The participation of one, who arrives after the distribution of the estate, is next declared. On this subject Vṙhaspati says, "Whether partition have, or have not, been made; whenever an heir appears, he shall receive a share of whatever common property there is. Be it debt, or a writing, or house, or field, which descended from his paternal ancestor, he shall take his due share of it, when he comes, even though he have been long absent."

1. The share of an absent co-parcener is directed by Vṙhaspati, to be delivered to him,

2. "If a man leave the common family, and reside in another country, his share must no doubt be given to his male descendants when they return. Be the descendant third, or fifth, or even seventh, in degree, he shall receive his hereditary allotment, on proof of his birth and name."

2. Or to his heir.

ANNOTATIONS.

1. Whether partition have or have not been made.] By the rest, who remain in the country. So the text must be supplied. Achyuta.

Whatever common property.] Which has descended from his ancestor. Achyuta.

2. Or even seventh.] The particle "or" (vá) connects this with other degrees not mentioned but included with the seventh. Therefore descendants, as far as the seventh in degree, returning from a foreign country, participate: not so the eighth or other remoter descendant. Accordingly, the text which expresses, that "The right to participation ceases with the seventh "person," relates to this subject. Çrík*ṙ*shṇa.

Be he the third, or fifth, or even seventh.] The particle "or" is here employed in an indefinite sense. If therefore, at the time of the demise of the ancestor and owner, a descendant, within the degree of great grandson, be the eldest of the male issue living; then, since the property devolves in regular succession on the progeny, the descendant, even beyond the seventh degree, may have a good title. But, if the eldest of the [surviving] male issue be the son of the great grandson; then, since he is destitute of title, being debarred from offering a funeral oblation, his son, though fifth in descent, has not the right of succession. Achyuta.

The foregoing is cited, without mention of the author's name, by Çrík*ṙ*shṇa, who replies, 'That is not right: for, were it so, there would be no difference in the cases of one who remained at home and of one who went abroad; and the text would consequently be superfluous. Accordingly a separate revelation must be presumed as the ground of that text. This should be considered by the wise.'

The close of Çrík*ṙ*shṇa's reply bears allusion to the sequel of Achyuta's argument, in which it is said, 'As for the supposition, that the rights of third, fifth, &c. are determined according to the greater or less distance of the place; but, since the succession is ordained to extend as far as the seventh in degree, it extends no further; and accordingly another passage of law expresses, that inheritance stops beyond the seventh in descent: That is wrong, for it would be necessary to assume another foundation of it [in scripture;] and the rule would be irrelevant, since no determination could be formed, as there is no ground for selection of particular distances.'

3. "To the lineal descendants, when they appear, of that man, whom the neighbours and old inhabitants know by tradition to be the proprietor, the land must be surrendered by his kinsmen.

3. On proof of descent.

4. Under this text; the heir [of a co-parcener] long absent shall take his due allotment, after making himself known to the old inhabitants settled on all sides.

4. Such proof is necessary.

5. Such is the participation of one arriving after a division.

5. Conclusion.

CHAPTER IX.

On the participation of sons by women of various tribes.

1. Partition among sons of the same father by different women; some equal to himself by class, others married in the direct order of the tribes, is now described.

1. Partition among the offspring of marriages with women of different tribes.

2. Marriage is allowed with women in the order of the tribes, as well as with those of equal class; for Manu says, "For the first marriage of the twice born classes, a woman of the same tribe is recommended; but for such, as are impelled by desire, those following are preferable in the order of the classes. A Çúdrá woman only must be the wife of a Çúdrá; she and a woman of his own tribe [are the only wives] of a merchant; they two, and a woman of his own class, are alone eligible for a man of the royal [or military] tribe; and those [three] and a woman of his own rank [may be wives] of a priest."*

2. Such marriages are authorized by Manu. The first wife must be of equal class. Subsequent marriages may be contracted in the gradation of the classes.

3. A Çúdrá woman only.] The particle "only" is connected with every member of the sentence; for that term, expressed immediately before, is understood with the words "she," "they two," and "those three." The meaning is, that marriage in the inverse order of the tribes must by no means be contracted.

3. Exposition of the text. Marriages are not allowed with women superior;

4. But for such, as are impelled by desire, these, &c.] This indicates an alleviation of offence, not entire exemption from blame.

4. And are blameable with women inferior by class.

* Manu, 3. 12.—13.

5. Çankha and Likhita declare, "Wives must be espoused. Women of like class are preferable for all persons." This is stated as the principal rule. The succedaneous one follows: "Four wives of a Bráhmaṇa are allowed in the direct order; three, of a Kshatriya; two, of a Vaiçya; and one,

5. Çankha and Likhita cited.

6. The numbers here stated, "four," &c. are intended to refer to the tribes.

6. And explained.

7. These women are wedded wives. So nasi shows: "Four wedded wives of a Bráhmaṇa are allowed; and three, two, and one, of the rest respectively.

7. Paiṭhínasi shows, that marriage is here meant.

8. Of the rest.] Of the Kshatriya, &c. in their order, three, two, and one, may be allowed.

8. Interpretation of his text.

9. Though [such a marriage be] in the direct order of the classes, Manu and Vishṇu have strongly censured the union of a man of a regenerate tribe with a Çúdrá woman. "Men of the twice born classes, who, through infatuation, marry a woman of the low tribe, soon degrade their families and progeny to the state of Çúdrás. According to Atri and [Gautama] the son of Utathya, he, who marries a Çúdrá woman is degraded instantly; according to Çaunaka, on the birth of a son; and, according to Bhṛgu, on the birth of a son's son. A Bráhmaṇa, who has ascended the couch of a Çúdrá woman, sinks to a region of torment: or, if he have begot a child on her, he loses even his priestly rank."*

Union of a regenerate man with a Cúdrá woman is reprobated by Manu and Vishṇu:

10. It thus appears, that the texts are applicable to the instance of such a woman married in regular gradation. Háríta's text also, which coincides with that of Manu and the rest, relates to a woman espoused. Thus he says, "No other is so sacrilegious, as is the husband of a woman of the servile tribe; for that Bráhmaṇa is slain by the child, which he himself begets on her." Accordingly [since marriage with a Çúdrá woman, and procreation of issue by her, are offences;†] Çankha omits the Çúdrá in describing a wife eligible for a twice born man. "A Bráhmaṇí, a Kshatriyá, and a Vaiçyá are propounded as the allowed wives of a Bráhmaṇa; a Kshatriyá and a Vaiçyá, of a Kshatriya; but a is ordained the only wife of a Vaiçya; and a Çúdrá, of a Çúdra."

10. Though she be espoused subsequently to wives of higher classes.

A passage of Hárita confirms this;

And one of

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6. The numbers refer to the tribes.] Therefore, the marriage of a Bráhmaṇa with five or six Bráhmaṇís is not prohibited.

The meaning is, that five or six wives, similar to the husband himself in class, are not forbidden to a man of the sacerdotal or other tribe. Achyuta.

* Manu, 3. 15.

11. But adultery with such a woman is comparatively venial.

11. Hence these evils do not ensue on the procreation of offspring upon a Çúdrá woman, not married to [the Bráhmaṇa] himself: but a venial offence is committed, and a slight penance is requisite, as will be shown.

12. Partition among sons by wives from various tribes, is propounded by Manu.

12. Manu propounds the distribution among sons of four classes. "Let the venerable son take three shares of the heritage; and the son of the Kshatriyá wife, two shares; the son of the Vaiçyá wife, a share and a half; and the son of the Çúdrá wife, may take a share. Or let a person, conversant with law, divide the whole collected estate into ten parts, and make a legal distribution by this [following] rule: let the venerable son receive four parts; the son of the Kshatriyá, three; let the son of the Vaiçyá have two parts; and let the son of the Çúdrá take a single part."*

13. In two modes according to the merit of the sons.

13. Two modes are propounded on the supposition of some [superiority of] good qualities [in the sons belonging to regenerate tribes,† or in the

14. Vishṇu has stated the distribution in detail

14. On this subject Vishṇu has delivered rules: "If there be sons of a Bráhmaṇa, by women of the four tribes,"§ &c., down to the concluding passage, "On this principle, shares should be distributed in other cases likewise."‖

ANNOTATIONS.

11. Not married to himself.] That is, married to another man. It does not, therefore, contradict what is subsequently said, 'This passage (Manu, 9. 178.) supppses the Çūdrá to be unmarried.' Cṛíkṛshṇa.

13. On the supposition of some good qualities.] In the sons belonging to the regenerate tribes. This phrase must be here understood. Achyuta.

According to the good and bad qualities of the Çúdrá's son. Some say, on the supposition of some good qualities in the sons belonging to regenerate classes. Çrí-kṛshṇa.

Of the two modes, that, by which a greater portion is allotted to him, than by the other, should be selected in favor of the person, who is superior in good qualities. Chūḍámaṇi.

If the first mentioned be respectively superior in good qualities, the distribution must be made in ten parts.

It should be l .e understood, that he, who is superior by his good qualities, shall take out of the w' le estate the share allotted to a person of his tribe, according to the distribution in te.. parts: and the residue shall be taken by the rest, sharing it according to the distribution in seven and half parts; but the share of him, who is superior in good qualities, must be omitted [in this further partition.] However, should the Çúdrá's son be superior in virtue, the mode of allotment by seven and a half shares must be followed: since he would have a less portion, if the mode of distribution in ten parts were observed. Maheçvara.

14. Down to the concluding passage.] Vishṇu's text has not been inserted by this author, through fear of prolixity. Çríkṛshṇa.

* Manu, 9. 161.—153. † Achyuta. ‡ Çríkṛshṇa.
§ Vishṇu, 18, 1. ‖ Vishṇu, 18. 40.

15. The son of a Bráhmaṇa by a Kshatriyá wife, if eldest of all by birth and superior in virtue, shall be an equal sharer with the Bráhmaṇa son: and the son of a Bráhmaṇa, or of Kshatriya, by a Vaiçyá wife, shall, in like circumstances, be an equal participator with the Kshatriya son. Vṛihaspati directs: "The son of a Kshatriyá wife, being elder by birth, and endowed with superior qualities, shall have an equal share with the venerable son of the Bráhmaṇí; and, in like manner, the son of a Vaiçyá wife shall share equally with the soldier." So Baudháyana says, "Of the sons by a woman of equal class and by one of the next inferior tribe, if this son of the wife one degree lower [than her husband] be [the most] virtuous, he may take the allotment of an eldest son. For a virtuous brother is the supporter of the rest."

15. Being elder by birth, a son shares with the higher tribe: agreeably to a passage of Vṛihaspati, and one of Baudháyana.

16. It is thus shown, that the Çúdrá likewise, in similar circumstances, shall have an equal share with the Vaiçya son.

16. Even the Çúdrá's son has that right.

17 But land, which has been acquired by the father, through acceptance [of a pious donation,] shall belong to the son of the Bráhmaṇí exclusively, not to the Kshatriya son and the rest: and the house, and hereditary field, appertain to the sons of regenerate classes, not to the Çúdras. So Vṛihat Manu declares: The sons of the Bráhmaṇí shall take land which was received as a pious gift; but all the sons of twice-born classes shall have the house, as well as the field, which has descended from ancestors."

17. But he has no right to land, according to Vṛihat Manu; especially a pious grant.

18. All sons, belonging to regenerate tribes, have a right to hereditary acquisitions gained both by the paternal grandfather and by the paternal great-grandfather; for it is expressed without restriction, "descended from ancestors." But, in the case of land obtained by acceptance [of a donation,] since the right of the Kshatriyá's son and the rest is denied, that of grandsons and other descendants [claiming through such sons*] is [properly†] unacknowledged.

18. Though other sons share other land.

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It is more fully cited by Achyuta as well as by Çríkṛishṇa: but the insertion of it in these notes is not judged necessary.

18. Grandson, &c.] The grandsons of the Kshatriyá or other inferior wife.

Is unacknowledged.] Dissent from their right is correct. So the sentence must be supplied. For, since the nearer relative has no title, it follows, by reasoning a fortiori, that the relative's relative has none. Çríkṛishṇa.

Ibid,

19. This is declared by Vṛihaspati: "Land, obtained by acceptance of donation, must not be given to the son of a Kshatriyá or other wife of inferior tribe: even though his father give it to him, the son of the Bráhmaṇí may resume it, when [his father is] dead." And thus [since the text of Vṛihaspati has the same foundation,*] land, obtained by acceptance of donation, is the same which has been termed [by Manu†] land received as a pious gift (brahma-dáya): for the study of the Vedas (here signified by the term brahma,) and the knowledge of their meaning, have been propounded as qualifications for the receipt of gifts.

A pious grant is meant.

20. It is not land which has been received as a present, according to the text of Manu: ("To priests returned from the mansion of their preceptors, let the king show due respect; for that holy mode of showing respect by kings, is pronounced unperishable."‡) Since this assumes the form of a token of respect.

20. Not a mere present.

21. Or else, this land is excepted by the one author, as the other is by the other.

21. However, this may be also intended.

22. But the land of a Bráhmaṇa is not universally a holy heritage (brahma-dáya): for it is expressly declared, that sons of twice-born classes have a right to the hereditary field; and the Çúdra is alone excluded. So a passage of law expresses: "The son, begotten on a Çúdrí woman by any man of a twice-born class, is not entitled to a share of land; but one, begotten on her, being of equal class, shall take all the property [whether land or chattels§]; thus is the law settled."‖

22. But a Bráhmaṇí's landed property in general is not holy.

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19. A pious gift.] In the phrase brahma-dáyágata, in the text of Vṛihat Manu; which has been translated "received as a pious gift."

As qualifications for the receipt of gifts.] For a proper object of donations is so described. (Vide C. 6. Sect. 2. § 15.)

21. This is excepted by the one author as the other is by the other.] This, meaning a respectful present, is excepted by one, namely by Vṛihaspati; and land received in a pious donation, by the other, namely by Vṛiddha Manu. Hence, both sorts descend from the father to the son of the Bráhmaṇí wife. Chūḍámaṇi.

This, which [illegible] in the form of a respectful present, is excepted by one, namely, by Manu; and the other, meaning land received as a pious gift, by the other, that is, by Vṛihaspati: and thus both sorts of land belong exclusively to the Bráhmaṇí's son. Çríkṛishṇa and Achyuta.

22. A Çūdrí woman.] Properly Çūdrí is the wife of a Çūdra; and Çūdrá a woman of the Çūdra tribe. (Vártika 1.—2. ou Páṇini 4. 1. 4.) But this distinction is not observed in the text here quoted.

Being of equal class.] A son begotten by a Çūdra man on a Chūḍámani and [illegible]

* Chūdámaṇi. † Çríkṛishṇa. ‡ Manu, 7. 82.

§ Chūḍámani and Çríkṛishṇa. ‖ Vṛihaspati cited in the Ratnakara.

23. The Çúdrá's son cannot inherit land however acquired.

23. Since land only is mentioned, it follows, that a Çúdrá's son has no right to land acquired by his father, being of a regenerate tribe, through purchase, or through favour, or through any other means.

24. A Çúdra, being the only son of a Bráhmaṇa, is entitled to a third part [of the inheritance]: and [the remaining] two parts go to the Sapiṇḍas; or, on failure of them, to the Sakulyas, or, if there be none, to the person, who performs the obsequies. So Devala ordains: "A Nisháda, being the only son of a priest, shall have a third part [of the heritage]; and let the kinsman, near or remote, who performs the obsequies [for the deceased, take the two [remaining] shares.

24. Being the only son of a Bráhmaṇí, the child of the Çúdra woman takes a third: according to Devala.

25. The son, begotten by a Bráhmaṇa on a Çúdrí, is termed a Nisháda. The difference between the Sapiṇḍa and Sakulya (the near and the remote kinsman) will be explained [under the head of succession to the estate of a man who leaves no son.*]

25. Interpretation of the passage.

26. If a Çúdra be the only son of a Kshatriya or of a Vaiçya, he takes half of his estate; and the next heirs, according to the order of succession subsequently explained in regard to the estate of one who has no male issue,† shall take the other half. So Vishṇu says, "A Çúdra, being the only son of any twice-born man, takes half his property; and the other half goes where the estate of a childless man would devolve."‡

26. Being the only son of a Kshatriya or Vaiçya, he takes half: as provided by Vishṇu.

Other heirs take the residue.

27. Here the right to a third part, or the succession to half the estate, must be understood as restricted to the instance of a person endowed with science, morality and virtue. For Manu says, "Whether he have sons, or have no sons, by other wives, no more than a tenth part must be given to his son by a Çúdrá wife."§ Since more than a tenth part is by this text forbidden, although there be no son belonging to a regenerate tribe; it appears, that the preceding text relates to an excellent only son by a Çúdrá woman. As for the prohibi-

27. If not virtuous, he has a tithe only, as declared by Manu;

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Only son of any twice-born man.] Here the term twice-born relates to two classes, the Kshatriya and the Vaiçya: not to the Bráhmaṇí; since Devala, (§ 24) ordaining a third part of the Bráhmaṇí's estate [for the Çúdra son,] opposes that construction. Çríkṛshṇa and Achyuta.

27. It must be explained, &c.] For it is said, 'that only, which his father may give him, shall be his.' Çríkṛshṇa.

Through his father's favour.] If that, which has been so received, be equal to a tenth part, nothing more should be given to the Çúdrá's son. Çríkṛshṇa.

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* Çríkṛshṇa, Vide C. 11.

† C. 11.

‡ Vishṇu, 18. 32.—33.

§ Manu, 9.

tion of his participating in the estate, as declared by Manu; ("The son of a Bráhmaṇa, a Kshatriya, or a Vaiçya, by a woman of the servile class, shall not share the inheritance: whatever his father may give him, let that only be his property.*") It must be explained as implying, that the property, received by him through his father's favour, amounts to a tenth part of the estate.

Or no share, if his father had given him so much.

28. A passage of Vṛihaspati expresses, "The virtuous and obedient son, borne by a Çúdrá woman, to a man who has no other offspring, should obtain a maintenance; and let the kinsmen take the residue of the estate:" which signifies, that something should be given, to enable him to practise agriculture or some other profession adapted to earn a subsistence; but to one deficient in good qualities, food and other necessaries, as means of subsistence, may be given, in consideration of his behaving with humility and obedience like a pupil. Thus a passage of Manu declares, "A son, begotten through lust on a Çúdrá woman by a man of the priestly class, is even as a corpse though alive, and is thence called a living corpse (páraçava)."† These [two] passages imply, that the Çúdrá woman is unmarried. For a husband is enjoined to approach his wedded wife once in the proper season; and conception takes place then only, not on subsequent intercourse. Thus Yájñavalkya says, "If a brother die without male issue, let another approach the widow once in the proper season:"‡ and Manu ordains, "Having espoused her in due form, she being clad in a white robe, and pure in her moral conduct, let him approach her secretly once in each proper season, until issue be had."§ The first intercourse being the cause of pregnancy, the mention of "once" may be intended for a secular purpose: else, it must be supposed to be meant for a spiritual end. Accordingly, in the practice of the world, months are counted from the day of the first intercourse, as well for regulating auspicious observances, as for determining the performance of ceremonies restricted to particular months, as the Punsavana and Simantonnayana. Hence, the expression "A son begotten through lust on a Çúdrá," must relate to the child of an unmarried Çúdrá(*a*).

28. But a bastard should have a [illegible] or [illegible] earn a livelihood; as Vṛihaspati directs.

A passage of Manu cited.

Also passages of Yájñavalkya, &c.

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28. Th[illegible]e two passages.] The two texts last cited. Çrí*k*ṛishṇa.

That th[illegible] Çúdrá woman is unmarried.] Not married to any one: but kept for sensual gratification. Çrí*k*ṛishṇa.

For a husband is enjoined to approach his wedded wife once, in the proper season.] Consequently, since a single intercourse in proper season, which is the cause of pregnancy, is enjoined, the procreation of a son, which is its consequence, is also enjoined: for the injunction was propounded for that very purpose. Çrí*k*ṛishṇa.

Ceremonies restricted to particular months, as the Punsavana and Simantonnayana.]

* Manu, 9. 155.

† Manu, 9. 178.

‡ Not found in the institutes of Yájñavalkya.

§ Manu, 9. 70.

(*a*) See 1 Morl. Dig. 310, note 6.—*Ed.*

29. But the son of a Çúdrá, by a female slave or other unmarried Çúdrá woman may share equally with other sons, by consent of the father. Thus Manu says, "A son, begotten by a man of the servile class on his female slave, or on the female slave of his slave, may take a share of the heritage, if permitted: thus is the law established*"(*b*).

29. However the bastard of a Çúdrá man by a Çúdrá woman may inherit, conformably with a passage of Manu.

30. Without such consent, he shall take half a share: as Yájñavalkya directs: "Even a son, begotten by a Çúdra on a female slave, may take a share by the choice of the father; but, if the father be dead, the brethren should make him partaker of half a share."†

30. Or he may take half a share according to Yáj-

31. Begotten on an unmarried woman, and having no brother, he may take the whole property: provided there be not a daughter's son. So Yájñavalkya ordains: "One, who has no brothers, may inherit the whole property; for want of daughter's sons."‡ But, if there be a daughter's son, he shall share equally with him: for no special provision occurs: and it is fit, that the allotment should be equal; since the one, though born of an unmarried woman, is son of the owner; and the other, though sprung from a married woman, is only his daughter's son.

31. He shall share equally with a daughter's son, according to Yájñavalkya.

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The first of the ceremonies here named is celebrated at the close of the third month of pregnancy. It consists of the following prayer recited by the husband, addressing his pregnant wife. "Male are Mitra and Varuṇa (the sun and the regent of the sea;) male are the twin sons of Açviní; male are fire and air: may the child in thy womb prove male." The recital of this prayer is preceded by burnt offerings of clarified butter. The other ceremony mentioned should be performed in the fourth, sixth or eighth month of the pregnancy. The husband decorates his wife's head with minium, ornaments and other articles, reciting divers prayers for a fortunate gestation.

29. On the female slave of his slave.] On the wife of his male slave. Chūḍámaṇi.

On the unespoused concubine of his male slave. Críkṛishṇa.

30. The brethren.] The sons by a wedded wife. Maheçvara.

31. Having no brother. His father having left no son by a wife. Achyuta.

He being born of an unmarried woman and having no brother born of a wedded wife. Maheçvara.

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* Manu, 9. 179. † Yájñavalkya, 2. 134. ‡ Yájñavalkya, 2. 135.

See 1 Morl. Dig. 310: 7 Moo. I. A. Ca.

CHAPTER X.

On the participation of sons by adoption.

1. Partition between a legitimate son and an appointed daughter.

1. If a true legitimate son be born after the appointment of a daughter to raise up issue, the distribution to be made between them is here propounded.

2. They share equally,

2. In such a case, the appointed daughter and the legitimate son take equal shares: nor is the appointed daughter entitled to a deduction of a twentieth part in right of seniority. So Manu declares: "A daughter having been appointed, if a son be afterwards born, the division of the heritage must, in that case, be equal: since there is no right of primogeniture for the woman.*"

According to Manu.

For the appointed daughter does not herself perform the functions of an eldest son; but, through her son, presents funeral oblations: as is hinted by Manu: "He, who has no son, may appoint his daughter in this manner to raise up a son for him: saying, the child which shall be born of her, shall be mine for the purpose of performing my obsequies."†

Her appointment described in another passage of Manu.

3. Her son is considered as a son's son.

3. It must not be supposed, that, if the appointed daughter first bear a son, and a legitimate son of her father be afterwards born, her son should have the allotment of an eldest son: for he is considered as a son's son(*c*). Manu intimates as much, saying, "By that male child, whom a daughter, whether formally appointed or not, shall produce from an husband of an equal class, the maternal grandfather becomes grandsire of a son's son: let that son give the funeral oblation and possess the inheritance."‡ For the appointed daughter is as it were a son (putra); and her son is deemed a son's son (pautra); and her father, to whom he thus appertains, becomes grandsire of a son's son. Now there has not been any mention of a peculiar allottment in right of primogeniture for the son's son.

4. He is figuratively called a son in a passage of Vaçishṭha.

4. As for the text of Vaçishṭha, which declares the son of an appointed daughter to be an adopted son: ("This damsel, who has no brother, I will give unto thee, decked with ornaments; the son, who may be born of her, shall be my son,§") whence it appears, that both

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4. One actually is such; and the other is so by his means.] Since both are givers of the funeral oblation, the terms 'figuratively a son' relate to both. The author declares the mode of it. One, namely the son of the appointed daughter,

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* Manu, 9. 134. † Manu, 9. 127. ‡ Manu, 9. 136. § Vaçishṭha, 17. 16.

(*c*) Sec 1 Morl. Dig. 18 n. 6.—*Ed.*

the appointed daughter and her son are [denominated] sons: this designation of him as a son must, (since it contradicts Manu; and since the oblation of a funeral cake is the only quality of a son, which he possesses; be figurative: for, through him, the appointed daughter, offers the funeral oblation; and thus one actually is such, and the other is so by his means.

5. The distribution beforementioned must be understood in the case where the *legitimate* son and the appointed daughter are of the same tribe: but, if they be of dissimilar classes, a distribution between them must be made as between legitimate sons appertaining to different classes: for the true son and the appointed daughter are equal.

5. This is restricted to equal class.

Else the true son has the allotment of his tribe.

6. But, if a daughter, being actually appointed, become a widow without having borne a son, or if she be ascertained to be barren, she has not, in that case, a right to her father's wealth: since the appointment was made for the sake of a son, who may perform obsequies; and, on failure of that, she is similar to any other daughter.

6. If she be barren or a widow, the appointment gives no right.

7. In a partition among sons of the wife and the rest with a true legitimate son, such of them, as are of the same class with the [adoptive] father and superior by tribe to the true son, whether they be sons of an appointed daughter, or issue of the wife, or offspring of an unmarried damsel,

7. Other adopted sons, sharing with a true son.

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actually offers the oblation; the other, or the appointed daughter, does so, through him; that is, through the son of the appointed daughter. Chúḍámaṇi.

One.] The son of the appointed daughter. The other.] The appointed daughter considered as a son. By his means.] By means of her son. Çríkṛishṇa.

One.] The son of the appointed daughter. The other.] The appointed daughter, considered as a son. If the reading be (feminine instead of masculine) anyásyáḥ for anyasya, the sense is, 'another, namely the appointed daughter.' Achyuta.

One actually.] The true legitimate son is of course, in right of his birth, a son. The other.] The son of the appointed daughter. By these means.] By presenting a funeral oblation like a son. Maheçvara.

6. She is similar to any other daughter.] It is thus intimated, that, as in the case of a barren daughter, who was not appointed, the next heirs take the inheritance; so they do, in the instance of such a daughter, who had been appointed. Chúḍámaṇi and

7. Superior by tribe to the true son.] If the true son be issue of a woman of the military or of the commercial class; then, the son of the wife, or other subsidiary son, being born of a Bráhmaní, is superior by tribe. Chúḍámaṇi.

Son of an appointed daughter.] Since the appointed daughter herself is equal to the true legitimate son, she is not included in this enumeration. Chúḍámani.

Begotten by himself.] "Issue begotten by a man himself" comprises 1st, the aurasa, or true legitimate son; 2d a paunarbhava, or son by a twice married woman; 3d, a páraçava, or son of a priest by a woman of the servile class; 4th, the putriká, or appointed daughter: these are all begotten by the man himself. "Issue procreated by another man" intends the kshetraja, or son of the wife and so forth. "Sons received for adoption" are 1st, datta, a son given; 2d, kríta, one bought; 3d, sahodha, the son of

or secretly produced, or abandoned [by the natural parents,] or received with a bride, or born of a twice-married woman, or given, or self-given, or made, or bought; shall be entitled to the third part of the share of a true son. So Devala, after having described the twelve sons, expressly declares, "These twelve sons have been propounded for the purpose of offspring: being sons begotten by a man himself, or procreated by another man, or received [for adoption,] or voluntarily given. Among these, the first six are heirs of kinsmen, and the other six inherit only from the father: the rank of sons is distinguished in order as enumerated. All these sons are pronounced heirs of a man who has no legitimate issue by himself begotten: but, should a true legitimate son be afterwards born, they have no right of primogeniture. Such, among them, as are of equal class [with the father,] shall have a third part as their allotment: but those of a lower tribe must live dependent on him supplied with food and raiment"(*a*).

Take a third; according to Devala.

8. The true legitimate son and the rest, to the number of six, are not only heirs of their father, but also heirs of kinsmen; that is, of Sapiṇḍas and other relations. The others are successors of their [adoptive] father, but not heirs of collateral relations (Sapiṇḍas, &c.)

8. Six heirs to kinsmen; and six heirs to the adopter.

9. They take the whole estate of a father, who has no legitimate issue by himself begotten; but, if there be a true son, such of them, as are of the same tribe with the father, take a third part(*b*).

9. They share with a true son.

10. Since the appointed daughter is equal to the true legitimate son, the same order of distribution must be observed in her case.

10. Also with the appointed daughter.

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a pregnant bride; 4th, kánína, a son born of an unmarried damsel; 5th, kṛitrima, a son made. "Voluntarily given" signifies presented unsought: comprehending 1st, the apaviddha, or son rejected [by his own parents]; 2d, svayamupagata, one who comes of his own accord; and 3dly, gúdhotpanna, a son secretly produced. Çríkṛishṇa and Achyuta.

Among these, the first six are heirs.] The first six, from the true legitimate son to the son rejected by his natural parents, are heirs of kinsmen; that is, of uncles and the rest. The others, from the son of a pregnant bride, to the son bought, are heirs of the [adoptive] father alone. Maheçvara.

Such among them as are of equal class.] The Kshetraja or issue of the wife, being son of a Bráhmaṇa by a Bráhmaní, is superior by tribe compared with the legitimate issue of a Vaiçyá wife, and belongs to the same class with the [adoptive] father. So, in other instances. Çríkṛishṇa.

10. The same order of distribution.] If there be an appointed daughter,* the rest share a third part only. Chúḍámani.

The same order of distribution, that is, the allotment of a third part, which has been directed for them at a division with the legitimate son, takes effect at a partition with an appointed daughter. For this very reason, the appointed daughter is exhibited first in the enumeration of twelve sorts of sons. Çríkṛishṇa.

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* This commentator appears to have read putrikáyám api instead of putrikáyá api.

(*a*) See 1 Strange, H. L. 98.—*Ed.* (*b*) See 1 Morl. Dig. 308.—*Ed.*

11. But those [adopted sons,] who are inferior by class to the father, yet superior to his legitimate son, shall take the fifth or the sixth part of a legitimate son's share, according to their good qualities, or the want of such qualities.* Thus Manu says: "Let the legitimate sons, when dividing the paternal heritage, give a sixth part, or a fifth, of the patrimony to the son of the wife."†

11. Another allotment stated.

By Manu.

12. Since all adopted sons are, in Devala's text, (§ 7.) equal to the wife's son, the term Kshétraja (son of the wife) is, in Manu's text, indefinite [and comprehends other descriptions of sons.]

13. But such as are inferior by class to the father, and to their brother, his legitimate son, are entitled only to food and raiment. So Manu declares: "The legitimate son of his father's estate: but, for the sake should give a maintenance to the rest."‡ Thus Kátyáyana says, "If a legitimate son be born, the rest are pronounced sharers of a third part, provided they belong to the same tribe [with the father;] but, if they be of a different class, they are entitled to food and raiment only."

13. Food and [illegible] by Manu; and by Kátyáyana.

14. The term "the rest" in the text of Manu, as well as the phrase "if they be of a different class" in that of Kátyáyana, signify one of inferior tribe: conformably with the text of Devala. (§ 7.)

14. Exposition of the passages.

15. Manu states the distribution between a true son, and the issue of the wife produced without due authority. "If there be two sons, a legitimate one, and the son of a wife, claiming the estate of the same person, each shall take the property which belonged to his father; and not the other."§

15. Special case of a true son and a son of the wife stated by Manu.

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11. According to their good qualities, &c.] According as they have good qualities, or are deficient in them. In fact, it is fit, that the adopted son, inferior by class to the father, but belonging to the same tribe with the legitimate son, should have a sixth part; or, if he belong to a superior tribe, a fifth: else, no allotment being specified for one inferior to the father but equal to the legitimate son, there would be a deficiency in the provisions of the law. Çríkrshṇa

12. Since all are equal.] For equal allotments are propounded for them. Çríkṙshṇa.

13. Pity.] Commiseration: for the sake of that. Therefore his own choice, not their right, is the motive for giving them a maintenance. Here maintenance signifies a subsistence. Çríkṙshna.

Sharers of a third part.] The Mitákshará, with certain other authorities, reads 'a fourth part.' See Mitákshará on inheritance C. 1. Sect. 11. § 25.

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* Çríkṙshṇa and Achyuta notice a variation in the reading, (Guṇavadaguṇatayá, and Guṇavadaguṇápékshayá,) which does not, however, make any material difference in the sense.

† Manu, 9. 164.

‡ Manu, 9. 163.

§ Manu, 9. 162.

16. Let each receive the wealth of him, from whose seed he sprung: and let not the other take it, who sprung from the seed of another person. Accordingly Nárada says, "If two sons, begotten by two fathers, contend for the wealth of the woman, let each of them take that which was his father's property; and not the other."*

16. Exposition of the text.

17. The wealth, appertaining to the woman, which was given to her by the respective fathers, let the son of each father severally take: and not the other. It would be needless to enlarge.

17. And explained.

CHAPTER XI.

On succession to the estate of one who leaves no male issue.

SECTION I.

On the Widow's right of succession.

1. Opinions vary as to the order of succession on failure of male issue.

1. In regard [to succession†] to the wealth of a deceased person, who leaves no male issue, authors disagree, in consequence of finding contradictory passages of law.

2. Vṛihaspati declares the wife to have a preferable title; before parents and collateral kinsmen.

2. Thus Vṛihaspati says, "In scripture and in the code of law, as well as in popular practice, a wife is declared by the wise to be half the body of her husband, equally sharing the fruit of pure and impure acts. Of him, whose wife is not deceased, half the body survives. How then should another take his property, while half his person is alive? Let the wife of a deceased man, who left no male issue(*a*) take his share, notwithstanding kinsmen, a father, a mother, or uterine brother, be present.‡ Dying before her husband, a

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17. The wealth appertaining to the woman.] The wealth of the woman, in Nárada's text, signifies property which has come into her hands [by inheritance.] For, if it were her own peculiar property, they would have equal shares of it. Maheçvara.

2. Partaker of his consecrated fire.] After her decease her body is burnt with fire taken from his consecrated hearth. Maheçvara.

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* Manu, 9. 191. and cited from his institutes by numerous compilers; but referred by Jímúta-váhana and Raghunandana to Nárada. It is not, however, found in the institutes of this author.

† Çríkṛishṇa. ‡ Vide infra. § 54.

(*a*) See 6 Moo. I. A. Ca. 444: 1 Strange, H. L. 134: 1 Morl. Dig. 282, 312—*Ed.*

virtuous wife partakes of his consecrated fire: or, if her husband die [before her, she shares] his wealth: this is a primeval law. Having taken his moveable and immoveable property, the precious and the base metals, the grains, the liquids, and the clothes, let her duly offer his monthly, half-yearly, and other funeral repasts. With presents offered to his manes, and by pious liberality, let her honour the paternal uncle of her husband, his spiritual parents and daughter's sons, the children of his sisters, his maternal uncles, and also ancient and unprotected persons, guests and females [of the family.]* Those near or distant kinsmen, who become her adversaries, or who injure the woman's property, let the king chastise by inflicting on them the punishment of robbery."

3. By these seven texts Vṙhaspati having declared, that the whole wealth of a deceased man, who had no male issue, as well the immoveable as the moveable property, the gold and other effects, shall belong to his widow, although there be brothers of the whole blood, paternal uncles, [daughters,†] daughter's sons and other heirs; and having directed, that any of them, who become her competitors for the succession, or who themselves seize the property, shall be punished as robbers; totally denies the right of the father, the brothers and the rest to inherit the estate if a widow remain.

3. The widow succeeds to her husband if there be no sons.

4. In like manner Yájñavalkya says, "The wife and the daughters, also both parents, brothers likewise and their sons, gentiles, cognates, a pupil and a fellow-student: on failure of the first among these, the next in order is indeed heir to the estate of one, who departed for heaven leaving no male issue. This rule extends to all persons and classes."‡ Thus affirming the right of the last mentioned on failure of the preceding, the sage propounds the succession of the widow in preference to all the other heirs.

4. She is first in Yájñavalkya's enumeration.

5. So Vishṇu ordains: "The wealth of him, who leaves no male issue, goes to his wife; on failure of her, it devolves on daughters; if there be none, it belongs to the father; if he be dead, it appertains to the mother; on failure

5. And first is Vishṇu's.

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Let her duly offer.] The causative verb is used in the original, with the sense of the simple verb, according to the remark of Chúḍámani and Çríkṙshna.

Monthly, half-yearly, &c.] The text is read by Achyuta "yearly, half-yearly" vatsa shan-másíkádikam; and he notices as a variation the other reading, "monthly, half-yearly" mása-shánmásikádikam. Raghunandana on the contrary states the former as a variation, considering the latter as the common reading of the text.

3. By these seven texts.] The passage above cited comprises seven stanzas.

4. Leaving no male issue.] This implies failure of son, son's son, and son of the grand-son. For these are equally givers of funeral oblations at periodical obsequies. Ragh. Dáya-tatva.

5. Devolves on daughters.] Some copies of Jimúta-váhana insert a sentence; "If there be none, it descends to daughter's sons." This clause is not noticed by

* Vide infra. § 63. † Chúḍámaṇi. ‡ Yájñavalkya, 2. 136.—137.

of her, it goes to the brothers; after them, it descends to the brother's sons; if none exist, it passes to the kinsmen (bandhu;) in their default, it devolves on relations (sakulya): [failing them, it belongs to the pupil:*] on failure of these, it comes to the fellow student: and, for want of all those heirs, the property escheats to the king; excepting the wealth of a Bráhmaṇa."†

6. By this text, relating to the order of succession, the right of the widow, to succeed in the first instance, is declared. It must not be alleged, that the mention of the widow is intended merely for the assertion of her right to wealth sufficient for her subsistence. For it would be irrational to assume different meanings of the same term used only once, by interpreting the word wealth as signifying the whole estate in respect of brothers and the rest, and not the whole estate in respect of the wife. Therefore, the widow's right must be affirmed to extend to the whole estate.

6. The passages above cited do not allot her a mere subsistence.

7. Thus Vṛihat Manu says, "The widow of a childless man, keeping unsullied her husband's bed, and persevering in religious observances, shall present his funeral oblation and obtain [his] entire share."(*b*)

7. But her husband's share, as in a passage of Vṛihat Manu.

8. "His" is repeated or understood from the words "his funeral oblation;" for that term alludes to her husband. The meaning therefore is, 'the wife shall obtain her husband's entire share;' not 'she shall obtain her own entire share;' for the direction, that 'she shall obtain, would be impertinent, in respect of her own complete share. Since the

8. Exposition of the text.

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Vishṇu's commentator; nor inserted by various compilers, though it be admitted by Raghunandana, who also makes another addition in a subsequent part of the text, respecting the pupil.

If there be none, it belongs to the father; if he be dead, it appertains to the mother.] In the text, as it is exhibited in the Ratnákara, Chintámaṇi, and other compilations, these sentences are transposed: a reading which is censured by Achyuta and Çríkṛishṇa commenting upon this passage.

If none exist, it passes to kinsmen; in their default, it devolves on relations.] The words bandhu and sakulya, here translated kinsmen and relations, are read in this order by the scholiast of Vishṇu and by the author of the Kalpataru and most other authorities But the terms are transposed in the Madana ratna. Either way, the same orde of succession is intended: first the near kindred, sapiṇḍas, and sagotras: and last th, remoter kindred.

7. His entire share.] In the commentary on Jímúta-váhana which bears Raghunandana's designation, another reading of the text is noticed: viz., kṛtsnam artham 'the entire estate' instead of kṛtsnam aṇçam 'the entire share.' That reading is countenanced by the Ratnákara and Chintámaṇi; and if it be the genuine text, the whole of Jímúta-váhana's argument in the subsequent paragraphs (to § 13) falls to the ground. But the Víramitrodaya and Smṛti-chandriká agree with Jímúta-váhana in the reading of this passage.

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* Ragh. Dáya-tatva. † Vishnu, 17. 4.—13.

(*b*) See 1 Strange, H. L. 121; 1 Morl. Dig. 306, 318.—*Ed.*

intention of the text is to declare a right of property, it ought not to be interpreted as declaring such right in regard to the person's own share; for that is known already from the enunciation of it as that person's share, [and it need not therefore be declared.]

9. A different interpretation.

9. Nor should it be said, that the intention of the text is to authorize the taking [or using] of the goods, [not to declare the right of property ;*] for the taking or using of one's own property is a matter of course.

10. The text is no injunction.

10. Nor can the text be supposed to intend a positive injunction [that she should take her own share,†.] For its purpose would be spiritual; and, if it were an injunction, a person who commanded and other particulars [as sin in the omission &c.‡] must be inferred.

11. Nor can it intend the allotment of a share only.

11. It is alleged, that, as in the passage, "let a son, who is neither blind nor otherwise disqualified, take an entire share," [the meaning is,‖] not 'his father's entire share, but 'his own complete allotment;' so, in this instance likewise, the terms are [interpreted as§] relative to the widow's own complete allottment. That is not accurate; for since there is no such passage of law as that stated, the example is impertinent; or admitting that there is, still, since for the reason before mentioned it would be impertinent as a precept, [the alleged example¶] will be rightly interpreted as relative to the father's share.

12. Authors are not at the pains of declaring a man's right of property in that which is his own.

12. Accordingly [since the scope of the precept cannot be to declare a right of property in a person's own wealth ;**] the sages do, in all instances, propound the right of a different person [as heir,] to the wealth of another [who is his predecessor;] for example, that of sons to the paternal estate; and that of widows and the rest to the goods of a man who leaves no male issue; and so in other cases. They do not needlessly bid a person take his own share.

13. The text does not intend her share.

13. It is alleged, that by the mention of the relative, the correlative is suggested; and thus, when the word mother is [singly] employed, it is not understood to intend a stranger's mother. This objection is irrelevant; for

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9. Taking.] Such taking as consists in disposal at pleasure. Çríkṛshṇa.

11. Relative to the father's share.] Maheçvara censures this reading, (which is ṛshṇa's,) and substitutes for pitranç*á*pékṣham, patyanç*á*pékṣham 'relative to the husband's share.' On this reading, the whole passage must be translated, 'since for reasons before mentioned it would be impertinent as a precept, [the text § 7] will be rightly interpreted as relative to the husband's share.'

* Çríkṛshṇa. † Çríkṛshṇa. ‡ Chúḍ*á*mani, Chūḍ*á*mani and Achyuta. ¶ Çríkṛshṇa. **

the maxim is applicable where the correlative is not specified: and thus, when it is said "call Ḍittha's mother," neither the [illegible] messenger, nor of the sender, is supposed to be meant. In like manner, since the correlative is here indicated by the pronoun in the phrase, "his funeral oblation." how can [the word share*] refer to the wife? And the incongruity of supposing the text to be an injunction, has been already shown (§ 10.)

14. Conclusion in regard to the interpretation of the passage (§ 7.)

14. Therefore, it is demonstrated, that Vṛihat Manu (§ 7.) declares the widow's right of taking his [that is, her husband's†] entire share(*a*).

15. Text of an apparent contrary import occur: viz. a passage of Çankha, Paiṭhínasi, &c.

15. Passages of various authors, which declare the contrary of the widow's right of succession, are the following. Çankha, Likhita, Paiṭhínasi and Yama say, "The wealth of a man, who departs for heaven, leaving no male issue, goes to his brothers. If there be none, father and mother take it; or his eldest kinsman (sagotra), a pupil,(*b*) or a fellow student."

16. Which prefers the brothers and the parents to the wife.

16. Here, in contradiction to the preceding text the succession of the father and another, if there be no brother, or that of the wife, if they be both dead, is propounded.

17. Also a passage of Devala.

17. So Devala ordains: "Next let brothers of the whole blood divide the heritage of him who leaves no male issue, or daughters equal [as appertaining to the same tribe‡]; or let the father if he survive, or [half§] brothers belonging to the same tribe, or the mother, or the wife, inherit in their order. On failure of all these, the nearest of the kinsmen succeed."‖

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Vṛihat Manu declares the widow's right of taking her husband's entire share.] On failure of male issue, the widow succeeds to the whole estate, whether joint or several, and consisting of immoveables or moveables. So Jímúta-váhana and the rest maintain. However, [Váchespati] Misra holds, that, in the case of separate property, the widow inherits; but, in the instance of undivided wealth, the brothers are heirs, and the widow only shares food and raiment. Káçiráma on Dáya-tatva.

15. Eldest wife.] In the Kalpataru and Ratnákara the text is read patní vá'jyeshṭhá 'a wife [illegible]ot eldest;' that is, according to Chandeçvara's interpretation, 'fulfilling some but not all [illegible]e duties of a faithful widow.' This reading is noticed in Raghunandana's commentary, but with a different interpretation; viz., 'youngest wife.' In the Viramitrodaya the text is written jyéshṭhá vá patní; which removes all ambiguity, and confirms the version of Jímúta-váhana's reading, patní vá jyéshṭhá.

17. If (dhriyamáṇa) he survive.] Being alive. Ragh. Dáya-tatva.

Being capable of the succession. This excludes one degraded or otherwise disqualified. Çríkṛishṇa and Káçiráma.

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* † Chúḍámaṇi, Çríkṛishṇa and Maheçvara. ‡ Çríkṛishṇa and

§ Chúḍámani, &c. See 1 Morl. Dig. 316.

‖ Vide infra. § 50. and Sect. 5. § 6.

(*b*) 1 Morl. Dig. 330.

18. Which places the brothers first and the widow last.

18. Here the contradiction is, the brother being placed first of all the heirs, and the widow last.

19. That cannot be reconciled, referring the brother's succession to the case of union, and the wife's to the instance of separation.

19. Some reconcile the contradiction by saying, that the preferable right of the brother supposes him either to be not separated or to be re-united; and the widow's right of succession is relative to the estate of one, who was separated from his co-heirs, and not re-united with them.

20. It would contradict Vṛhaspati.

20. That is contrary to a passage of Vṛhaspati, who says, "Among brothers, who become re-united, through mutual affection, after being separated, there is no right of seniority, if partition be again made. Should any one of them die, or in any manner depart [by entering into a religious order,*] his portion is not lost, but devolves on his uterine brother. His sister also is entitled to take a share of it. This law concerns one who leaves no issue, nor wife, nor parent. If any one of the re-united brethren acquire wealth by science, valour, or the like, [with the use of the joint stock†,] two shares of it must be given to him, and the rest shall have each a share."‡

21. Who intimates the wife's preferable right in the instance of re-united brethren.

21. Here, since re-union of parceners is specified at the beginning and at the close, of the text, the intermediate passage, "his share is not lost, but devolves on his uterine brother," must be understood as relating to a re-united parcener. And the author, saying "this law concerns one who leaves no issue, nor wife nor parent," declares the right of a re-united uterine brother as taking effect on failure of son, daughter, widow and parents. How then does [the re-united brother§] bar the widow's title to the succession?

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19. Some reconcile the contradiction by saying.] The doctrine of the Maithila school is here stated. Maheçvara.

20. His sister also is entitled to a share.] His unmarried sister, whose father is deceased, is entitled to take out of her deceased brother's share, a portion or allotment to defray the expense of her marriage. But, if it cannot be defrayed with that, she may likewise take from the surviving brother. Maheçvara.

If unmarried, she takes a portion sufficient to defray the charges of her nuptials. If a widow, she receives a maintenance. Achyuta.

Some say, that, if she be a widow, she receives a maintenance. Çrîkṛsl

* Çrîkṛshna and Achyuta.

† Chūḍámani.

‡ In this passage, (as it stands in the Ratnâkara and other compilations, there are several variations of the reading: but not materially affecting the sense.

§ Maheçvara.

22. Besides the text expresses, that "his share is not lost;" and the expression is pertinent in regard to unseparated parceners and re-united co-heirs, since the lapse of the share might be supposed, because the property, being intermixed with another brother's effects, is not seen apart; but, the property of a separated co-heir being distinctly perceived in a separate state, what room is there for supposing its lapse? Therefore, these texts [of Vṛhaspati * vide § 20] relate to re-united co-heirs.

22. The text must relate to re-united co-heirs.

23. Moreover, the inference, that the texts of Çankha and others above cited, (§ 15 &c.,) which declare the preferable right of the brother before the widow and the rest, relate to a re-united brother, [as well as an unseparated, one,†] must be drawn either from the authority of a text of law or from reasoning. Now it is not deducible from a text of law; for there is none which bears that meaning expressly; and the passages, concerning the succession of the re-united parcener (sect. 5. §13.) containing special provisions regarding the brother's succession, cannot intend generally the right of a brother to inherit [to the exclusion of a widow.‡]

23. The proposed mode of reconciling the seeming contradiction(§19) is unsupported by positive texts.

24. Since the texts of Vṛhaspati just now cited (§ 20) contradict that inference; for the brother's right is there declared to take effect, in the case of re-union, on failure of son, daughter, widow and parents; brethren not re-united must be the subject [of those passages of Çankha, &c., § 15.) That alone is right; and they do not relate to [unseparated and] re-united brethren.

24. The preceding passages (§15, &c.) do not relate to unseparated & re-united co-heirs.

25. But it is said, this inference is deduced from reasoning. Thus, in the instance of re-union, [or in that of a subsisting co-parcenery,§ the same goods, which appertain to one brother, belong to another likewise. In such case, when the right of one ceases by his demise, those goods belong exclusively to the survivor, since his ownership is not divested. They do not belong to the widow: for her right ceases on the demise of her husband; in the like manner as his property devolves not on her, if sons or other [male descendants] be left.

25. It is equally unsupported by reasoning.

26. That argument is futile. It is not true, that, in the instance of re-union [and of a subsisting co-parcenery,‖] what belongs to one, appertains also to the other parcener. But the property is referred severally to unascertained portions of the aggregate. Both parceners have not a proprietary right to the whole; for there is no proof to establish their ownership of the whole: as has been before shown [when defining the term partition of heritage.¶](a) Nor is there any proof of the position, that the wife's right in her husband's property, accruing to her from her marriage, ceases on his demise. But the cessation of the widow's

26. For the proposed reasoning is confuted.

ı, &c. † Maheçvara. ‡ Maheçvara.
§ Maheçvara. ‖ Maheçvara. ¶ Maheçvara, Vide C. 1.

(a) See *Vírasvámi Grámiṇi* v. *Ayyasvámi Grámiṇi*, 1 Mad. H. C. Rep. 475.—*Ed.*

right of property, if there be male issue, appears only from the law ordaining the succession of male issue.

27. If it be said, that the cessation of her right, in this instance also, does appear from the law which ordains the succession of the re-united parceners; the answer is, no, for it is not true that the text relates to re-united parceners; since the law, which declares the brother's right of succession, may relate to re-united brethren, if it be true, that the widow's right of ownership ceases by the demise of her husband who was re-united with his co-heirs; and the widow's proprietary right does so cease, provided the law relate to the case of re-united brethren. Thus the propositions reciprocate.

27. An objection answered.

28. Besides, if the texts of Çankha, Likhita and the rest, (§ 15 &c.) relate to unseparated or re-united parceners, they must be interpreted as signifying, that 'the wealth of one, who is either unseparated or re-united, goes to a brother who is so; or, if there be none such, the two parents take it.' In that case, a question may be proposed, shall parents, who are separated and not re-united, take the heritage? or parents who are either unseparated or re-united? Here the first proposition is not admissible; for how can the claim of parents, who are separated and not re-united, be preferred to the wife's, since they are excluded by her, under the passage before cited? Nor is the second proposition maintainable; for all agree, that a father, being unseparated or re-united, takes the heritage in preference to an unseparated or re-united brother.

28. A further reason stated.

29. Moreover, as in the instance of the estate of one, who was separated from, and not re-united with, his father and his brother, the father has the right of succession before brothers, because he has authority over the person and wealth of his son; since he gave him life; (for their identity is affirmed in holy writ, where it is said "he himself is born a son:"*) and because the deceased, by participating [with the manes of the grandfather and great-grandfather†] in funeral offerings, partakes of two oblations of food which his father must present to the grandfather and great-grandfather [at the same time that none are presented by his brother,‡] for sons do not offer the half-monthly oblations of food, while their father lives; so the same [preference of the father before the brother] is fit in the other instance [of the estate of one who is either unseparated or re-united.§] Or, since they are alike

29. An additional argument set forth.

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29. Alike in respect of coparcenery and re-union.] A variation in the reading of this passage is noticed by Maheçvara, viz. sansrishṭatwayoh for sansargayoh; but no material difference results from it in the import of the passage.

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* See Essay on the Vedas. As. Res. vol. 8. p. 412. † Maheçvara.

‡ Çrikṛshṇa. § Çrikṛshṇa, Achyuta, &c.

in respect of co-parcenery and re-union, the equal right of father and son would be proper, not the postponement of the father's claim to the brother's.

30. Further, the dual number, expressing, that 'parents, who are unseparated or re-united, take the heritage,' is unsuitable: for there is neither partition, nor co-parcenery, with the mother; and consequently no re-union of estates; since Vṛihaspati says, "He, who being once separated, dwells again, through affection, with his father, brother, or paternal uncle, is termed re-united.* He thus shows, that persons, who by birth have common rights in the wealth acquired by the father and grandfather, as father [and son,] brothers, uncle [and nephew,] are re-united, when, after having made a partition, they live together, through mutual affection, as inhabitants of the same house, annulling the previous partition, and stipulating, that "The property which is mine, is thine; and that, which is mine, is thine." The partnership of traders, who are not so circumstanced, and only act in concert on an united capital, is no re-union. Nor are separated co-heirs re-united merely by junction of stock, without an agreement prompted by affection as above stated. Therefore, since neither re-union nor co-parcenery with a mother can exist, how is the contradiction in regard to the succession devolving on her before brothers, to be reconciled?

30. The proposed explanation is insufficient.

It is inconsistent with Vṛihaspati's definition of re-union.

Interpretation of the text.

31. In the next place the manner, in which the difficulty is removed by the wise, will be stated. From the texts of Vishṇu (§ 5.) and the rest [as Yájñavalkya, &c.,† § 4.] it clearly appears, that the succession devolves on the widow, by failure of sons and other [male descendants:] and this is reasonable; for the estate of the deceased should go first to the son, grandson, and great-grandson. Thus Manu and Vishṇu say, "Since a son delivers [tráyate] his father from the hell called Put; therefore he is named puttra by the self-existent himself."‡ So Háríta says, "A certain hell is named Put; and he, who is destitute of offspring, is tormented in hell. A son is therefore called puttra, because he delivers

31. Approved mode of reconciling the apparent contradiction.

Sons confer benefits on their father: as appears from passages of Manu and Vishṇu, Háríta, Çankha and Likhita, Manu, &c., and Yájñavalkya.

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31. The manner in which the difficulty is removed by the wise.] By **Haláyudha** and others who maintain the same doctrine with us. **Çríkṛishṇa** and **Achyuta.**

Is tormented in hell.] Achyuta and Maheçvara explain nairaya one who goes to a place of torment (niraya). But Çríkṛishna contradicts that exposition. Consistently with one interpretation, the sense is, that 'he, who is destitute of progeny (chinnatantu), will be tormented in hell.' According to the other, a separate place of torment is here mentioned under the name of Chinnatantu.

* Vide infra. C. 13. § 3.

† Chūḍamani and Çríkṛishṇa.

‡ Manu, 9. 138. Vishṇu, 15. 43. Vide supra. C. 5. § 6.

his father from that region of horror." In like manner Çankha and Likhita declare, "A father is exonerated in his life-time from debt to his own ancestors, upon seeing the countenance of a living son: he becomes entitled to heaven by the birth of his son, and devolves on him his own debt. The sacrificial hearth, the three vedas, and sacrifices rewarded with ample gratuities, have not the sixteenth part of the efficacy of the birth of an eldest son."* Thus Manu, Çankha, Vasishṭha, Likhita and Hárîta ordain, "By a son, a mán conquers worlds; by a son's son, he enjoys immortality; and, afterwards, by the son of a grandson, he reaches the solar abode."† So Yájñavalkya says, "The attainment of worlds, immortality and heaven depend on a son, grandson and great-grandson."‡

32. Thus the proprietary right of sons and the rest is expressly ordained, as already inferrible from reasoning; because the wealth, devolving upon sons and the rest, benefits the deceased: since sons or other male descendants produce great spiritual benefit to their father or ancestor from the moment of their birth; and they present funeral oblations, half-monthly, in due form, after his decease. So Manu declares the right of inheritance to be founded on benefits conferred: "By the eldest son as soon as born, a man becomes the father of male issue, and is exonerated from debt to his ancestors; such a son, therefore, is entitled to take the heritage."§

32. The benefit conferred is the reason of their succession.

Manu.

33. From the mention of it as a reason ("therefore," &c.,) and since there can be no other purpose in speaking of various benefits derived from sons and the rest, while treating of inheritance, it appears to be a doctrine to which Manu assents, that the right of succession is grounded solely on the benefits conferred.

33. Assents to this doctrine.

Accordingly [since benefits are derived from the great-grandson as well as from the son‖] the term "son" [in the text of Manu, ¶ § 32. or in that of Vishṇu,** § 5. or in those of Yajñavalkya, &c.,††] extends to the great-grandson; for, as far as that degree, descendants equally confer benefits by presenting oblations of food in the prescribed form of half-monthly obsequies.

34. Therefore the right extends to the great-grandson.

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The attainments of worlds, immortality and heaven.] There is a difference in the reading of the text, lokánantyan divaḥ praptiḥ "Immortality in the world and the attainment of heaven," instead of lokánantya-diyaḥ praptiḥ "attainment of worlds, immortality and heaven." A corresponding difference of interpretation is found in the commentaries of Vijñáneçvara, Aparárka and Súlapáṇi.

32. Expressly ordained, as already inferrible from reason.] Ordained by a passage of the Veda founded on reason. Çríkṛishṇa.

* The first stanza occurs in the institutes of Atri. 53.

† Manu, 9. 137. Vasishṭha, 17. 5. Also Vishnu, 15. 45.

‡ Yájñavalkya, 1. 78. § Manu, 9. 106. Vide supra. C. 1, § 36.

Maheçvara. ¶ Chūḍámaṇi. ** Maheçvara. †† Achyuta.

35. Else [if it were not inferrible from reason,* or if Manu did not mean, that the right of succession rests upon benefits conferred ;†] the word son could not quit its proper sense [for a larger import ;] and a passage, declaratory of the grandson's right, must be somehow assumed. But, admitting that such a passage may be assumed [as inferrible from the declared right of a daughter's son considered as a son's son ;‡] still there is no separate text concerning the great-grandson.

35. Reason of his inference.

36. Therefore the great-grandson's right of succession is founded on benefits derived from him ; and the word son is of comprehensive import.

36. His right rests on the benefits conferred by him.

37. Accordingly Baudhâyana says, "The paternal great-grandfather and grandfather, the father, the man himself, his brothers of the whole blood, his son by a woman of the same tribe, his son's son and his great-grandson : all these, partaking of undivided oblations, are pronounced sapiṇḍas. Those, who share divided oblations, are called sakulyas. Male issue of the body being left, the property must go to them. On failure of sapiṇḍas or near kindred, sakulyas, or remote kinsmen, are heirs. If there be none, the preceptor, the pupil, or the priest, takes the inheritance. In default of all these, the king [has the escheat."]

37. Baudhâyana intimates as much, in enumerating Sapiṇḍas.

38. The meaning of the passage is this : since the father and certain other ancestors partake of three funeral oblations as participating in the offerings at obsequies ; and since the son and other descendants, to the number of three, present oblations to the deceased [or to be shared by his manes ;§] and he, who, while living, presents an oblation to an ancestor, partakes, when deceased, of oblations presented to the same person ; therefore, such being the case, the middlemost [of seven,‖] who, while living, offered food to the manes of ancestors, and when dead partook of offerings made to them, became the object to which the oblations of his descendants were addressed in their life-time, and shares with them when they are deceased, the food which must be offered by the daughter's son and other [surviving descendants beyond the third degree.¶ Hence those [ancestors,] to whom he presented oblations, and those [descendants,] who present oblations to him, partak· of an undivided offering in the form of (piṇḍa) food at obse-

38. Exposition of his text.

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Suggested by reason and also ordained in express terms. Maheçvara.

37. Partaking of undivided oblations] The terms of the text are interpreted very differently in the Ratnákara.

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* Çríkishṇa and Achyuta. † Maheçvara. ‡ Çríkishṇa, Achyuta and § Maheçvara. ‖ Maheçvara. ¶ Maheçvara.

quies. Persons, who do partake of such offerings, are sapiṇḍas. But one distant in the fifth degree neither gives an oblation to the fifth in ascent, nor shares the offering presented to his manes. So the fifth in descent neither gives oblations to the middle person who is distant from him in the fifth degree, nor partakes of offerings made to him. Therefore three ancestors, from the grandfather's grandfather upwards, and three descendants from the grandson's grandson downwards, are denominated sakulyas, as partaking of divided oblations, since they do not participate in the same offering.

39. The relation of Sapiṇḍas regards inheritance.

39. This relation of sapiṇḍas [extending no further than the fourth degree,*] as well as that of sakulyas, has been propounded relatively to inheritance.

40. Corroborated by a passage of Manu.

40. Accordingly [since the right of succession to property is founded on competence for offering oblations at obsequies,†] Manu likewise, after premising "Not brothers, nor parents, but sons are heirs of the father;"‡ proceeds, in answer to the question why? to declare, "To three must libations of water be made, to three must oblations of food be presented; the fourth in descent is the giver of those offerings; but the fifth has no concern with them."§

41. For mourning and other purposes, the relation of Sapiṇḍas is more comprehensive: according to a passage of the Márkaṇḍéya puráṇa.

41. But for mourning and other purposes, the relation of sapiṇḍas extends to such as partake of the remains of oblations; for that relation is defined in the Markaṇḍeya puráṇa as founded on participation in the wipings of offerings. "Three others, from the grandfather's grandsire upwards, are declared to be partakers of the residue of oblations; they, and the person who performs the religious rite, being seventh in descent, constitute that relation, which is termed by the holy sages kin within the seventh degree."‖ The meaning here is kin which occasions impurity [on occasion of deaths and births.]

42. And one of Manu.

42. Accordingly Manu likewise has said, when treating of uncleanness by reason of mourning, &c. "The relation of sapiṇḍas ceases with the seventh person [in ascent or descent;] and that of samánodakas ends only where birth and family name are no longer known."¶ Else this passage would be in contradiction to the text before cited: "To three must libations of water be made, &c." (§ 39.)

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39. This relation has been propounded relatively to inheritance.] But those, who partake of the remnants of oblations, bear the same designation [of sapiṇḍas] relatively to mourning, marriage, &c. Suddhi-tatva and Dáya-tatva.

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* Çríkṛshna and Achyuta. † Maheçvara. ‡ Manu, 9. 185.

§ Manu, 9. 186. Vide infra. Sect. 6. § 7.

‖ Márcaṇḍéya puráṇa, 28. 4. In the Story of Madálasá. ¶ Manu, 5. 60.

43. But, on failure of heirs down to the son's grandson, the wife, being inferior in pretensions to sons and the rest, because she performs acts spiritually beneficial to her husband from the date of her widowhood, [and not, like them, from the moment of their birth,*] succeeds to the estate in their default(*a*). Thus Vyása says, "After the death of her husband, let a virtuous woman observe strictly the duty of continence; and let her daily, after the purification of the bath, present water from the joined palms of her hands to the manes of her husband. Let her day by day perform with devotion the worship of the gods, and especially the adoration of Vishṇu, practicing constant abstemiousness. She should give alms to the chief of the venerable for increase of holiness, and keep the various fasts which are commanded by sacred ordinances. A woman, who is assiduous in the performance of duties, conveys her husband, though abiding in another world, and herself [to a region of bliss."†]

43. The widow, conferring spiritual benefits on her husband in the next degree to the male issue, succeeds on failure of it. A passage of Vyása.

44 Since by these and other passages it is declared, that the wife rescues her husband from hell; and since a woman, doing improper acts through indigence, causes her husband to fall [to a region of horror;] for they share the fruits of virtue and of vice; therefore the wealth devolving on her is for the benefit of the former owner: and the wife's succession is consequently proper.

44. Shows, that her good or bad conduct affects her husband in another world. Wealth, devolving on her, is beneficial to him.

45. Hence [since the wife's right of succession is founded on reason,‡] the construction in the text of Çankha, &c., (§ 15.) must be arranged by connexion of remote terms, in this manner, 'The wealth of a man, who departs for heaven leaving no male issue, let his eldest [that is, his most excellent§] wife take; or, in her default, let the parents take it: on failure of them, it goes to the brothers.' The terms "if there be none [that is, if there be no wife‖]."

45. Proper interpretation of the text of Çankha, &c. [§15.]

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43. The wife being inferior to sons, because she performs acts spiritually beneficial from the date of her widowhood.] Chūḍámaṇi's interpretation of his author's meaning is followed in this version. Achyuta dissents from it; and maintains, that the performance of acts of spiritual benefit is here stated as the reason of the widow's success ; and her incapacity for presenting oblations at the half-monthly obsequies is the reaso of her inferiority to sons, and of the consequent postponement of her claim. His explanation, and the reasoning by which it is supported, are refuted by Çríkṛishṇa and Maheçvara.

Let her daily perform with devotion the worship of the gods.] 'And show hospitality to guests.' So the text is read in the Víramitrodaya, viz., devatá'tithi-pūjanam instead of devatấnán cha pūjanam. Other variations in the reading of the text occur, but which are unimportant.

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* Chūḍamaṇi, Çríkṛishṇa and Maheçvara. † Çríkṛishṇa. ‡ Çríkṛishṇa.
§ Víramitrodaya. ‖ Raghunandana. (*a*) See 1 Morl. Dig. 316—*Ed.*

which occur in the middle of the text, (§ 15.) are connected both with the preceding sentence "it goes to his brothers," and with the subsequent one "his father and mother take it." For the text agrees [with passages of Vishṇu and Yájñavalkya,* § 4 and 5, which declare the wife's right; †] and the reasonableness of this has been already shown (§ 43.)

46. The assumption of any reference to the condition of the brethren as unseparated or as re-united,‡ not specified in the text, is inadmissible [being burdensome and unnecessary.§ Therefore the doctrine of Jitendriya, who affirms the right of the wife to inherit the whole property of her husband leaving no male issue, without attention to the circumstance of his being separated from his co-heirs, or united with them, (for no such distinction is specified,) should be respected.

46. A different opinion (§ 19) is erroneous.

Jitendriya's doctrine is right.

47. The rank of wife belongs in the first place to a woman of the highest tribe: for the text [of Çankha, &c.‖] expresses, that "the eldest wife takes the wealth," (§ 15 and 45;) and seniority is reckoned in the order of the tribes. Thus Manu says, "When regenerate men take wives both of their own class and others, the precedence, honour and habitation of those wives must be settled according to the order of their classes."¶ Therefore [since seniority is by tribe,**] a woman of equal class, though youngest in respect of the date of marriage, is deemed eldest. The

47. The wife must be a woman of the same tribe:

Manu declares her precedence.

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47. The rank of a wife belongs in the first place, &c.] Çríkishna remarks, that Chūḍámani expounds this whole paragraph differently from the sense in which he himself has explained it. According to Chūḍámaṇi, 'Yájñavalkya and Vishnu (§ 4 and 5.) ordain, that the estate of a childless man shall go to his widow. Çankha (§ 15.) adds the condition, that she be the eldest wife. Manu (§ 47.) restricts the rank of eldest wife to a woman of equal class: and states the purpose to be her personal attendance, &c. In the passage cited from Vishnu, (§ 47.) that is extended to a woman of the next following tribe. Therefore, to render all these passages consistent, since it appears that the eldest wife succeeds, and Yájñavalkya and the rest use the word wife for one competent to inherit, and it further appears from passages to be hereafter cited, (§ 48.) that brothers and the rest inherit the estate, giving only a maintenance to women who are not of that rank, it follows, that the rank of wife is restricted to the woman of equal class and to one of the next following tribe.' Çríkṛshna on the other hand admits, in concurrence with Achyuta, that, in a case of the utmost distress, a woman of the Vaisya tribe, being married to a Bráhmana, may be employed by him in religious offices. It should follow, that she may be capable of inheriting. This, however, is not expressly stated.

Though youngest in respect of the marriage.] Upon the death of the first wife, who is a Bráhmaní, and after a marriage with a Kshatriyá, another Bráhmaní, who is subsequently espoused, is 'one youngest in respect of the date of marriage.' Else [if the Kshatriyá were the first wife,] the marriages would be in the inverse order of the classes; which is forbidden. Chūḍámani, Achyuta and Çríkṛshṇa.

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* Chūḍámani, Achyuta and Çríkṛshṇa. † Maheçvara. ‡ Vide § 19.

§ Çríkishṇa. ‖ Achyuta, Çríkṛshṇa and Maheçvara.

¶ Manu, 9. 85. ** Çríkṛshṇa.

rank of wife (patní) belongs to her, for she alone is competent to assist in the performance of sacrifices and other sacred rites. Accordingly Manu says, "To all such married men, the wives of the same class only(*a*) (not wives of a different class by any means) must perform the duty of personal attendance, and the daily business relating to acts of religion. For he, who foolishly causes those duties to be performed by any other than his wife of the same class, when she is near at hand, has been immemorially considered as a mere Cháṇḍála begotten on a Bráhmaṇí."* But, on failure of a wife of the same tribe, one of the tribe immediately following [may be employed in such duties.] Thus Vishṇu ordains, "If there be no wife belonging to the same tribe, [he may execute the business relating to acts of religion] with one of the tribe immediately following, in case of distress. But a regenerate man must not do so with a woman of the Çúdrá class."† 'Execute business relating to acts of religion,' is understood from the preceding sentence.‡ Therefore a Bráhmaṇí is lawful wife (patní) of a Bráhmaṇa. On failure of such, a Kshatriyá may be so, in case of distress; but not a Vaiçyá, nor a Çúdrá, though married to him. A Kshatriyá woman is wife of a Kshatriya man. In her default, a Vaiçyá woman may be so, as belonging to the next following tribe; but not a Çúdrá woman. A Vaiçyá is the only wife for a Vaiçya: since a Çúdrá wife is denied in respect of the regenerate tribes simply.

In her default a woman of the next tribe.

Conformably with a passage of Vishṇu.

But not a woman of a lower class.

48. In this manner must be understood the succession to property in the order in which the rank of wife is acknowledged. Therefore, since women actually espoused may not have the rank of wives, the following passage of Nárada intends such a case. "Among brothers, if any one die without issue, or enter a religious order, let the rest of the brethren divide his wealth, except the wife's separate property. Let them allow a maintenance to his women for life, provided these preserve unsullied the bed of their lord. But, if they behave otherwise, the brethren may resume that allowance."§ So [this other passage‖] of the same author; ["On failure of heirs, the property goes to the king,¶] except the wealth of a Bráhmaṇa. But a king, who is attentive to the obligations of duty, should give a

48. A maintenance, declared by Nárada, regards women espoused, but not reckoned as wives.

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She alone is competent to the performance of sacred rites.] According to the remark of Achyuta and Çríkṛishṇa, this alludes to the grammatical rule for the derivation of patní wife, from pati husband; as intending his female associate in the performance of religious ceremonies. Vide Páṇini. 4. 1. 35. Mitákshará on inheritance. 2. 1. 5.

48. Not being of the rank of wives.] Being of a tribe distant by one intermediate degree, or being of Çudra class. Chúḍámaṇi and Çríkṛishṇa.

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* Manu, 9. 86—87. † Vishṇu, 26. 3. ‡ Vishnu, 26. 1.

§ Nárada, 13. 25.—26. ‖ Çríkṛishṇa, &c. ¶ Nárada, 13. 51.

(*a*) See 1 Strange H. L. 136.—*Ed.*

maintenance to the women of such persons. "The law of inheritance has been thus declared."* The allotment of a maintenance to the women of such person, not being of the rank of wives, and the declared right of wives to succeed to the whole estate, constitute no discrepancy.

There is no discrepancy.

49. Accordingly, Vṛhaspati propounds the king's right to an escheat in default of the wife: "If men of the military, commercial and servile tribes die childless, leaving neither wife nor brother, let the king take the property; for he is indeed lord of all." But Nárada, directing that "he should give a maintenance to the women of such persons," (§ 48.) authorizes the king to take the whole estate, giving to them enough for their support. This contradiction must be reconciled by distinguishing between the wife and the espoused woman. Accordingly, in passages declaratory of the wife's right of succession, the term "wife" (patní) is employed: and, in those which ordain a maintenance, the terms "woman" (strí or nárí) or "spouse" (bháryá) or other similar word.

49. Passages of Vṛhaspati and Náradareconciled on the same principle.

50. In the text of Devala (§ 17.) which expresses, "Next let brothers of the whole blood divide the heritage of him, who leaves no male issue; or daughters equal [as appertaining to the same tribe;] or let the father, if he survive, or brothers belonging to the same tribe, or the mother, or the wife, inherit in their order; but, on failure of all these, the nearest of the kinsmen succeed;" where "daughters equal" are such as appertain to the same class [with the deceased]; and "brothers belonging to the same tribe" intend those of the half-blood; for whole brothers are specified under the appropriate term, and the distinction would be impertinent [as not excluding any one;† or as superfluous, since whole brothers of course belong to the same tribe;‡] in this text, we say, the order in which heirs are enumerated, from the whole brother to the wife, is not intended for the order of their succession; since it contradicts Vishṇu and the rest [as Vṛhaspati and Yájñavalkya§]: but the meaning of the text is, that the heirs shall take the succession in the order declared by Vishṇu and others. To mark uncertainty in the specified order, the author has twice used the word 'or;' once in the phrase "or daughters," and again in the sentence "or let the father, &c.," and the word is also understood in other places. Thus Devala has himself shown vagueness in his own enumeration, intimating that 'either brothers, or daughters, or parents, &c., [take the succession].'

50. Proper interpretation of the text of Devala (§ 17.)

51. As for what has been said by Báloka, concerning the text of Çankha and the rest (§ 15), that it either relates to a wife inferior in class to her husband, or supposes the

51. Báloka's opinion refuted.

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51. It either relates to a wife inferior in class.] According to this opinion, the passage is read with the interposition of the privative a: "The wife not eldest;" that is, inferior by tribe. (Vide § 15.) Achyuta and Çríkṛshna.

* Nárada, 13. 52. † Çríkṛshna. ‡ Ragh. on Dáya-bhága. § Maheçvara.

widow to be young, or is relative to brethren unseparated or re-united; that author has manifested his own imbecility by thus proposing an indefinite interpretation of the law: for the doubt remains [which of the three is intended;*] and neither rule could be followed in practice.

52. The allotment of a maintenance does not regard concubines.

52. As for the assertion, that the text, which ordains a maintenance, is relative to an unmarried woman and concubine, that must be rejected as intending a favor to the matrons; for the scope of the precepts, which allot a maintenance to women, has been already shown.

53. Further argument against a different interpretation.

53. Moreover, under the distinction respecting the wife as belonging to the same or to a different tribe, how is the contradiction [of the text to passages of Vishṇu and Yájñavalkya† § 4 and 5] regarding the succession of parents and brothers, to be reconciled [without transposition, or without connecting in construction remote terms ?‡] If it be by distinguishing the cases of re-union and continued separation, the same distinction may pervade the whole subject: and what occasion is there for assuming a difference relative to the wife, as belonging to the same or to another tribe? But the proposed distinction, founded on re-union and separation, [§ 19] has been already fully refuted by us [§ 30.]

54. A distinction of the whole and half-blood does not reconcile

54. The distinction regarding the whole and the half-blood is contradicted by Vṛhaspati, who says "Let the wife of a deceased man, who left no male issue, take his share, notwithstanding kinsmen, a father, a mother, or uterine brethren be present."§ Uterine brethren are brothers

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Or supposes the widow to be young.] Conformably with the text of Háríta, which directs, that property, sufficient only for the support of life, should be allotted to a young widow. Achyuta, Çríkṛshna and Maheçvara.

Or is relative to brethren unseparated or re-united.] The reasoning, on which this is grounded, has been before stated. (Vide § 19.) Çríkṛshna.

52. As for the assertion.] Of the same author, according to Çríkṛshṇa. But Maheçvara says, a certain author.

Intending a favor to the matrons.] This passage, which is obscure, has been explained by Çríkṛshṇa as ironical; the concubines being here tauntingly termed matrons: and Maheçvara quotes Chúḍámani as authority for that interpretation. But the same commentators, in concurrence with Achyuta, state another explanation in which the wives are understood by matrons. It is only by favour of the wives, who themselves inherit the whole property, that a maintenance is allowed to the concubines.

53. The proposed distinction founded on re-union, &c. has been refuted.] Maheçvara understands this to be levelled against the doctrine of the Mait'hila school.

54. The distinction regarding the whole and half-blood.] The opinion that the whole brother inherits before the wife, but the half-brother after her. Chúḍámaṇi and Achyuta.

* Çríkṛshṇa. † Maheçvara. ‡ Maheçvara, Vide § 45. § Vide supra. § 1

the contradiction, being inconsistent with a passage of Vṛhaspati.

by the same mother [and of course of the whole blood.] The author declares the wife's right of succession, although such persons exist. By the term "his share," is understood the entire share appertaining to her husband; not a part of it only [sufficient for her support.*]

55. Conclusion in favor of the proposed coustruction.

55. Therefore the interpretation of the law is right as set forth by us.

56. But the wife must only enjoy her husband's estate after his demise. She is not entitled to make a gift, mortgage or sale of it. Thus Kátyáyana says, "Let the childless widow, preserving unsullied the bed of her lord, and abiding with her venerable protector, enjoy with moderation the property until her death. After her let the heirs take it."

56. The widow is restricted from gift, mortgage and sale.

57. Abiding with her venerable protector, that is, with her father-in-law or others of her husband's family, let her enjoy her husband's estate during her life; and not, as with her separate property, make a gift, mortgage or sale of it at her pleasure. But, when she dies, the daughters or others, who would regularly be heirs in default of the wife, take the estate; not the kinsmen [or sapiṇḍas :†] since these, being inferior to the daughter and the rest, ought not to exclude those heirs: for the widow debars them of the succession; and, the obstacle being equally removed if her right cease or never take effect, it can be no bar to their claim.

57. She shall enjoy the estate for life; and after her it goes to her husband's heirs.

58. Nor shall the heirs of the woman's separate property [as her brothers, &c.‡] take the succession [on failure of daughters and daughter's sons, to the exclusion of her husband's heirs;§] for the right of those [persons, whose succession is declared under that head,‖ C. 4.] is relative to the property of a woman [other than that which is inherited by her.¶] Kátyáyana has propounded by separate texts the heirs of a woman's property; and [his text, declaratory of the succession to heritage,**] would be tautology: [consequently heritage is not ranked with woman's peculiar property.††]

58. Not to her own heirs.

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56. Abiding with her venerable protector.] This is according to the usual reading of the text, and conformable with the interpretation of it in the Ratnákara. But, in the Dáya-tatva, it is read vraté st'hitá in place of gurau st'hitá; and the reading is expounded by the commentator Káçiráma, 'diligent in such observances as may be beneficial to her husband in another world.' He rejects another interpretation, 'observant of fasts."

Enjoy with moderation.] With abstemiousness, according to the commentators, and Achyuta. But, in the Smṛti-chandriká, it is explained 'patient of

* Maheçvara. † Maheçvara. ‡ Çríkṛshṇa and Achyuta.
§ Çríkṛshṇa and Achyuta. ‖ Maheçvara. ¶ Maheçvara.
** Çríkṛshṇa, &c. †† Achyuta, &c.

59. Therefore those persons, who are exhibited in a passage above cited (§ 4.) as the next heirs on failure of prior claimants, shall, in like manner as they would have succeeded if the widow's right had never taken effect, equally succeed to the residue of the estate remaining after her use of it, upon the demise of the widow in whom the succession had vested. At such time [when the widow dies,* or when her right ceases,†] the succession of daughters and the rest is proper, since they confer greater benefits on the deceased [by the oblations presented by them‡] than other claimants [such as the sapiṇḍas abovementioned.‖ § 37.]

59. The heirs of her husband take the residue, after her use and consumption.

60. Thus in the Mahábhárata, in the chapter entitled Dánadharma, it is said "For women, the heritage of their husbands is pronounced applicable to use. Let not women on any account make waste of their husband's wealth."§

60. A passage of the Mahábhárata confirms this.

61. Even use should not be by wearing delicate apparel and similar luxuries: but, since a widow benefits her husband by the preservation of her person, the use of property sufficient for that purpose is authorized. In like manner [since the benefit of the husband is to be consulted,¶] even a gift or other alienation is permitted for the completion of her husband's funeral rites. Accordingly the author says, "Let not women make waste." Here "waste" intends expenditure not useful to the owner of the property.

61. Exposition of the passage.

She may make a gift or sale for the obsequies of her husband.

62. Hence, if she be unable to subsist otherwise, she is authorized to mortgage the property; or, if still unable, she may sell or otherwise alien it: for the same reason is equally applicable.

62. For her maintenance, she may mortgage or

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control.' There is considerable difference in the interpretation of the text, as to its general scope, according to various compilers, by whom it is cited.

60. Thus in the Mahábhárata, &c.] The author here corroborates what had been said concerning the restriction on the widow's power of gift, mortgage and sale. (§ 56.) Achyuta, Çríkrshṇa and Maheçvara.

passage, here cited, is read differently in the text of the Mahábhárata; patidáyáyam, instead of pati-dáyaḥ." But both readings may be interpreted in the same sense. One of the commentators on the poem notices another variation, parivittáḥ, instead of pativittát 'their husband's wealth.' Another commentator expounds the passage in a different manner: 'Let not sons resume any part of the wealth given to a woman by her husband.'

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* Çríkṛshṇa.

† Chūáḍmaṇi.

‡ Maheçvara.

§ Maheçvara.

‖ Mahábhárata, Dánadharma, 46. 24.

¶ Çríkṛshṇa.

63. Let her give to the paternal uncles and other relatives of her husband presents in proportion to the wealth, at her husband's funeral rites. Vṛihaspati directs it, saying "With presents offered to his manes, and by pious liberality, let her honour the paternal uncles of her husband, his spiritual parents and daughter's sons, the children of his sisters, his maternal uncles, and also ancient and unprotected persons, guests, and females of the family."* The term "paternal uncle" intends any sapiṇḍa of her husband; "daughter's sons," the descendants of her husband's daughter; "children of his sister," the progeny of her husband's sister's son; "maternal uncles," her husband's mother's family. To these and to the rest, let her give presents, and not to the family of her own father, while such persons are forthcoming: for the specific mention of paternal uncles and the rest would be superfluous.

She should give suitable presents to her husband's kindred at his obsequies.

Not to her own kindred.

64. With their consent, however, she may bestow gifts on the kindred of her own father and mother. Thus Nárada says, "When the husband is deceased, his kin are the guardians of his childless widow. In the disposal of the property, and care of herself, as well as in her maintenance, they have full power. But, if the husband's family be extinct or contain no male, or be helpless, the kin of her own father are the guardians of the widow, if there be no relations of her husband within the degree of a sapiṇḍa."† In the disposal of property by gift or otherwise, she is subject to the control of her husband's family, after his decease, and in default of sons.

64. Unless with the sanction of her husband's relations.

Nárada declares them to be her guardians.

She is subject to their control.

65. In like manner, if the succession have devolved on a daughter, those persons, who would have been heirs of her father's property in her default, [as her son, her paternal grandfather, &c.‡] take the succession on her death; not the heirs of the daughters property [as her daughter's son, &c.§]

In like manner, the succession, devolving on a daughter, passes, after her, to her father's heirs.

66. The widow should give to an unmarried daughter a fourth part out of her husband's estate, to defray the expenses of the damsel's marriage. Since sons are required to give that allotment,‖ much more should the wife, or any other successor, give a like portion.

66. An unmarried daughter should have a share allotted by the widow for the expenses of her marriage.

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65. In like manner, if the succession have devolved on a daughter, those persons, &c.] If the next heirs succeed to the residue of the property, in the instance of the widow, whose right is preferable to the daughter's, much rather should the next heirs who would regularly succeed if there were no daughter, take the succession after her. Çrîkṛishṇa and Chúḍámani.

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* Vide supra. § 2.

† Nárada, 13. 28—29.

‡ Achyuta and Çrîkṛishṇa.

§ Achyuta and Çrîkṛishṇa.

‖ Vide C. 3. § 34.

67. Conclusion.

67. Thus has the widow's right of succession been explained.

SECTION II.

On the right of the Daughter and Daughter's Son.

1. The daughter's right of succession on failure of the wife [is declared.*] On that subject Manu and Nárada say, "The son of a man is even as himself; and the daughter is equal to the son: how then can any other inherit his property, notwithstanding the survival of her, who is as it were himself?"† Nárada particularizes the daughter [as inheriting in right of her continuing the line of succession:] "On failure of male issue, the daughter inherits, for she is equally a cause of perpetuating the race; since both the son and daughter are the means of prolonging the father's line."‡ The author states the circumstance of her continuing the line as a reason of the daughter's succession: and the line of descendants here intends such descendants as present funeral oblations; for one, who is not an offerer of oblations, confers no benefits, and consequently differs in no respect from the offspring of a stranger or no offspring at all.

1. A daughter inherits if there be no widow; conformably with passages of Manu and Nárada; in right of oblations to be presented by her son.

2. It is the daughter's son, who is the giver of a funeral oblation, not his son; nor the daughter's daughter: for the funeral oblation ceases with him.

2. Her son only presents such oblations.

3. Therefore the doctrine should be respected, which Díkshita maintains; namely that a daughter, who is mother of male issue, or who is likely to become so, is competent to inherit; not one, who is a widow, or is barren, or fails in bringing male issue as bearing none but daughters, or from some other cause(*a*).

3. Díkshita rightly prefers the daughter, who has or is likely to to have male issue.

4. Here again, the unmarried daughter is in the first place sole heiress of her father's property [to the exclusion of any daughter verbally betrothed.§] Accordingly Paráçara says, "Let a maiden daughter take the heritage of one who dies leaving no male issue; or, if there be no such daughter, a married one shall inherit." In the text, "married" is here implied the restriction before mentioned [excluding one who fails in bringing male issue.||]

4. The maiden daughter has the best claim, according to Paráçara.

ANNOTATIONS.

Upon the same principle, the succession, devolving on the mother by the death of her son, passes after her decease to the heirs of her son; and not to her own heirs. See Sect. 2. § 31.

* Çríkṛshṇa. † Manu, 9. 130. Not found in Nárada's institutes. ‡ Nárada, 13. 49.
§ Chūḍámaṇi and Çríkṛshṇa. || Chūḍámaṇi and Çríkṛshṇa.
(*a*) See 1 Morl. Dig. 319, 335, 480.

5. Thus Devala says, "To maidens should be given a nuptial portion out of the father's estate. But of him, who leaves no appointed daughter, [nor son,] the unmarried daughter, belonging to his own tribe, and legitimate, shall take the inheritance, like a son." The term "appointed daughter" implies also son. "His own;" belonging to the same tribe with himself. "Legitimate;" his own lawful issue.

5. And Devala.

6. This is proper: for, should the maiden arrive at puberty unmarried, through poverty, her father and the rest would fall to a region of punishment, as declared by holy writ. Thus Vasishṭha says, "So many seasons of menstruation as overtake a maiden feeling the passion of love and sought in marriage by persons of suitable rank, even so many are the beings destroyed by both her father and her mother; this is a maxim of the law."* So Paiṭhínasi: "A damsel should be given in marriage, before her breasts swell. But, if she have menstruated [before marriage,] both the giver and the taker fall to the abyss of hell; and her father, grandfather and great-grandfather are born [insects] in ordure. Therefore she should be given in marriage while she is yet a girl."

6. Her marriage is requisite to the welfare of the manes of her ancestor; as shown by Vasiṣṭha and Paiṭhínasi.

7. Since then the father and the rest are saved from hell by sufficient property becoming applicable to the charges of her marriage; and, being accordingly married, she confers benefits on her father by means of her son; the wealth devolving on her is for the benefit of the [former] owner;† and it is reasonable, therefore, that the property should descend to the unmarried daughter, on failure of the wife.

7. And the appropriation of the wealth to that purpose is for her father's benefit.

8. But, if there be no maiden daughter, the succession devolves on her who has, and on her who is likely to have, male issue(*b*). That is declared by Vṙhaspati: "Being of equal class and married to a man of like tribe, and being virtuous and devoted to obedience, she [namely the daughter,‡] whether appointed or not appointed to continue the male line, shall take the property of her father who leaves no son [nor wife.§]"

8. Next a daughter who has or is likely to have male issue, succeeds: as intimated by Vṙhas-

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5. Out of the father's estate.] This is according to the reading, which is followed by this author, as well as by Raghunandana. But in other compilations, as the Smṛiti-chandriká, Ratnákara and Víramitrodaya, the text is read pitṙ-dravyam instead of pitṙ-dravyát: and the author of the last mentioned work explains the passage as signifying, that 'a portion of the paternal estate [equal to the fourth part of a share] and nuptial presents should be given to a maiden daughter.'

* Vasishṭha, 17. 56.

‡ Vide § 13.

† Vide Sect. 1. § 44.

§ Crík*ṙ*shṇa and Chūḍámaṇi.

(*b*) See 6 Moo. I. A. Ca. 444.—*Ed.*

9. Of equal class.] Belonging to the same tribe with her father. Married to a man of like tribe.] This is intended to exclude one married to a man of a superior or inferior tribe. For the offspring of a daughter married to a man of a higher or lower class is forbidden to perform the obsequies of his maternal grandfather and other ancestors who are of inferior or of superior rank. But one, married to a man belonging to the same class, confers benefits on her father by means of her son.

9. Interpretation of the text.

10. The son of a daughter appointed to continue the male line is like a son, highly beneficial to his ancestor; and, through him, the appointed daughter is equal to a son: wherefore the appointed daughter and legitimate son have an equal right of succession.* But a married daughter, who was not so appointed, confers less benefit on her father than the son and the rest [viz. the son's son and grandson's son,† and the widow;‡] and is of benefit by means only of her son: it is proper, therefore, that she should succeed only on failure of other heirs down to the unmarried daughter.

10. A daughter appointed to continue the male line has a preferable title.

11. It must not be alleged, that, admitting this doctrine [of benefits conferred being the cause of a right of succession,§] the daughter, who has male issue, should alone inherit in the first instance; but, on failure of such, then a daughter who may have issue. For her son, born subsequently, might in this manner be excluded from the succession. Nor is this proper; for both equally confer benefits on their grandfather, as daughter's sons.

11. An argument for preferring one who has male issue to the maiden daughter, refuted.

12. By specifying "obedience" to her husband (§ 8), the author indicates, that she is not in the state of widowhood, and that consequently she may have issue.

12. A widow is excluded by implication (§ 8.)

13. In the text before cited (§ 8.), the pronoun refers to the word "daughter" contained in a preceding passage [which will be forthwith quoted. ‖ § 14.] Thus, by the conditions specified, that she be "of equal class"

13. Further exposition of the text (§ 8.)

ANNOTATIONS.

9. To exclude one married to a man of a superior or inferior tribe, &c.] This remark of Jímúta-váhana is inadmissible: for the term 'married' excludes the notion of union with a man of inferior tribe; since there can be no marriage between a woman of higher tribe and a man of a lower one. Therefore the intention is to exclude one married to a man of superior class. Víramitrodaya.

Who are of inferior or of superior rank.] A daughter's son of a superior tribe is fortunate to offer a funeral repast to the manes of his maternal grandfather who is of a lower tribe; and a daughter's son, being of inferior rank, is forbidden to offer it for his maternal grandfather who is of a higher class. Ragh. on Dáya-bhága.

11. For her son might be excluded from the succession.] Accordingly the notion, that, in the case of two daughters having male issue, one a widow, the other having a husband living, the widow should inherit in the first instance, because she first offers funeral oblations through her son [whose father is already dead], is refuted. Achyuta and Çríkṙshṇa.

* Vide C. 10. † Çríkṙshṇa. ‡ Chūḍámaṇi.

§ Achyuta and Çríkṙshṇa. ‖ Chūḍámaṇi, Çríkṙshṇa, &c.

A daughter does not inherit of course, in right of her relation as such.

and "married to a man of like tribe," &c. (§ 8), the author shows, that she does not inherit her father's wealth merely in right of her relation as daughter. Else, since the daughter's right of succession is declared by the following passage, the mention of it by the same author in the foregoing text would be a vain repetition. But a special rule, regarding what was suggested generally, is not tautology.

14. A passage of Vṛihaspati compares the daughter to the son.

14. "As a son, so does the daughter of a man proceed from his several limbs. How then should any other person take her father's wealth?"*

15. Since a daughter's right of succession to the property of her father is founded on her offering funeral oblations by means of her son; therefore, even in the case of an appointed daughter, on whom the estate has devolved by the demise of her father, should she bear no male issue in consequence of her proving barren, or because her husband is incapable of procreation, the property does not go upon her death to her husband. Thus Çankha and Likhita say, "The husband is not entitled to the wealth of his wife being an appointed daughter, if she die leaving no issue." So Paiṭhínasi: "On the death of an appointed daughter, her husband does not inherit her property: if she leave no issue, it shall be taken by her unmarried sister or by another." Hence her property is to be taken by her maiden sister, or by another sister likely to have issue. Therefore, when the succession has devolved on a female, [her husband's†] claim [as her heir] is precluded.

15. If an appointed daughter bear no issue, the property does not go to her husband:

According to Çankha and Likhita; and Paiṭhínasi.

16. But the following passage of Manu must be understood to be applicable, on the demise of an appointed daughter, who has not been destitute of male issue, having borne a son who has died. "Should a daughter, appointed to continue the male line, die by any accident without a son, the husband of that daughter may without hesitation possess himself of her property."‡

16. A contradictory passage of Manu supposes her to have borne issue.

ANNOTATIONS.

14. Proceed from his several limbs.] This is an allusion to a passage of the Veda, which is quoted by Baudháyana. It is addressed by a father to his son. "From my several limbs thou art distilled; from my heart thou art produced: thou art indeed self, but denominated son: mayst thou live a hundred years."

15. By her unmarried sister or by another.] The text is read and interpreted differently in the Ratnákara: 'If she leave no son, it shall be taken by her daughter or by her sister.' This is according to the reading of the text, as it is cited in the Kalpataru, 'aputráyán kumáryá svasrá vá tad gráhyam,' instead of aputráyáṅ kumáryá vá svasrá tad grahyan tad anyayá.

16. Having borne a son who has died.] Jímúta-váhana's text exhibits the conjunctive particle cha: and, according to this reading, the sense should be 'who is not destitute of male issue and who has borne a son who has died.' But Achyuta and Çríkṛishna censure it as an erroneous reading.

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* Vṛihaspati. † Chúḍámaṇi, Achyuta and Çríkṛishṇa. ‡ Manu, 9. 135.

17. Vṛhaspati recites the gift of the funeral oblation as the sole cause [of right] in the instance of both [the daughter and the grandson.] "As the ownership of her father's wealth devolves on her, although kindred exist; so her son likewise is acknowledged to be heir to his maternal grandfather's estate"(*a*). As the daughter is heiress of her father's wealth in right of the funeral oblation which is to be presented by the daughter's son; so is the daughter's son owner of his maternal grandfather's estate in right of offering that oblation, notwithstanding the existence of kindred, such as the father and others.

17. A daughter's son is the next heir; as declared by Vṛhaspati.

18. Nor does this text (§ 17.) relate to the son of an appointed daughter: for the pronoun "her," in both the phrases ("devolves on her," and "her son is acknowledged,") bears reference to the "daughter whether appointed or not appointed," who was mentioned in the preceding passage (§ 8.) Or, upon the principle of selecting the nearest term, the reference may properly be to the "daughter not appointed." But this term cannot be rejected to select the other.

18. The text does not concern the offspring of an appointed daughter.

19. Accordingly Manu propounds the daughter's origin from the person of the maternal grandfather as the reason of the daughter's son having a right to the succession; not her appointment to raise a son: else he would have specified this cause. "Let the daughter's son take the whole estate of his own father who leaves no [other] son; and let him offer two funeral oblations; one to his own father, the other to his maternal grandfather. Between a son's son and the son of a daughter, there is no difference in law; since their father and mother both sprung from the body of the same man."*

19. Manu states relation as the reason of the daughter's son inheriting.

20. Thus this very author expressly declares, that the daughter's son, born of one not appointed to continue the male line, has the right of succession. "By that male child, whom a daughter, whether formally appointed or not, shall produce from a husband of an equal class; the maternal grandfather becomes in law the father of a son: let that son give the funeral oblation and possess the inheritance."†

20. Manu expressly declares his right of succession.

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19. There is no difference.] By thus likening the grandson in the female line to the grandson in the male line, it is intimated, that, as, on failure of the son, the son's son is heir, so, in default of the daughter, the daughter's son is the successor. Ragh. Dâya-tatva.

Consider as another son.] In the Kalpataru, the text is read asyám "her" instead of anyam "another." That reading varies the construction rather than the purport of the text.

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* Manu, 9. 132.—133.

† Manu, 9. 136.

(*a*) See 1 Morl. Dig. 258.-

21. Besides the term 'daughter's son' is in law restricted to signify the male offspring of an appointed daughter. Baudhá-yana intimates that, when he says, "[Considers] another [son] the daughter's son termed son of an appointed daughter, being born of the female issue after an express stipulation." Here 'consider' is understood.

21. Daughter's son intends son of an apponted daughter: as is intimated by Baudh-

22. Hence also [since such is the scope and purport of the text;* § 17.] Bhojadeva has cited that passage of Vṛhaspati under the head of succession of a daughter appointed or unappointed.

22. Bhójadéva cites the text (§ 17.) as of general import.

23. But Govinda-rája, in his commentary on Manu, states the claim of the daughter's son as preferable to that of the married daughter, of the grounds of the following passage of Vishṇu. "If one die leaving neither son nor grandson, the daughter's son shall inherit the estate; for, by consent of all, the son's son and the daughter's son are alike in respect of the celebration of obsequies."†

23. Govinda-rája prefers the daughter's son to the married daughter: conformably with a passage of Vishṇu.

24. This does not appear to us satisfactory: for it contradicts the text above cited (§ 8.)

24. This is unsatisfactory.

25. But, in default of a married daughter such as above described, the succession assuredly devolves on the daughter's son notwithstanding the existence of the father and other kinsmen(*b*). For it appears from the comparison of his condition to heirs, (§ 17.) and more expressly from the purport of the term "likewise" in the phrase "her son likewise is acknowledged to be heir," (§ 17.) that his pretensions are inferior to her's. Therefore, it is a right deduction, that the succession of the daughter's son is next after the daughter.

25. A daughter's son inherits after the married daughter;

26. By the words "although kindred exist," (§ 17.) the succession of both parents, which reasonably should take effect on failure of the wife, but which is barred by the daughter and daughter's son, is hinted as taking place when no such impediment exists. Accordingly Vṛhaspati, immediately after [the passage above cited,‡ § 17.]

26. And before the father and mother.

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21. After an express stipulation.] After the accepting of her as an appointed daughter. (Vide § 15—17.) Chūḍámani and Çríkṛshna.

25. A married daughter such as above described.] Who does not fail of bearing issue. Chūḍámaṇi, Achyuta and Çríkṛshna..

Who has or is likely to have male issue. Ragh. on Dáya-bhága.

26. Bears reference.....to the parents.] Else, if the brothers inherit next after the daughter's son, that would contradict Yájñavalkya and the rest, as above cited. (Vide Sect. 1. § 4.) Chūḍámaṇi and Çríkṛshṇa.

* Çríkṛshna.

† Not found in Vishnu's institutes. It is cited by Raghunandana in the Dáya-tatva, as on the authority of Govinda-rája's quotations.

‡ Çríkṛshna

(*b*) See 1 Morl. Dig. 320.—*Ed.*

says "On failure of those persons, the brothers and nephews of the whole are entitled to the estate, or kinsmen, or cognates, or pupils, or venerable priests." Here the word "those" bears reference to the daughter's son [named in the text,] and to the parents indicated [by the term kindred.*] Therefore, it is on failure of these persons, that the succession of brothers and the rest take place.

27. As for the assertion of Báloka, that the daughter's son inherits after the whole series of heirs specified in the passage of [Yájñavalkya] above cited, "The wife, daughters also," &c., (sect. 1. § 4.) that is mere childish prattle; for it contradicts the text of Vṛihaspati (§ 17.) Nor is there any thing inconsistent with that enumeration of heirs; for the maiden daughter, married daughter, and daughter's son, are all signified by the term "daughters" in the plural number (sect. 1. § 4.) As the word "son," in the phrase "who departed for heaven leaving no son," intends male issue down to the great-grandson, since he is equally a giver of funeral oblations; so does the term "daughter" comprehend the daughter's son, for he also is the giver of a funeral offering; or as the term "male issue," in the sentence "on failure of male issue, the daughter inherits" (§ 1.), intends the widow also. Else the plural number, in the word "daughters," would be unmeaning: and the author would have used the singular number, as in the words "the wife," "the son of a brother," &c. We shall hereafter [in the course of expounding passages concerning the re-union of parceners†] explain the intention of the plural number in the word "brothers" (sect. 1. § 4.)

27. Báloka postpones the claim of the daughter's son; erroneously.

28. Moreover, since a series of heirs is specified from both parents to the king, it would follow, that the succession of the daughter's son takes effect on failure of the king. But there never is a vacancy of the throne; and consequently the succession could never take place.

28. He would not inherit in any case.

29. Therefore the succession of the daughter's son on failure of daughters, as affirmed by Viçvarupa, Jitendriya, Bhojadeva and Govinda-rája, should be respected.

29. The other doctrine should be admitted.

30. But, if a maiden daughter, in whom the succession has vested, and who has been afterwards married, die [without bearing issue,‡ the estate, which was her's, becomes the property of those persons, a married daughter or others, who would regularly succeed if there were no such [unmarried daughter] in whom the inheritance

30. If the daughter die without issue, her father's next heirs succeed.

ANNOTATIONS.

27. As for the assertion, that the daughter's son inherits after the whole series of heirs, &c.] This doctrine is maintained by the Maithila school, as is remarked by Çríkṛishṇa in the Krama-Sangraha.

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* Ragh. on Dáya-bhága.

† Achyúta and Çríkṛishṇa. Vide infra, Sect. 5. § 37.

‡ Çríkṛ

vested, and in like manner succeed on her demise after it has so vested in her(*a*). It does not become the property of her husband or other heirs; for that [text, which is declaratory of the right of the husband and the rest,*] is relative to a woman's peculiar property. Since it has been shown by a text before cited (sect. 1. § 56), that, on the decease of the widow in whom the succession had vested, the legal heirs of the former owner, who would regularly inherit his property if there were no widow in whom the succession vested, namely the daughters and the rest, succeed to the wealth; therefore the same rule [concerning the succession of the former possessor's next heirs†] is inferred a fortiori, in the case of the daughter and grandson whose pretensions are inferior to the wife's.

31. Or the word "wife" [in the text above quoted,‡ sect. 1. § 56.] is employed with a general import: and it implies, that the rule must be understood as applicable generally to the case of a woman's succession by inheritance.

31. The rule is general in the case of a woman's succession.

Conclusion.

32. Thus has the succession of the daughter and daughter's son been explained.

SECTION III.

On the Father's right of succession.

1. If there be no daughter's son, the succession devolves on the father; and not on the mother [before the father]; nor at once on both parents. For that is contrary to Vishṇu's text "If there be none, it belongs to the father; if he be dead, it appertains to the mother."§

1. The father is next heir after the daughter's son.

2. But the following passage of Manu, as well as that of Vṛhaspati, must be understood as relating to a case of failure of heirs down to the father inclusively. "Of a son dying childless [and leaving no widow‖] the mother shall take the estate; and, the mother also being dead, the father's mother shall take the heritage."¶ Of a deceased son, who leaves neither wife nor male issue, the mother must be considered as heiress: or, by her consent, the brother may inherit."**

2. Passage of Manu and Vṛhaspati which declare the mother's succession, suppose the demise of the father.

3. This is a result too of reasoning. The father's right of succession should be after the daughter's son and before the mother: for the father, offering two oblations of food to other manes, in which the deceased participates, is inferior to the daughter's son who presents one oblation to the deceased and two to other manes in which

3. The preferable right of the father is a result of reasoning.

* Çrîkṛishṇa. † Çrîkṛishṇa. ‡ Çrîkṛishṇa. § See Infra. Sect. 1. § 5.

‖ Achyuta and Çrîkṛishṇa. ¶ Manu, 9, 217.

(*a*) See 1 Morl. Dig.

the deceased participates: he is preferable to the mother and the rest because he presents [personally*] to others two oblations in which the deceased participates; and his superiority is indicated in a passage of Manu: "In a comparison of the male with the female sex, the male is pronounced superior."†

4. In the term pitarau "both parents" (Sect. 1. § 4.), the priority of the father is indicated: for the father is first suggested by the radical term pitṛ; and afterwards the mother is inferred from the dual number, by assuming that one term [of two which composed the phrase] is retained.

4. And is indicated by the text which expresses "parents."

5. Hence [since the members of the series are presented to the understanding in the order here stated‡], the argument, that, 'the mental apprehension of a series being co-extensive with the oral recital of its component members, recital, being wanting, necessarily precludes apprehension,' must be rejected as inconclusive; for it is not true, that an adequate indication is wanting [being deducible in the manner above stated; § 4.] and [the joint succession of father and mother] would contradict the text of Vishnu.

5. An objection obviated.

6. Thus the father's right of succession has been explained.

6. Conclusion.

SECTION IV.

On the Mother's right of succession.

1. If the father be not living, the succession devolves on the mother: for, immediately after propounding the father's right to the estate, Vishṇu's text declares, "If he be dead, it appertains to the mother."§

1. The mother inherits after the father.

2. This too is reasonable: for her claim properly precedes that of the brothers and the rest; since it is necessary to make a grateful return to her, for benefits which she has personally conferred by bearing the child in her womb and nurturing him during his infancy; and also because she confers benefits on him by the birth of other sons who may offer funeral oblations in which he will participate.

2. Her right is founded on reason.

ANNOTATIONS.

4. By assuming that one term is retained.] This is an allusion to the etymology of pitarau 'parents' from pitṛ 'father,' representing the compound term mátá-pitarau 'mother and father.' Paṇini. 1. 2. 70.

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* Chūḍámaṇi. † Manu, 9. 35. ‡ Çrikṛshṇa. § Vide supra. Sect. 1. § 5.

3. The notion, therefore, that the mother's right should precede the father's, because she is pronounced to surpass him in the degree of veneration due to her, must be rejected. For, if a superior title to veneration were the reason of a right of inheritance, the succession would devolve on the spiritual preceptor before the father; since it is said "Of him who is the natural parent, and him who gives holy knowledge, the giver of the sacred science is the more venerable father:"* and paternal uncles and the rest would inherit in preference to a younger brother or a nephew. Therefore the mother's right of succession is after the father [and before the brothers.†]

3. The doctrine of her preferable right is erroneous.

4. By thus declaring, that the mother's succession takes place after the father of the deceased, and before the father's offspring, the author intimates, that the paternal grandmother's succession likewise takes place after the grandfather and before the grandfather's offspring. For otherwise [if a different order of succession be assumed;‡ or if that order be not established;§ or that indication be not acknowledged;‖ there is a contradiction between the specified order of succession, "both parents, brothers, likewise, &c.,¶ [and this case which is perfectly analogous.**] Accordingly [since the grandmother's right of succession is in this manner indicated by Yájñavalkya;†† Manu says, "And the mother also being dead, the father's mother shall take the heritage."‡‡ The meaning is 'being dead, that is, deceased, together with her offspring.'

4. By the same analogy, the grandmother inherits after the grandfather.

5. Here the particle "and," as well as "also," must be joined in construction with both parts of the sentence. Therefore the sense is 'and the mother being dead, the paternal grandmother also may take the heritage.' What then becomes of the brothers and the rest? These persons, including the paternal grandfather, are indicated by the particle "also."

5. And after brothers and nephews.

ANNOTATIONS.

3. The notion that the mother's right should precede the father's is rejected.] This appears to be levelled against the doctrine maintained by the Mait'hila school, or at least by Váchespati Miçra and by the author of the Vivádа-chandra. Çríkṙshṇa, in the Krama-sangraha, cites Miçra (meaning Váchespati Miçra) as affirming that doctrine on the strength of an inverted and erroneous reading of Vishṇu's text. (Sect. 1. § 5.)

Because she is pronounced to surpass him.] By the following or similar passages: "A mother surpasses a thousand fathers."‖‖ Çríkṙshṇa.

5. Are indicated.] Copies of Çríkṙshṇa exhibit a different reading; samuchchitáḥ 'assembled' instead of suchitáḥ 'hinted.' The variation does not make a material alteration in the sense.

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* Manu, 2. 146. † Çríkṙshṇa. ‡ Çríkṙshṇa. § Chúḍámani.
‖ Achyuta. ¶ Vide Supra. Sect. 1. § 4 ** Chúḍámani and Çríkṙshṇa.
†† Ragh. on Dáya-bhága. ‡‡ Vide supra. Sect. 3. § 2.
§§ Chúḍámaṇi. ‖‖ Manu, 2. 145.

6. The meaning then of the text [of Yájñavalkya] is this: the succession of both parents takes effect, in the order which has been explained, after the descendants of the deceased, down to his daughter's son, and before [the father's*] own offspring. Hence the succession of the paternal grandfather and grandmother is thus shown to take place before their own offspring. Accordingly it is not separately propounded in the text of Yájñavalkya; since the right of the paternal grandfather and grandmother is virtually declared by showing the mother's right of succession.

6. As the mother inherits after the father and before the offspring, so the grandmother inherits after the grandfather and before their progeny.

7. Thus the mother's right of inheritance has been explained.

7. Conclusion.

SECTION V.

On the Brother's right of succession.

1. If the mother be dead, the property devolves on the brother: for Vishṇu, having declared, that, "If the father be dead, it appertains to the mother," proceeds to say "On failure of her, it goes to the brothers:"† and here the pronoun refers to the mother. It appears also from the passage [of Yájñavalkya] "both parents, brothers likewise,"‡ that the brother's succession takes place in the case of the death of both parents.

1. After the mother, the brothers inherit.

2. It must not be alleged, that, under the passage above cited, which expresses "brothers likewise and their sons," the brother's son, being declared heir in like manner as the brothers are, shall inherit also next to the mother. For the text of Vishṇu, declaring that "it goes to the brothers," adds "After them, it descends to the brother's sons:" and in this place the pronoun refers to the brothers.

2. Not the brother's son jointly with them.

3. That too is reasonable: for the brother confers benefits on the deceased owner by offering three funeral oblations to his father and other ancestors, in which the deceased participates; and he occupies his place, as presenting three oblations to the maternal grandfather and the rest, which the deceased was bound to offer; and he is

3. It is reasonable; for the brother confers more benefits on the deceased.

ANNOTATIONS.

7. The mother's right of inheritance has been explained.] On the death of the mother, the residue of the estate devolves on the brother as next heir in the order of succession, and not, like a woman's peculiar property, on her son and daughter: for it is a case of an estate devolving on a woman. (Vide Section 2. § 31.) Chúḍámani.

* Ragh. on Dáya-bhága. † Vide Supra. Sect. 1. § 5. ‡ Sect. 1. § 4.

therefore superior to the brother's son, who has not the same qualifications. But deriving his origin from the mother, the brother, though he do possess these qualifications, is inferior to the mother; and his succession, therefore, very properly takes effect after her.

4. Besides why may not the word "likewise" be connected with the term "brother?" and thus the parents and brothers may have an equal right of succession; the text being interpreted 'as parents, so do brothers in-

4. As well might parents and brothers inherit together.

5. The question, then, must be negatived, as at variance with the text of Vishṇu: and the same is to be done in the other instance likewise [of the claims of brother and brother's son.*] So Manu declares, that brothers take the inheritance, not the nephew. "Of him, who leaves no son, the father shall take the inheritance; or the brothers."†

It is contradicted by Vishṇu, and by Manu.

6. Moreover, why has not the nephew, whose father is living, a right of succession? There is no other reason but this: that one, whose father is living, does not confer benefits, since he is incompetent to offer oblations. If then it be thus settled, [that the order of succession is regulated by the decree in which benefits are conferred.‡] how should a nephew, whose father is deceased, inherit equally with the brother, since he does not confer equal benefits? Accordingly Devala, in a passage before cited [Sect. 1. § 17.] not specifying the brother's son in the series of heirs down to the half-brother, comprehending the widow, daughter equal by class, father, mother, brother of the whole blood, and brother of the half-blood, intimates that the succession of nephews and the rest takes place on failure of heirs down to the half-brother.

6. The nephew whose father is living, is excluded: how should one, whose father is dead, be admitted?

7. The passage, which pronounces a nephew to be as a son, ["They are all fathers by means of that son;"§] is intended to authorize his presenting a funeral oblation and to establish his right of succession on failure of brothers. [They do not inherit together;‖] for that contradicts the text [of Vishṇu¶] above cited. Else why should not [his right of succession**] be before the brothers.

7. A nephew is pronounced to be as a son, with a different view.

8. Therefore the brother alone is heir in the first instance. [ading o him.] By

8. The brother therefore is sole heir.

9. Here again, a brother of the whole blood has the first title: under the following text [§ 10]: and, even under the general rule for the brother's succession ("Brothers also," Sect. 1. § 4). The meaning is, that the whole

9. First the brother of the whole blood inherits:

* Achyuta and Çrîkṛshṇa. † Manu, 9. 185. ‡ Çrîkṛshṇa. § Manu, 9. 182.
i and Çrîkṛshṇa. ** Çrîkṛshṇa.

brother shall inherit in the first place: but, if there be none, then the half-brother; for he also is signified by the word brother, being issue of the same father.

10. Conformably with a passage of Yájñavalkya.

10. The passage alluded to (§ 9) is as follows: "A re-united [brother] shall keep the share of his re-united [co-heir,] who is deceased; or shall deliver it to [a son subsequently] born. But an uterine brother [shall thus retain or deliver the allotment] of his uterine relation."* This text of Yájñavalkya also shows, that the term brother is applicable both to the whole and to the half-blood. Else, if it intended only the uterine [and of course whole] brother, the author would not have specified, that "the uterine brother, should retain or deliver the allotment of his uterine relation:" for the whole blood would be signified by the single term "brother."

11. Proof of the inference.

11. Therefore the succession of brothers, whether of the whole or of the half-blood, is declared by the passage before cited ("Both parents, brothers likewise." Sect. 1. § 4.) But, by here specifying the uterine relation, the prior right of the uterine (or whole) brother is intimated.

12. The half brother is rightly placed between the whole brother and nephew by Çríkara and Viçvarúpa.

12. The succession of the half-brother, between [the whole brother and the brother's son,†] as affirmed by Çríkara and Viçvarúpa, should be acknowledged; for he is inferior to the whole brother, who presents oblations to six ancestors which the deceased was bound to offer, and also presents three oblations to the father and others, in which the deceased participates; while the half-brother only presents three oblations in which the deceased participates: and he is superior to the nephew, because he surpasses him in the conferring of benefits, since he offers three oblations of which the deceased participates.

13. A further passage of Yájñavalkya.

13. In answer to the inquiry whether the half-brother, though re-united in co-parcenery, be inferior or not to the whole brother, Yájñavalkya says, "A half-brother, being again associated, may take the succession; not a half-brother, though not re-united: but one united [by blood, though not by co-parcenery,] may obtain the property; and not [exclusively] the son of a different mother."‡

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13. A half-brother, being again associated, &c.] This obscure text, darker even than the preceding one (§ 10.), admits of different interpretations, independently of variations in the reading, which also are numerous. It is necessary therefore for the understanding of the commentary, to exhibit a second version of the text, conformably with the interpretation of Çúlapáṇi: "A half-brother, being again associated, may not take the succession of his half-brother: [the whole blood,] though not re-united, shall obtain the property; not though united, the son of a different mother." Raghunandana, in the Dáya-tatva, remarks that the Mitákshará and Ratnákara concur in the same interpretation with Jímúta-váhana; from which he also does not substantially differ.

* Yájñavalkya, 2. 139. † Çríkṛshna. ‡ Yájñavalkya, 2. 140.

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14. Exposition of it.

mother, but associated again in co-parcenery, shall first take the inheritance; not generally any half-brother [whether associated or separated*].' The latter part of the text is in answer to the question, whether, inheriting first, he excludes the whole brother or takes the succession jointly with him? 'the whole brother, though not re-united in parcenery, shall take the heritage;' (here the word whole brother is understood from the preceding sentence:) 'not exclusively the son of a different mother, though re-united.' Or the term "united" may signify whole brother [or united by blood.] Accordingly the text is so read in the citation of it by Jitendriya as a passage of Vṛiddha Yájñavalkya: and, in that case, the term "associated" is understood from the preceding sentence.

15. Therefore the half-brother, who is again associated in co-parcenery, shall not take the succession exclusively; but the whole brother [shares it] though not associated. Such is the meaning: and consequently the whole brother, who is not re-united in parcenery, and the half-brother, who is associated, should divide the succession. Accordingly the author has employed the particle "but" [with the connective sense†].

15. An associated half brother inherits with the unassociated whole brother.

16. An objection is stated by Çríkara Miçra. The maxim, that "the re-united brother shall keep the share of his re-united co-heir," (§ 11.) is independent [of other precepts,‡] as it applies to the case of re-united half-brothers exclusively; and, in like manner, the maxim that "uterine [meaning the whole] brother retains the allotment of his uterine relation," (§ 10.) bears no reference [to any other rule,] when it is applicable to the case of unassociated whole brothers only: but, when there is a half-brother associated and a whole brother unasso-

An objection opposed by

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14. The text is so read.] The reading here exhibited is sodaro nányamatṛjaḥ instead of sanstshto nányamátṛjaḥ. The second verse of the stanza is read in the Kalpataru 'may not take the wealth of the half-brother,' nányodarya-dhanam haret, in place of nányodaryo dhanam haret, 'a half-brother,' may not take the wealth.' This reading is condemned by the author of the Ratnákara as unauthorized; and Raghunandana, in the Dáya-tatva, quotes the censure and apparently concurs in it.

16. In the disquisition on the passage dvayoḥ pranayanti.] This is the ninth (or, according to one reckoning, the seventh) adhikaraṇa or topic in the third section of Jaimini's seventh chapter. It is a disquisition on the interpretation of a passage of the Veda, which directs that a northern altar be prepared for the Cháturmásya sacrifice, and forbids it at two of the four sacrifices comprehended under that designation; namely, at the Vaiçvadeva and Çunásíríya: whence it is concluded, that, this being an exception to the more general rule, the altar is directed to be employed under that general rule in the remaining two sacrifices only: viz., at the Váruna-praghása and Sákamedha. The reasoning, introduced into this disquisition, is the groundwork of Çríkṛshna's objection. See Mitákshará, 2. 1. 34.

Çríkṛshna. † Çríkṛshna. ‡ Çríkṛshna. § Mímánsá 7. 3. 9.

ciated, if the two maxims be applied to this case in consequence of finding oth descriptions of brethren, then both maxims take effect with reference to each other. Now it is not right to make the same rule operative with and without reference to another maxim; for this argues variableness in the precept. Thus it is shown [by Jaimini,] in the disquisition on the passage dvayoḥ praṇayanti,* that the prohibition, relatively to two sacrifices, of the use of the uttara-vedi or northern altar directed generally for the four sacrifices [in which those two are comprehended], is not a prohibition [but an exception]; for, if the precept concerning the northern altar be taken with reference to the [denial, implying consequently] an option, in the instance of two sacrifices, and be taken absolutely and without reference to any other maxim in the instance of the two other sacrifices, there would be variableness in the precept. So, in regard to the subject under consideration, the maxims, that "the re-united brother shall keep the shares of his re-united co-heir," and that "the uterine [or whole] brother shall retain the allotment of his uterine relation," (§ 10.) are applicable in those cases in which the rules are operative independently of any other: but, if there be a half brother associated and a whole brother unassociated, the two rules are not applicable in this instance; and it would follow, that no one could take the estate [since there is no special provision in the law for this case.†] Therefore [the true interpretation is, that, in the case stated,] where the associated half brother might be supposed to be heir of his associated parcener, under the rule, that "a re-united brother shall keep the share of his re-united co-heir," the maxim that "the uterine [or whole] brother shall retain the allotment of his uterine relation," serves as an exception to that rule. Thus the half brother, though associated, cannot be supposed to be heir, if there be a brother of the whole blood. Then how does the succession go? The whole brother, whether re-united or not re-united in co-parcenery, inherits the property.

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Çrîkara's conclusion.

17. That is not congruent: for it is not true, that there is variableness in a precept, merely because two [rules‡], which are severally applicable to two [cases§], become applicable in a single instance at the same time.

17. Refutation of his objection.

18. Thus, in respect of the precepts enjoining the votary to bestow his whole wealth as a gratuity in one instance and no gratuity in the other, which are respectively applicable independently of each other, if either the priest doing the functions of Udgátṛ, or the one performing the office of Pratistotṛ, singly stumble [in passing

18. An example of the incongruity of his reasoning.

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18. If either the priest doing the functions of Udgátṛ] Among the priests, who officiate at the sacri[illegible] called Jyotishtoma, one is termed Udgátṛ and another Pratistotṛ. In the cour[illegible] of the ceremony the priests proceed from one apartment named

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* Mimánsá, 739. † Çrîkṛishṇa. ‡ Achyuta and Çrîkṛishṇa. § Ibid.

from the one apartment to the other, at the celebration of the sacrifice called Jyótishtoma :*] but, if both those priests should stumble at the same time, neither injunction would be applicable; for that would be a variableness in the precept.

19. A further example.

In like manner, under the precepts, which direct the priest to touch an oblation with the prayer denominated Cháturhotra at the full moon, and with the prayer termed Pañchahotra at the new moon; an oblation of curds consecrated to Indra is understood in the sacrifice named Upánçu-yága, and an offering of milk consecrated to Indra is similarly understood at the Agníshomíya sacrifice; and, both precepts being thus severally applicable in those instances, neither of them would take effect at the Ágneya sacrifice, since there would be variableness in the precept if both were applied to this case.

20. The instance referred to does not authorize

20. Therefore, the definition of variableness in a precept is its being a positive injunction without reference to any opposition in one instance, and [an eventual one†] with reference to the opposition of a different precept in another instance. Thus, in the example stated (§ 16), the prohibition bears reference to the injunction concerning the altar, expressed in these words " At this sacrifice prepare the uttara-vedi." Without opposition to that [injunction‡], it would be no precept. Therefore it is a command which bears reference to the injunction respecting the altar. Nor is it in constant opposition to it: for, were it so, the prohibition [as well as the injunction§] would be useless; since, without the prohibition [and injunction,¶] the omission of the altar might be deduced [from the silence of the law]. Therefore, even the injunction concerning the altar is a command which bears relation to the contrary prohibition; but, in regard to two of the periods of sacrifice, it is independent of any other rule. Consequently there is variableness in the precept; and an alternative must be inferred. But, in the case of any thing supposed as a matter of spontaneous option, a prohibition is an absolute forbiddance: for the occasional omission of the act was inferrible without the aid of an express prohibition.

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Havirdhánin to another denominated Haviṣpavamána. During their progress, if the Udgátṛ happen to stumble, the votary is enjoined to bestow his whole wealth in a gratuity. But, if the Pratistotṛ fall, the ceremony is terminated without any gratuity, or with a trifle only; and the sacrifice is to be recommenced.

19. The prayer denominated Cháturhotra.] Beginning with the words Pṛthví hotá. One, being four times called by Prajápati under the designation of átman or soul, replied in the words of this prayer. Hence he is named chaturhuta 'four times called;' and, for the sake of mystery, chaturhotṛ; from which the name of the prayer is derived. Taittiríya Bráhmaṇa; and Mádhava on Mímánsá. 3. 7. 4.)

The prayer termed Pañchahotra.] It begins with the words Agniḥ hotá.

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* Çríkṛishṇa &c. † Chúḍámani. ‡

§ Achyuta. ¶ Achyuta.

21. Accordingly [since there is variableness in the precept, when a general and a particular rule, or injunction and prohibition, are sometimes applicable in the same instance, but not when two particular rules are so ;* or since a prohibition, which is constant, is inferrible without the aid of either injunction or prohibition ;† the passage, which direct that the Shoḍasin shall be taken, and that it shall not be taken, [at an Atirátra sacrifice,] constitute an alternative.

A further illustration by an example.

22. But according to the doctrine of those, who affirm, that an alternative is inferred by this reasoning; namely that, since a prohibition implies a previous supposition [to the *contrary*,] the [negative‡] precept does not obviate the cause; an alternative would be inferrible even in the instance of a prohibition concerning that which was suggested only as a matter of spontaneous choice: for example, the passage which expresses "The priest makes not two [portions of an oblation of liquid butter] when a victim is offered; [nor at the sacrifice with acid asclepias:"] and other similar passages.

22. An objection obviated.

23. Moreover, since an effect cannot preclude its own cause, how can there be in one case opposition [which is necessary to constitute an alternative ?] for the precepts are not equipollent. But, admitting that such is the nature of prohibition, that it eradicates its own cause; it should eradicate it altogether, for [the precept, which suggested] the previous supposition, is of inferior cogency.

23. A further reason.

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In the sacrifice named Upánsu-yága] Sacrifices are directed to be performed at the full and change of the moon. The Upánsu-yága is one of those to be celebrated at the full moon and the Agníshomíya at new moon. Curds constitute the oblation at one, and milk at the other of these sacrifices. The A'gneya appertains to both periods; and both kinds of oblations are to be made on that occasion.

21. Passage, which direct that the Shoḍasin shall be taken] One passage of the Veda expresses "At the Atirátra take the Shoḍasin;" another, on the contrary, provides "At the Atirátra take not the Shoḍasin." It is inferred, that an alternative must be admitted; and that the Shoḍasin may optionally be used or not at the ceremony called Atirátra. (Jaimini's Mímánsa 10. 8. 4.)

Shoḍasin is a name for a vessel of a particular description. Çríkṛshṇa.

It is a wooden bowl employed at sacrifices in which the juice of acid asclepias is drunk.

22. The passage which expresses "the priest makes not two portions, &c." This passage, with the sequel of it which is here inserted between hyphens, forms the subject of a disquisition in Jaimini's Mímánsá. (10. 8. 3)

23. The precept [are not equipollent.] The author here alludes to a passage of Gautama: "If there be contradiction between equal authorities, an option is inferred."§ Achyuta, Çrikíshna &c.

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* Çríkṛshṇa. † Achyuta. ‡ Achyuta. § Gautama, 1. 4.

, that this prohibition concerns the supposition of something which spontaneous choice may suggest and is not a forbiddance of any thing deduced from a precept. That is an assertion which argues extreme ignorance: for it would follow, that an alternative does not exist; since the practice of what is commanded by precept, and the prohibition of a practice not commanded by precept, cannot be in opposition at the same time. The prohibition too would not be essential to the act of religion, since the practice of something suggested by spontaneous choice is not supposable as an essential part of a religious act.

24. Another argument refuted.

25. Therefore, [since the opposite opinion is erroneous,*] an alternative is inferred [not in the manner there proposed, but†] according to the reasoning set forth by us [viz., that, if the prohibition be constant, both injunction and prohibition would be unnecessary; and, if the injunction were invariably cogent, the prohibition would be vain.‡] But let that be; for why expatiate?

25. Conclusion against Çríkara's reasoning.

26. As for the remark of the same author, who says (§ 16.) that 'if there be a half brother associated and a whole brother unassociated, in which case the half brother might be supposed to be the heir under the rule, that "a re-united brother shall keep the share of his re-united coheir;" (§10.) then the maxim, that the uterine [or whole] brother shall retain the allotment of his uterine relation, (§ 10.) serves as an exception to that rule;' That is unsuitable, for, in this very case, the rule concerning the re-united co-heir might on the contrary serve as an exception to the maxim, that "the uterine [or whole] brother shall retain the allotment of his uterine relation," under which the whole brother might be supposed to be the heir: since there is not in this instance any ground of preference.

26. His inference is wrong;

27. But this author's interpretation of the text "A half brother being again associated, &c. (§13), as explanatory of the passage "a re-united brother shall keep the share of his re-united co-heir," is quite wrong: for, the intended purport being conveyed in that text, the passage in question would become superfluous.

27. And the purport of the text, as stated by him.

28. Moreover the exposition of the text [by Çríkara§], as signifying 'Let not the half brother, who is an associated half brother, take the estate; but the whole brother, (this term is understood,) who is not re-united, shall positively take it; a son of a different mother, though

28. As well as the interpretation of it, is erroneous.

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24. Cannot be in opposition at the same time. 'Or may subsist in the same instance.' For Çríkṛshṇa notices two readings of this passage: Upasanhárá-sambhavát and Upsanhára-sambhavát.

* Çríkṛshna.

† Çríkṛshṇa and Achyuta.

§ Çríkṛshṇa and Achyuta.

inherit;' is also erroneous, for the term 'half-' in the first part of the text, is needlessly repeated; and the phrase 'son of a different mother,' in the latter part of it, becomes superfluous; and the particle *api* is taken in the sense of positively.

29. His exposition leaves a case unprovided for.

Besides, under the interpretation of the passage the uterine [or whole] brother as an exception to claim of the associated half brother if a whole brother unassociated exist; and its consequent inapplicableness to the case of a whole brother and half-brother both unassociated; these would have an equal right of succession [under the general maxim, that brothers shall inherit; section 1. § 4.* since no distinction is specified:†] or else the property would belong to neither of them [if the general rule be explained by the particular one.‡]

30. Or else the objection alleged by him may be retorted.

30. But, if the passage concerning the uterine [or whole] brother be applicable to this case also, [taking the term "uterine" as intending such a brother generally, whether associated or unassociated,§] then the objection of variableness in the precept may be retorted on you; for the passage, concerning the re-united brother, bears reference to opposition in one case, [in that of the associated half brother and unassociated whole brother;‖] and bears no reference to opposition in another case, [in that of a whole brother and half-brother both unassociated:¶] in like manner as it is declared, that the general rule for preparing the vedí or altar at a sacrifice with the Soma plant, must be understood as applicable to sacrifices in which the use of the altar has not been otherwise directed; since there would be variableness in the precept, if it operate in the case of the Díkshiṇíya and other similar sacrifices, in bar of a command forbidding the altar suggested by the extension of a rule [concerning sacrifices celebrated at the full moon,] but in other instances operate without bar to any thing else.

31. It is not a valid objection to the proposed construction.

31. But, according to our interpretation, there is no variableness in the precept, even as that is understood by Çríkara: for the passages concerning the re-united brother and the uterine [or whole] brother (§ 10.) are relative severally to different cases; and that regarding "a half brother again associated" (§ 13.) declares the equal participation of a

ANNOTATIONS.

30. At a sacrifice with the Soma plant.] It is a general rule, that an altar is to be used at sacrifices in which the Soma or Asclepias acida is employed. An altar is also directed to be provided at sacrifices celebrated at the full of the moon. By extension of this rule to the Díkshiṇíya, which is one part of the sacrifice to be celebrated at that period, the use of the altar is deducible from this as well as from the general rule abovementioned. Now, since the injunction is unnecessary as regarding what is otherwise known, it is supposed, that, to give operation to the injunction in this case, it must be taken as a bar to the inference deducible from an extension of a different rule. Hence it is considered liable to the objection of variableness.

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* Achyuta. † Çríkṛshṇa. ‡ Çríkṛshṇa and Achyuta.
§ Çríkṛshṇa. ‖ Çríkṛshṇa. ¶

brother unassociated and a half brother associated. Thus the meaning of the first part of that text is, 'a half brother, being re-united in co-parcenery, shall take the succession, although a whole brother not re-united exist; but a half-brother, who is not re-united, shall not inherit.' The latter part of the text is in answer to the question, does not the whole brother inherit in that case? 'Though not re-united, the whole brother (this term is understood) shall take the heritage; and not exclusively the son of a different mother who is again associated. But it shall be taken and shared by both.' Thus the alleged variableness in the precept is obviated.

32. A passage of Manu confirms the interpretation.

32. So Manu likewise shows the same rule of succession. "His uterine brothers and sisters, and such brothers as were re-united after a separation, shall assemble together and divide his share equally."*

33. Exposition of his text and refutation of a contrary inference from it.

33. Reciprocation being indicated by the plural number, in the term "uterine brothers," as respecting these exclusively; and in the words "brothers re-united," as relating to the half-brothers; the words "assemble together" are properly employed to mark association of both [descriptions of brethren;†] for they would otherwise be unmeaning terms. Therefore it is from mere ignorance that it has been asserted, that both [do not inherit together,‡] because reciprocation is not expressed by the text. Moreover, since the text exhibits the conjunctive particle "and," in the phrase "and such brothers as were re-united, &c." and the rule [of grammar] expresses, that a conjunctive compound is used when the sense of the conjunctive particle is denoted;§ the assertion, that reciprocation is not expressed by the text, would imply, that even the conjunction does not bear that sense [viz., the sense of reciprocation.‖]

34. The whole brother inherits in preference to a half-brother, if neither be re-united.

A passage of Vṛhat Manu confirms this.

34. Therefore, if whole brothers and half brothers only [not re-united brothers of either description¶] be the claimants, the succession devolves exclusively on the whole brothers. Accordingly Vṛhat Manu says, "If a son of the same mother survive, the son of her rival shall not take the wealth. This rule shall hold good in regard to the immoveable estate. But, on failure of him, [the half-brother] may take the heritage."

35. It relates to divided immoveables.

A corresponding passage of Yama.

45. This rule shall hold good in regard to the immoveable estate.] This rule is relative to divided immoveables. For, immediately after treating of such [property,] Yama says, "The whole of the undivided immoveable estate appertains to all the brethren; but divided immoveables must on no account be taken by the half-brother."

* Manu, 9. 212.
2. 2. 29.

† Çrîkṛshna.
‖ Achyuta and Çrîkṛshṇa.

‡ Achyuta.
¶ Ibid.

36. All the brethren.] Whether of the whole blood or of the half-blood. But, among whole brothers, if one be re-united after separation, the estate belongs to him. If an unassociated whole brother and re-united half-brother exist, it devolves on both of them. If there be only half-brothers, the property of the deceased must be assigned in the first instance to a re-united one; but, if there be none such, then to the half-brother who is not re-united.

The succession devolves on the re-united whole brother in preference to one not re-united.

37. Accordingly the plural number is employed* in the term "brothers," (sect. 1. § 4.) for the purpose of indicating the succession of all descriptions of them, in the order here stated. Else it would be unmean-

37. Reason of the use of the plural number in a passage before cited (Sect. 1. § 4.)

38. The text, "a re-united [brother] shall keep the share of his re-united co-heir," (§ 10) is intended to provide a special rule governed by the circumstance of re-union after separation, and applicable to the case where a number of claimants in an equal degree of affinity occurs.

38. The passage under consideration (§ 10.) provides a special rule.

39. Hence, if there be competition between claimants of equal degree, whether brothers of the whole blood, or brothers of the half-blood, or sons of such brothers, or uncles, or the like, the re-united parcener shall take the heritage: for the text does not specify the particular relation; and all [these relations] were premised in the preceding text (sect. 1. § 4.†); and a question arises in regard to all of them. Therefore the text must be considered as not relating exclusively to brothers.

39. It is applicable to nephew and uncles, as well as to brothers.

40. Thus the brother's right of succession has been explained.

40. Conclusion.

SECTION VI.

On the Nephew's right of succession,—and that of other heirs.

1. On failure of brothers, the brother's son is heir: for the text of Vishṇu, having declared "it goes to the brothers," proceeds "After them it descends to the brother's

1. After brothers, nephews inherit

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36. All the brethren.] Effects other than immoveables go to the brothers of the whole blood whether separated or unseparated. Ragh. Dáya-tatva.

* Vide Sect. 2. § 27. † Çríkṛishṇa. ‡ Sect. 1. § 5.

2. Among these, the succession devolves first on the son of a uterine [or whole] brother; but, if there be none, it passes to the son of the half-brother(*a*). For the text expresses, "An uterine [brother] shall retain or deliver the allotment of his uterine relation" (sect. 5. § 10). Indeed the son of the half-brother, being a giver of oblations to the father of the late proprietor, together with his own grandmother, to the exclusion of the mother of the deceased-owner, is inferior to a son of a whole brother [who is the giver of oblations to the grandfather in conjunction with the mother of the deceased*].

2. The whole blood first, and then the half-blood.

3. Nor can it be pretended that the stepmother, grandmother and great grandmother take their places at the funeral repast, in consequence of [ancestors being deified†] with their wives: for the terms "mother" [grandmother and great grandmother‡] &c. [in such texts as the following‖] bear the original sense of 'his own natural mother,' 'father's natural mother;' and 'grandfather's natural mother;' and it is by those terms that they are described as taking their places at the funeral repast. Thus it is said, "A mother tastes with her husband the funeral repast consisting of oblations to the manes; and the paternal grandmother with her husband; and the paternal great grandmother with her's." But the introduction of stepmothers and the rest to a place at the periodical obsequies, is expressly forbidden. Thus the sage declares, "Whosoever die, whether man or woman, without male issue, for such person shall be performed funeral rites peculiar to the individual, but no periodical obsequies."

3. Stepmothers do not participate, like the natural mother, in the funeral oblations.

4. Besides, the command for the celebration of the funeral repast in honour of ancestors with their wives, is of invariable exigency; as it is universally acknowledged: but, since there are not stepmothers in every instance, the precept must relate to the natural mother; for the association of the variable and invariable exigency of the same command would be a contradiction.

4. It would be a contradiction.

5. Since the paternal uncle, like the nephew of the whole blood, offers two oblations, which the owner was bound to present, to two ancestors with their wives, should not the succession devolve equally on the uncle and nephew of the late proprietor? The answer is, the paternal uncle is indeed a giver of oblations to the grandfather and great

5. The paternal uncle has not equal pretensions with the nephew.

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2. For the text expresses "An uterine brother," &c.] Although there be no text which declares the right of a nephew of the whole blood before a nephew of the half-blood; yet, under the passage cited, which shows, that in the case of brothers, the whole blood excludes the half blood, it is reasonable, that the son of an excluded person should be debarred by the son of the person who excludes him. Çríkṛshṇa and Achyuta.

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* Çríkṛshṇa.
Çríkṛshṇa and Achyuta.
See 1 Morl. Dig. 313, 324.—*Ed.*

† Çríkṛshṇa and Achyuta.

‖ Çríkṛshṇa.

grandfather of the proprietor; but the nephew is giver of two oblations to two ancestors including the owner's father who is principally considered. He is therefore a preferable claimant, and inherits before the uncle(*a*).

6. Even the brother's grandson inherits before him.

6. Accordingly [since superior benefits are conferred by such a successor*,] the brother's grandson excludes the paternal uncle; for he is a giver of oblations to the deceased owner's father(*b*) who is the person principally considered.

7. But the brother's great-grandson is excluded, as too remote.

7. But the brother's great grandson, though a lineal descendant of the owner's father, is excluded by the paternal uncle: for he is not a giver of oblations, since he is distant in the fifth degree. Thus Manu says, "To three must libations of water be made, to three must oblations of food be presented; the fourth in descent is the giver of those offerings: but the fifth has no concern with them."† By this passage the fifth in descent is debarred.

8. The sister's son also inherits before the uncle.

8. But, on failure of heirs of the father down to the great-grandson, it must be understood, that the succession devolves on the father's daughter's son [in preference to the uncle;‡] in like manner as it descends to the owner's daughter's son [on failure of the male issue, in preference to the brother.](*c*)

9. So the daughter's son of the grandfather and great-grandfather are the last heirs in those several lines.

9. The succession of the grandfather's and great-grandfather's lineal descendants including the daughter's son, must be understood in a similar manner, according to the proximity of the funeral offering: since the reason stated in the text "for even the son of a daughter delivers him in the next world, like the son of a son,"§ is equally applicable; and his father's or grandfather's daughter's son, like his own daughter's son, transports his manes over the abyss, by offering oblations of which he may partake.

10. Manu and Yájñavalkya have not specified, but only indicated, their succession.

10. Accordingly Manu has not separately propounded their right of inheritance: for they are comprehended under the two passages, "To three must libations of water be made, &c."‖ and "To the nearest kinsman (sapiṇḍa) the inheritance next belongs."¶ Yájñavalkya likewise uses the term "gentiles" or kinsmen (gotraja)** for the

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8. In the manner as it descends to the daughter's son.] Although the succession ought previously to devolve on the sister, as it goes to the daughter before the daughter's son, nevertheless she is excluded from the succession because she is no giver of oblations at periodical obsequies; being disqualified by sex. But the daughter's right of inheritance before the daughter's son takes effect under the special provisions of an express text (Sect. 2. § 14.) Çríkṛshṇa.

* Çríkṛshṇa.

† Manu, 9. 186. Vide supra. Sect. 1. § 40.

‡ Achyuta and Çríkṛshṇa.

§ Manu, 9. 139.

‖ Manu, 9. 186.

¶ Manu, 9. 187. Vide infra. § 17 and 18.

** Vide Sect. 1. § 4.

(*a*) See 1 Morl. Dig. 328.—*Ed.*

(*b*) See 1 Strange, H. L. 38.

(*c*) See 1 Morl. Dig. 326, 328.—

purpose of indicating the right of inheritance of the father's and grandfather's daughter's son, as sprung from the same line, in the relative order of the funeral oblation; and for the further purpose of excluding females related as sapiṇḍas, since these also sprung from the same line.

11. Accordingly [since they are excluded.]* Baudháyana, after premising "A woman is entitled," proceeds "not to the heritage; for females, and persons deficient in an organ of sense or member, are deemed incompetent to inherit." The construction of this passage is 'a woman is not entitled to the heritage.' But the succession of the widow and certain others [viz., the daughter, the mother and the paternal grandmother,†] takes effect under express texts, without any contradiction to this maxim.

11. In general a female is incapable of inheriting. But a widow, a daughter and mother are speci-

12. On failure of any lineal descendant of the paternal great-grandfather, down to the daughter's son, who might present oblations in which the deceased would participate; to intimate, that, in such case, the maternal uncle shall inherit in consequence of the proximity of oblations, as presenting offerings to the maternal grandfather and the rest, which the deceased was bound to offer, Yájñavalkya employs the term, "cognates" (bandhu.)§ But Manu has indicated it only by a passage declaratory of succession according to the nearness of the oblation.

12. On failure of the paternal line, the property devolves on the maternal kindred.

13. Since the maternal uncle and the rest present three oblations to the maternal grandfather and other ancestors, which the deceased was bound to offer, therefore the property should devolve on the maternal uncle and the rest: for it is by means of wealth, that a person becomes a giver of oblations. Two motives are indeed declared for the acquisition of wealth: one temporal enjoyment, the other the spiritual benefit of alms and so forth. Now, since the acquirer is dead and cannot have temporal enjoyment, it is right that the wealth should be applied to his spiritual benefit. Accordingly Vṛihaspati says, "Of property which descends by inheritance, half should carefully be set apart for the benefit of the deceased owner to defray the charges of his monthly, six-monthly and annual obsequies." So A'pastamba ordains, "Let the pupil or the daughter apply the goods to religious purposes for the benefit of the deceased." By saying to defray the charges of his monthly, &c. obsequies" his participation, and by directing "religious purposes" his spiritual benefit, are stated as reasons. Accordingly the sage says, "Wealth is useful for alms and for enjoyment." It is reasonable, there-

13. For the property should be so applied to the spiritual benefit of the deceased: conformable with texts of Vṛihaspati and A'pastamba.

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11. Females are deemed incompetent to inherit.] Whether bearing the same or a different family name. Therefore the son's daughter has no right of inheritance. Ragh. on Dáya-bhága

* Çríkṛishṇa. † Achyuta and Çríkṛishṇa. § Vide Sect. 1 § 4.

fore, that, on failure of kindred who might present oblations in he would participate, the succession should devolve on the ma uncle and the rest, who present oblations which he was bound to

14. After the kindred on the mother's side, the distant kinsman is heir: according to a passage of Manu.

Accordingly [since the succession devolves on heirs down to the maternal uncle and the rest, in the order of oblations in which the deceased may participate, or which he was bound to offer;*] Manu, considering that purport as sufficiently indicated by the two passages above cited, "To three must libations be made, &c." "To the nearest kinsman the inheritance next belongs;" (vide § 7 and 17.) proceeds thus, "Then, on failure of such kindred, the distant kinsman shall be the heir, or the spiritual protector, or the pupil."†

15. The distant kinsman (sakulya) is the descendant of the paternal grandfather's grandfather or the remote ancestor. Such relatives are denominated **Samánodakas.** Their order of succession is in the series as exhibited. On failure of such heirs [down to the Samánodaka‡] succession devolves on the spiritual preceptor, the

15. He is the descendant of the grandfather's grandfather or remote ancestor.

preceptor or the pupil.

16. Otherwise [if the text of Manu do not intend the maternal uncle and the rest,§] how is the admission of maternal uncles and others affirmed without contradiction to Manu? Therefore this meaning is intended by him in the passage above cited; and there is no contradiction.

16. Such must be Manu's intention.

17. Accordingly, having declared, while treating of inheritance, "To three must libations of water be made; to three must oblations of food be presented; the fourth in descent is the giver of those offsprings; but the fifth has no concern with them;"‖ he adds "To the nearest kinsman (sapiṇḍa,) the inheritance next belongs;"¶ for the purpose of showing, that the fifth in descent, not being connected even by a single oblation, is not the heir, so long as a person connected by a single oblation, whether sprung from the father's or the mother's family, exists. Otherwise, since the relation of sapiṇḍa has been declared by a distinct text, ("Now the relation of sapiṇḍa or men connected by the funeral cake, ceases with the seventh person;"**) and the right of the fourth in descent to inherit is declared by the text "To the nearest kinsman the inheritance next belongs;"†† the passage, which begins "To three must libations be made, &c."‡‡ would be superfluous. It cannot be said, that it is intended to direct the celebration of funeral repast in honour of three ancestors: for it is inserted in the midst of a disquisition concernin[illegible] inheritance; and the funeral repast is ordained by a

17. As appears from several passages.

* Çrîkṛishṇa. † Manu, 9. 187. Vide infra. § 21 ‡
§ Çrîkṛishṇa. ‖ Manu, 9. 186. ¶ Manu, 9. 187.
** Manu, 5. 60. †† Manu, 9. 187. ‡‡ Manu, 9. 186.

text. Thus Manu says, "Let the householder honour the gods duly studying the Veda; the gods by oblations to fire as ordained by law; the manes, by pious obsequies; men, by supplying them with food; and spirits, by gifts to all animated creatures."*

18. Nor should it be pretended, that the text [of Manu, "To the nearest sapiṇda, &c.," § 17.†] is intended to indicate nearness of kin according to the order of birth, and not according to the presentation of offerings: for the order of birth is not suggested by the text. But Manu, declaring, that oblations of food, as well as libations of water, are to be offered to three persons, and that the fourth in descent is a giver of oblations, but neither is the fifth in ascent a receiver of offerings nor the fifth in descent a giver of them, thus declares nearness of kin, and shows that it depends on superiority of [benefits by‡] presentation of oblations.

18. Nearest of kin is not by birth.

19. Therefore a kinsman who is allied by a common oblation as presenting funeral offerings to three persons in the family of the father, or in that of the mother, of the deceased owner, such kinsman having sprung from his family though of different male descent, as his own daughter's son or his father's daughter's son, or having sprung from a different family as his maternal uncle or the like, [is heir §] and the next ("To three must libations of water be made," &c. § 7.) is intended to propound the succession of such kinsmen; and the subsequent passage ("To the nearest sapiṇda, &c. § 17.) must be explained as meant to discriminate them according to their degrees of proximity.

19. The kindred on the mother's side therefore inherit;

20. The order of succession then must be understood in this manner: on failure of the father's daughter's son or other person who is a giver of three oblations (presented to the father, &c.,) which the deceased shares or which he was bound to offer, the succession devolves in the next place on the maternal uncle and others [namely his son or grandson‖] who offer oblations to the maternal grandfather and the rest which the deceased was bound to present(*a*).

20. On failure of paternal kindred connected by funeral oblations.

21. But on failure of kin in this degree, the distant kinsman (sakulya) is successor. For Manu says, "Then, on failure of such kindred, the distant kinsman shall be the heir, or the spiritual preceptor, or the

21. After them the distant kin-

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20. The succession devolves in the next place on the maternal uncle, &c.] On failure of persons who are givers of oblations in which the deceased may participate, the kinsman [that is, the maternal grandfather, or maternal uncle, and so forth] is heir. Here also, as in the instance of the father and paternal ancestors, if the maternal grandfather be living, he is heir; but, on failure of him, the maternal uncle and other maternal kindred in order; for they present oblations, which the deceased was bound to offer. Ragh. Dáya-tatva.

The distant kinsman is one who shares a divided oblation.] The sakulya is of two descriptions; descending and ascending. The first intends the son of the great

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* Manu, 3. 81. † Achyuta. ‡ Achyuta. § Çrîkṛshna. ‖ Çrîkṛshṇa.

Manu, 9. 187. Vide Supra. § 14. (*a*) See 1 Morl. Dig. 329.—*Ed.*

The distant kinsman (sakulya) is one who shares a divided oblation (sect. 1. § 37.) as the grandson's grandson or other descendant within three degrees reckoned from him; or as the offspring of the father's grandfather or other remoter ancestor.

22. Among these claimants [whether ascending or descending,]* the grandson's grandson and the rest are nearest, since they confer benefits by means of the residue of oblations which they offer. [These descendants are therefore heirs.†] On failure of such, the offspring of the paternal grandfather's grandfather inherits in right of oblations presented to the paternal grandfather's grandfather and other ancestors who are sharers of the residue of oblations which the deceased was bound to offer.

22. First the grandson's grandson and his descendants. Then the descendants of the grandfather's grandfather, &c.

23. If there be no such distant kindred, the Samánodakas, or kinsmen allied by common libation of water, must be admitted to inherit, as being signified by the term sakulya [conformably with Baudháyana's explanation of it: sect. 1 § 37.‡]

23. Next remote kindred.

24. On failure of these, the spiritual preceptor [or instructor in knowledge of the veda§] is the successor. In default of him, the pupil [or student of the veda] is heir: by the text of Manu, "or the spiritual preceptor or the pupil." (§14.) On failure of him likewise, the fellow-student; by the text [of Yájñavalkya] "a pupil and a fellow-student." (sect. 1. § 4.)

24. After these, the preceptor, pupil and fellow-student.

25. In default of these claimants, persons bearing the same family name (gotra) are heirs. On failure of them, persons descended from the same patriarch are the successors. For the text of Gautama expresses "Persons allied by funeral oblations, family name and patriarchal descent, shall share the heritage [of a childless man; or his widow shall partake."||]

25. Then persons bearing the same family name; and descendants from the same patriarch.

26. On failure of all heirs as here specified, let the priests take the estate. Thus Manu says, "On failure of all those, the lawful heirs are such Bráhmaṇas, as have read the three vedas, as are pure in body and mind, as have

26. Next Bráhmaṇas.

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grandson and the rest to the third degree in the descending line; the other signifies the great-grandfather's father and other ancestors to the third degree in the ascending line. Çríkṛshṇa, Karma-sangraha.

25. Or his widow shall partake.] The passage, as cited in the text, was incomplete: the compiler having omitted the close of it, which is declaratory of the widow's participation. The defect of the quotation has been supplied. As the original passage stands in Gautama's institutes, it is not easily reconcilable with Jímúta-váhana's doctrine of the widow's preferable title.

26. Virtue whi[illegible] would be extinguished, &c.] This differs from Kullúka-bhaṭṭa's interpretation, which makes the passage relate to funeral rites: "thus the rites of obsequies cannot fail."

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* Çríkṛshṇa. † Çríkṛshṇa. ‡ Achyuta. § Çríkṛshṇa. || Gautama, 28. 19.

subdued their passions. Thus virtue is not lost."* Virtue which would be extinguished by the ample enjoyment [of its reward,] but is renewed by the acquisition of fresh merit through the circumstance of his wealth devolving on Bráhmaṇas, is not lost. Here also the author indicates the appropriation of the property for the benefit of the deceased.

27. In default of them, the king shall take the wealth : excepting however the property of a Bráhmaṇa. A failure of descendants from the same patriarch and of persons bearing the same family name, as well as of Bráhmaṇas, must be understood as occurring when there are none inhabiting the same village : else an escheat to the king could never happen.

27. Lastly the

28. If the right of the father's daughter's son, and of the maternal uncle and the rest, be not considered as intended by the text, "To three must libations of water be made, &c., (§ 7.) they would have no right of succession, since they have not a place among distant kinsmen and others, whose order of succession is specified. Nor can this be deemed an admissible inference, since they are indicated by Yájnavalkya under the terms "Gentiles and cognates" (sect. 1. § 4). Consequently it must be affirmed, that they have been indicated by Manu in this text (§ 7). Therefore such order of succession must be followed, as will render the wealth of the deceased most serviceable to him.

28. Unless this doctrine be admitted, the maternal uncle and the rest, not being specified, would have no right of inheritance.

29. Accordingly [since inheritance is in right of benefits conferred, and the order of succession is regulated by the degree of benefit ;†] the equal right of the son, the son's son and the son's grandson, is proper : for their equal pretensions are declared in the text, "By a son a man conquers worlds," &c. (sect. 1. § 31.) and in other similar passages(*a*). They equally present oblations to the deceased. Hence also the grandson and great-grandson, whose fathers are living, do not inherit, for they do not confer benefits, since they are forbidden to celebrate the periodical obsequies by skipping the surviving father ; the law providing, that oblations shall not be presented, overpassing a living person. Otherwise these [sons and grandsons, whose fathers are living,‡] would have the same right of inheritance with those whose fathers are deceased. Or the son alone would inherit as nearest of kin in the order of birth, to the exclusion of the son's son and son's grandson. Neither is there any express text declaratory of the equal rights of three descendants, son, grandson and great-grandson. Therefore it must be inferred, that the parity in their right of inheritance arises from the equal benefits conferred by them.

29. On the same principle of inheritance in right of benefits conferred, [illegible] the equal succession of the [illegible]dson and -grandson justified ; as well as the exclusion of the two last, if their fathers be living.

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* Manu, 9. 188. † Çríkṛshṇa. ‡ Achyuta and Çríkṛshṇa.

(*a*) See 1 Strange, H. L. 127, 128.—*Ed.*

30. In every case the wealth is appropriated in the manner most serviceable to the deceased.

30. In like manner the appropriation of the wealth of the deceased to his benefit, in the which has been stated, should in every case be according to the specified order.

31. Manu and the rest assent to this doctrine.

31. This doctrine, [that inheritance is deducible from reasoning and founded on services rendered,*] must be admitted to have the assent of Manu and other sages: for there can be no other purpose of propounding, under the head of inheritance, the superior benefits derived from sons and the rest; and the exoneration of the father from debt is stated as a reason for the son's inheriting: ("By the eldest son a man is exonerated from debt to his ancestors; therefore that son is entitled to take the heritage." Sect. 1. § 32.) redemption also is exhibited as a cause of succession to property: ("Even the son of a daughter delivers him in the next world like the son of a son."†) and there is no other reason for the equal right of inheritance of three descendants, the son and the rest, besides their deliverance [of their ancestors;] and the passage, "To three must libations of water be made, &c." (§ 7.) would be unnecessary [if such were not the purpose ;‡] and the exclusion of persons impotent, degraded, blind from their birth and so forth, is an apposite rule as founded upon their rendering no services; [but not so as grounded on the mere letter of the law: §] and it is troublesome to establish an assumed precept for debarring those before whom an heir intervenes; [as must be done upon any other supposition:] and it is reasonable, that the wealth, which a man has acquired, should be made beneficial to him by appropriating it according to the degree in which services are rendered to him.

32. It is maintained by Udyota;

32. This doctrine, as illustrated by the irreproachable Udyota,‖ should be respected by the wise.

33. And is consistent with the letter of the law.

33. If the learned be yet unsatisfied [with relying on reason¶ for the ground of the law of inheritance,] this doctrine may be derived from express passages of law. Still the same interpretation of both texts [of Manu, § 7. and 17.] must be assumed. But let this be. What need is there of expatiating?

34. The king takes the escheat on failure of heirs, excepting the wealth of a priest. So Manu declares.

Excepting the property of a Bráhmaṇa, let the king take the wealth [on failure of heirs]. So Manu directs "the property of a Bráhmaṇa shall never be taken by the king: this is a fixed law. But the wealth of the other classes on failure of all [heirs,] the king may take."** By the term "all" is signified every heir including the Bráhmaṇa (§26).

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31. Before who an heir intervenes.] As the grandson or great-grandson, whose own father is living, and so forth. Çríkṛishṇa

* Çríkṛishṇa. † Manu, 9. 139. Vide supra. C. 4. Sect. 2. § 10. ‡ Çríkṛishṇa. § Çríkṛishṇa.
‖ Vide supra. C. 2. § 9. ¶ Achyuta and Çríkṛishṇa. ** Manu, 9. 189.

35. The goods of a hermit, of an ascetic, and of a professed student, let the spiritual brother, the virtuous pupil and the holy preceptor take. On failure of these, the associate in holiness, or person belonging to the same order, shall inherit. Thus Yájñavalkya says, "The heirs of a hermit, of an ascetic and of a professed student, are, in their order, the preceptor, the virtuous pupil, and the spiritual brother and associate in holiness."*

35. Special rule of succession in the instance of religious orders: conformably with a passage of Yájñavalkya.

36. Goods, such as they may happen to possess, should be delivered in the inverse order of this enumeration. The student must be understood to be a professed one: for, abandoning his father and relations, he makes a vow of service and of dwelling for life in his preceptor's family. But the property of a temporary student would be inherited by his father and other relations.

36. Exposition of the text.

37. Thus has the distribution of the wealth of one, who leaves no male issue, been explained.

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35. The associate in holiness or person belonging to the same order.] This is according to the author's apprehension of the meaning of the text: but in fact, 'associate in holiness' is an epithet 'of spiritual brother.' Çríkṙshṇa.

36. Goods such as they may happen to possess.] Viz., the hoard of wild rice or other property of a hermit; the gourd, clout, and other effects of an ascetic; and the books, clothes and other goods of a student.

Recapitulation by Çríkṙshṇa Tarkálankára.

The order of succession to the property of a deceased man, is this. First the son inherits; on failure of him, the son's son; in his default, the son's grandson. However, a grandson whose father is dead, and a great-grandson whose father and grandfather are deceased, inherit at once with the son. On failure of descendants down to the son's grandson, the wife inherits: and she, having received her husband's heritage, should take the protection of her husband's family or of her father's, and should use her husband's heritage for the support of life, and make donations and give alms in a moderate degree, for the benefit of her deceased husband; but not dispose of it at her pleasure, like her own peculiar property. If there be no widow, the daughter inherits; in the first place, a maiden daughter; or on failure of such, an affianced daughter: but, if there be none, a married daughter: and she may be one, who has, or is likely to have, male issue; for both these inherit together: but one who is barren, or who is become a widow having no male issue, is incompetent to inherit. On failure of the married daughter, a daughter's son is heir. If there be none, the father succeeds; or, if he be dead, the mother. If she be deceased, a brother is the successor. In the first place, the uterine (or whole) brother; if there be none, a half brother. But, if the deceased lived in renewed co-parcenery with a brother, then, in case of all being of the whole blood, the associated whole brother is heir in the first instance; but, on failure of him, the unassociated whole brother. So, in case of all being of the half blood, the associated half brother inherits in the first place, and on failure of him the unassociated half brother. But, if there be an associated half brother and an unassociated whole brother, then both are equal heirs. In default of brothers, the brother's son is the successor. Here also a nephew of the whole blood inherits in the first instance; and on failure of such, the nephew of the half blood; but, in case of re-union of co-heirs, and on the supposition of all being of the whole blood, the associated son of the whole brother

* Yájñavalkya, 2. 138.

is in the first place heir; and, on failure of him, the unassociated nephew of the whole blood: or, on the supposition of all being of the half-blood, the associated nephew of the half-blood, is the first heir; and, on failure of him, the unassociated nephew. But, if the son of the whole brother be separate, and the son of the half brother associated, both inherit together, like brothers in similar circumstances. If there be no brother's son, the brother's grandson is heir. Here likewise the distinction of the whole blood and half blood, and that of re-united parcenery and disjoined parcenery, must be understood. On failure of the brother's grandson, the father's daughter's son is the successor: whether he be the son of the sister of the whole blood, or the son of a sister of the half blood.* If there be none, the father's own brother is heir; or, in default of such, the father's half brother. On failure of these, the succession devolves in order on the son of the father's whole brother, on the son of his half brother, on the grandson of his whole brother, and on the grandson of his half brother. In default of these, the paternal grandfather's daughter's son inherits; and, in this instance also, whether he be son of the father's own sister or son of the father's half sister: and, in like manner, [the whole blood and half blood inherit alike] in the subsequent instance of the succession devolving on the son of the great-grandfather's daughter. On failure of these heirs, the paternal grandfather is the successor. If he be dead, the paternal grandmother inherits. If she be deceased, the paternal grandfather's own brother, his half brother, their sons, and grandsons, and the great-grandfather's daughter's son are successively heirs. On failure of all such kindred, who present oblations in which the deceased owner may participate, the succession devolves on the maternal uncle† and the rest, who present oblations which the deceased was bound to offer. In default of these, the heritage goes to the son of the owner's maternal aunt. Or, failing him, it passes successively to the son and grandson of the maternal uncle ‡ On failure of these, the right of inheritance accrues to the remote kindred in the descending line, who present the residue of oblations to ancestors with whom the deceased owner may participate; namely, to the grandson's grandson and other descendants for three generations in succession. In default of these, the inheritance returns to the ascending line of distant kindred, by whom oblations are offered, of which the deceased owner may partake; namely, to the offspring of the paternal grandfather's grandfather and other ancestors, in the order of proximity. On failure of these, the succession devolves on the Samánodakas or kindred allied by a common oblation of water. In default of them, the spiritual preceptor is heir; or, if he be dead, the pupil; or, failing him, the fellow-student in theology. If there be none, the inheritance devolves successively on a person bearing the family name, and on one descendant from the same patriarch, in either case being an inhabitant of the same village. On failure of all relatives as here specified, [the property devolves on Bráhmaṇas learned in the three Vedas and endowed with other requisite qualities :§ and, in default of such,] the king shall take the escheat, excepting however the property of a Bráhmana. But the priests, who have read the three Vedas and possess other requisite qualities, shall take the wealth of a deceased Bráhmana.

So the goods of an anchoret shall devolve on another hermit considered as his brother and serving the same holy place. In like manner the goods of an ascetic shall be inherited by his virtuous pupil: and the preceptor shall obtain the goods of a professed student. But the wealth of a temporary student is taken by his father or other heir. Such is the abridged statement of the law of inheritance. Çríkṛshṇa.

Remark by the Translator.

The son and grandson of the maternal uncle ought to precede the son of the maternal aunt, by the analogy of the rule of inheritance on the father's side. But three collated copies of Çríkṛshṇa's commentary agree in stating the order of succession as here exhibited. On the other hand the same author, in his original treatise on inheritance

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* The son of the proprietor's own sister, and the son of his half sister, have an equal right of inheritance; according to A'chárya Chúḍámaṇi. Çríkṛshṇa, Krama-sangraha.

† The maternal grandfather inherits before his son the maternal uncle, according to the Dáya-tatva of Raghunandana and Krama-sangraha of Çríkṛshṇa.

‡ See the note subjoined to this summary.

§ Krama-sangraha.

CHAPTER XII.

On a second partition of property after the re-union of co-parceners.

1. When parts is again re-union of parceners, the shares must be equal.
So Manu, &c.

1. Next the partition of the property of re-united co-parceners is explained. On that subject Manu and Vishṇu say, "If brethren, once divided and again together as parceners, make a second the shares must in that case be equal: there is not in this instance any right of primogeniture."*

entitled Krama-sangraha, exhibits the succession on the mother's side in the following order: 'first the maternal grandfather; next the maternal uncle; then the maternal uncle's son; after him, the maternal uncle's son's son; and subsequently the maternal grandfather's daughter's son: [on failure of these, the maternal great-grandfather, his son, his son's son, his son's grandson, and his daughter's son: again, on failure of these, the maternal grandfather's grandfather, his son, his son's son, his son's grandson and his daughter's son.†]' It must be remarked, however, that the text of Çríkṛshṇa's treatise, according to some copies of it, interposes the mother's sister's son between the maternal uncle and his son. But that is an evident mistake; for the mother's sister's son is the same with the maternal grandfather's daughter's son, who is placed by the same author after the maternal uncle's grandson.

The author of the Dáya-nirṇaya states the succession differently: viz. 'First the maternal uncle; then the maternal uncle's son; next the maternal grandfather; after him, the mother's sister's son; subsequently the maternal uncle's son's son; and lastly the maternal great-grandfather.' He gives reasons founded on the number of oblations deemed beneficial to the deceased owner.

Jagannátha Tarkapanchánana intimates the opinion, that the son of a son's daughter, or of a grandson's daughter, or of a niece, or of a nephew's daughter, are entitled to the succession before the maternal grandfather. (Digest of Hindú law, Vol. . p. 230.)

I find nothing else upon the subject in other writers of the Bengal school; and, amidst this disagreement of authors, I should be inclined to give the preference to the authority of Çríkṛshṇa's Krama-sangraha; because the order of succession on the mother's side, as there stated, follows the analogy of the rule of inheritance on the father's side. C.

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1. Property of re-united co-parceners.] According to the doctrine of those who contend for a general property of co-parceners in the aggregate estate, re-united property is wealth in which an aggregate property is raised by the annulment of previously vested several rights, through a stipulation or agreement with a father, brethren, &c. concluded subsequently to partition with one accord, to this effect 'the wealth, which is thine, is mine; and that, which is mine, is thine.' But, according to the author's doctrine, it is wealth in which undistinguished several rights are raised by the annulment of the previous several rights through a stipulation as abovementioned.

* Manu, 9. 210. Vishṇu, 18. 41.

† That part of the text which is enclosed between crotchets is wanting in some copies of the Krama-sangraha.

2. The shares must be equal.] This supposes re-union of brothers belonging to the same tribe. But, in the case of association of brothers appertaining, the one to the sacerdotal, and the other to the military tribe, the of distribution must be understood to conform the original allotment of shares: for the text is intended only to forbid an elder brother's superior portion as before allotted to him. Accordingly [since unequal partition, regulated by difference of tribes, is not denied;*] Vṛhaspati, saying "Among brethren, who, being once separated, again live together through mutual affection, there is no right of primogeniture when partition is again made;" prohibits only the assignment of a superior share to the eldest, but does not ordain equality of allotments.

2. That is, the superior allotment in right of primogeniture is forbidden.

A passage of Vṛhaspati confirms this construction.

3. Re-united co-parceners are described by Vṛhaspati: "He, who, being once separated, dwells again, through affection, with his father, brother or paternal uncle, is termed re-united."

3. Definition of "re-united co-parcener," in a passage of Vṛhaspati.

4. A special association among persons other than the relations here enumerated, is not to be acknowledged as a re-union of parceners: for the enumeration would be unmeaning.

4. It is restricted to certain relations: father and son; brothers, uncle and nephew.

5. Other particular rules, which have been set forth under the head of partition among brothers, must be observed in this case also.

5. Other rules hold good in this as in any partition among brothers.

6. Thus has the right of a re-united parcener been explained.

6. Conclusion.

CHAPTER XIII.

On the distribution of effects concealed.

1. The distribution of that, which was concealed at the time of partition and is afterwards discovered, shall be now taught. On that subject Manu says, "When all the debts and wealth have been justly distributed according to law, any thing, which may be afterwards discovered, shall be subject to an equal distribution."†

1. If effects have been concealed and be discovered, they are subject to distribution, as u.

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5. Other particular rules.] Wealth, acquired without use of the joint stock, belongs to the acquirer exclusively, and is not shared by the rest: but, in the instance of the gains of science, such of the brethren as are equally or more learned participate;

* Çrîkṛishṇa and Achyuta.

† Manu, 9.

2. The division of it should be precisely similar to that which had been previously made; and a less share is not to be given, nor no share, to the person who concealed the property, as a punishment of his concealment. Such is the meaning of the sentence "shall be subject to an equal distribution." Nor is the text intended to enjoin the allotment of equal shares of the property to all the parceners: for there is no reason for prohibiting the deduction in favour of the eldest, and so forth; and it would follow, that brothers belonging, one to the sacerdotal, another to the military, and the rest to other tribes, would have equal shares.

2. The second distribution is made on the same principles with the first.

3. Thus Yájñavalkya says, "Effects, which have been withheld by one co-heir from another, and which are discovered after the separation, let them again divide in equal shares: this is a settled rule."*

3. A passage of Yájñavalkya confirms this.

4. So Kátyáyana declares [by the close of the following text,†] that a division shall be again made of that which has been distributed in an undue manner. "What has been concealed by one of the co-heirs, and is afterwards discovered, let the sons, if the father be deceased, divide equally with their brethren. Effects, which are withheld by them from each other, and property which has been ill distributed, being subsequently discovered, let them divide in equal shares. So Bhṛgu has ordained."

4. Kátyáyana directs what has been ill distributed to be divided

5. But a fair distribution is conclusive.

5. But the maxim, "Once is the partition of inheritance made,"‡ relates to the case of a fair distribution.

6. And what has been already justly divided, is not distributed afresh.

6. "Being subsequently discovered."] The meaning is, that what has been already divided, is not to be again distributed.

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and, in the case of wealth acquired with the use of the joint stock, all partake. These and other special rules, set forth under the head of partition among brethren, must be observed also in the case of partition after re-union. Çríkṛshna.

2. For there is no reason.] Since the text is significant as obviating a supposition, that the withholder of the effects shall have a smaller share, or none, it is illogical to make it a restriction of the precept for allowing a deduction of a twentieth part and so forth to the eldest, &c. Çríkṛshṇa.

Since the sentence, "shall be subject to an equal distribution," is pertinent as grounded on the reasons here stated; it is wrong to make it a restriction of a different text. Achyuta.

If a younger brother be the person who withholds the effects, the eldest, though faultless, whould have less than his regular share, and the youngest more. This objection is also to be understood. Ragh. on Dáya-bhága.

The Mitákshará, Sūlapáni, Kullūkabhaṭṭa and others maintain the doctrine which is here opposed. Ragh. ibid.

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* Yájñavalkya, 2. 127. † Çríkṛshna. ‡ Manu, 9.

7. Kátyáyana provides that violence shall not be used to compel restitution of effects withheld; nor shall the co-heir make good what he has consumed.

7. So Kátyáyana says, "Effects, which have been taken by a kinsman, he shall not be compelled by violence to restore: and the consumption of unseparated kinsmen, they shall not be required to make good." By gentle means, and not by violence, a kinsman shall be made to restore the effects taken by him. But what has been consumed by a co-heir during co-parcenery over and above his due proportion, he shall not be required to make good.

8. An argument against the doctrine, that embezzlement of common property is a theft.

8. In answer to those authors, who contend, that, in this case, as there is the property of another in the common effects, he, who embezzles them, is a thief and of course a sinner, the following argument is propounded: since the received import of the term conveys, that a thief is he, who usurps a right in the property of another, without a title [by gift, sale or other act of the owner,*] being clearly conscious, that the thing belongs to another; but, in the present case, the person cannot distinguish 'this is mine and that is another's,' for the goods are undivided; therefore, as donation is complete then only, when the owner, conscious that the thing is his, relinquishes it with a view to its becoming the property of another person, and that other person is sensible of his property, apprehending 'this is become mine;' but that cannot occur in respect to common goods, and therefore common property is pronounced unfit to be given; so theft likewise is complete by the consciousness that 'this is not mine, but another's:' therefore the crime of theft is not imputable to the act of embezzling what is common.

9. Embezzlement is not theft.

9. But the term embezzlement or withholding (apahára) signifies concealment; and concealment is not exactly theft; for the word theft is in use for an unconcealed taking. Thus Kátyáyana says, "The taking of another's goods, whether privately or openly, by night or by day, is termed theft." Accordingly [since the concealment of common property is not theft,†] it has been before declared, that the withholder of the goods shall not be compelled by violence to restore them. (§ 7.) But, if it were a theft [in him who withholds common property,‡] then, under the text which directs, that "Having compelled the thief to restore the stolen goods, the king should smite him by various modes of condign punishment:"§ admitting even that he should be made to restore the goods by gentle means, still the smiting of him would be indispensable.

10. Accordingly the person embezzling has nevertheless his regular share.

10. This too [namely that such is the definition of theft,‖] appears from the sages authorizing the allotment of a share even to the withholder of common property.

* Çríkṛshṇa. † Çríkṛshṇa. ‡ Çríkṛshṇa.

§ Yájñavalkya, 2. 268. ‖ Achyuta and Çríkṛshṇa.

11. Accordingly it is observed by Viçvarúpa, 'The crime of theft is not here imputable ; for the recital of the text obviates that supposition.' His meaning is, because the sense of the verb to steal is not applicable to the case.

11. Viçvarupa's opinion is consonant to this.

12. Hence also it is remarked by Jitendriya, in the chapter on expiation and penance, that, 'if a man seize gold appertaining to another by mistake for iron or other matter [of little value ;] or something which is not gold, mistaking it for this substance ; or a thing resembling some chattel of his own but belonging to another person, by mistake for his own ; in all these cases there is not a complete seizure [or wilful taking of the gold :] for, in these several instances, there is not a knowledge of its belonging to another person, being such as the thing in fact is.' In like manner, in the present instance also, [viz. in that of common property, *] the same holds good : for, previous to partition, a discriminative property, referrible to particular persons relatively to particular things, is not perceived. Consequently there is not in this case a complete theft.

12. And so is Jitendriya's.

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12. Consequently there is not in this case a complete theft.] Raghunandana contests this reasoning, without however materially differing as to the result. He says, 'It is the doctrine of Jitendriya, and of the authors of the Dáya-bhága and Práyaçchitta-Vivéka, that, if goods be taken knowing them to be another's, the crime of theft is committed; but that crime is not imputable to one who uses them by a mistake as to the substance. Their assertion, that the appropriation of another's property by mistake for his own is not theft, appears unsatisfactory: for it is at variance with the story of Nṛga in the Bhágavata. "A cow, belonging to a certain eminent priest, strayed into my herd of kine, and being confounded with them was given by me, ignorant of the circumstance, to a man of the sacerdotal tribe. The owner, seeing her led away, claimed her for his own; and the other replied, she is mine by gift; Nṛga gave her to me. The priests, contending, addressed me, setting forth their claims: you are the giver, said the one; the lawless taker, said the other. Hearing this, I was confounded. For that sin was I transformed into a lizard; since which time I have seen myself, O prince, in this degraded form."†

'But, if many rings belonging to diverse persons be mixed together, it is no theft if one sell another's ring by mistake for his own, in consequence of their similarity: for they were placed together under the conviction, that, in the case of many articles which have no discriminative mark, as cowries or the like, belonging to different persons, being intermixed, no offence is committed if they be reciprocally used by a sort of barter: else a person would not do so, [he would not place them together,‡] under the apprehension of offence. The following passage of the Matsya puráṇa relates to this case: "The man, who, through ignorance, makes a sale of another man's chattels, is faultless; but, wilfully doing so, he merits punishment as a robber." Therefore, the disposal of chattels belonging exclusively to another person, without such person's consent and with the reflection, "this is mine and shall be disposed of according to my pleasure," is theft. Sometimes it is mental, being a resolution only. In other instances it is corporeal, as an actual gift or sale. But such [a theft§] cannot happen in the case of the goods of undivided brethren: for it cannot be distinctly ascertained "this is mine and that is another's." Accordingly [since there is no theft,‖] Kátyáyana says, "Effects which have been taken, &c." (§ 7.) Here taken [or more literally embezzled] is used metaphorically.

, 10. 64. ‡ Káçiráma, §

13. Admitting it to be theft, the guilt is not incurred.

13. Or, admitting that it is a theft, the guilt of robbery is not incurred: for the text allows a share even to the person who embezzles the property. Else, in the case of embezzling gold or other valuable effects, the offender, being degraded from his tribe, would have no allotment.

14. An objection answered.

14. If it be alleged, that, since there is no text expressly authorizing the allotment of a share to the thief who has embezzled gold to an amount sufficient to cause his degradation from his tribe, the rule for the allotment of a share is presumed to be applicable to the case of theft of other effects: but why may not the law which forbids the stealing of gold or the like, be the rather considered as relating only to goods appertaining to another, and not common? Still, however, there is no proof or authority on which to ground the selection [of one of these restrictions in preference to the other.] The answer to this alleged objection is as follows: in the legal definition, "the taking of another's goods is theft,"* "another's" signifies appertaining to a different person to the utter exclusion of any right of his own; for, of two sorts of property, common and several, the notion of several property is most readily presented. Therefore the proposition is similar to that which provides for the previous performance of a sacrifice, [preparatory to the sacrifice with the acid asclepias,†] where an oblation, such as is presented at the full of the moon, intends particularly the offering of a cake of ground rice, as used at the Agníshoma [one of the ceremonies performed at that period,] and not the oblation of liquid butter, as practised at the Upánsu-yága, for this is common to the Agníshoma and to sacrifices bearing other denominations.

15. Báloka's concurrence inferred.

15. Accordingly [since it is not theft,‡] there is no censure anywhere expressed in Báloka on such a subject [viz. in regard to the taking of common property.§]

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'Thus also there is no offence in taking a treasure which is found. For it is a thing of which the owner is lost.

'There is not a similar [innocency‖] in the case of associated traders: for no text indicates it. On the contrary, it is directed by a passage of Yájñavalkya (2. 264), that a fraudulent partner shall be dismissed without profit. Traders have not, as in the instance of inherited effects, a property vested in several persons relatively to the same chattel. But, by reason of intermixture, the property in the goods is uncertain.'

14. An oblation such as is presented at the full of the moon, intends particularly the offering of a cake of ground rice.] Two sorts of oblations are commonly used at different sacrifices. One, which is the simplest, consists of clarified butter only; the other, termed purodása, is a cake of ground rice kneaded with hot water into the form of a tortoise and roasted on a specific number of potsherds before one of the consecrated fires; it is then smeared with clarified butter, and presented as a burnt offering in the consecrated fire.

15. Accordingly since it is not theft.] The author has, in this disquisition, relied on the doctrine of Those who maintain a general property vested in the co-parceners over the aggregate estate. But, according to his own doctrine of several rights to portions of the estate, it is difficult, even with all this laborious argument, to the inference of theft. Çríkṛshṇa.

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* Kátyáyana. Vide supra. § 9. † Achyuta. ‡ Çríkṛshṇa.

§ Achyuta and Çríkṛshṇa. ‖ Achyuta.

16. A remark confuted.

16. It is a remark of Bâla, that, as in the instance of green and of black kidney beans* in relation to sacrifices, where it might be supposed, that black kidney beans would be a fit substitute when green kidney beans are not procurable, but the use of such beans is prohibited by an express passage of scripture which declares that black kidney beans are unfit to be employed at sacrifices; so, notwithstanding the taking of that which is, and that which is not, his own, [being common,] is permitted, still the taking of what exclusively is not his own is forbidden: this is puerile; for the definition of theft, as above explained, is not applicable [to the case of embezzlement of common property.†] It cannot be affirmed, that black kidney beans are unemployed in sacrifices; although ground particles of green beans, intermixed with black beans, be employed: for, in such case, mixed black beans appear to be used at the sacrifice.

17. Conclusion.

17. Thus has partition of effects concealed by co-parceners from each other, been discussed.

CHAPTER XIV.

On the ascertainment of a contested partition.

1. Mode of ascertaining the fact of partition, stated by Nárada.

1. The determination of a doubt, regarding the fact of a partition having been made, is next explained. On that subject Nárada says, "If a question arise among co-heirs in regard to the fact of partition, it must be ascertained by the evidence of kinsmen, by the record of the distribution, or by the separate transaction of affairs."(*a*)

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16. It is a remark of Bála.] In the silence of the commentators, it appears uncertain whether this be the name of an author; and whether the person, noticed in the preceding paragraph under the name of Báloka, be intended: or whether the meaning be, 'it is the remark of a child (bála);' it is puerile.

As in the instance of green and of black kidney beans.] The author here adverts to the reasoning contained in the Mímánsá 6. 3. 6. Vide Mitákshará C. 1. § 9. § 11.

1. By the record of the distribution.] Achyuta and Çríkṛshṇa notice a variation in the reading of the text bhogalekhyena, in place of bhágalekhyena. Their exposition of that reading is 'by occupancy or by a writing.' In the various quotations of this passage in numerous compilations, no other hint of such a reading has been found: except in Bálam-bhaṭṭa's commentary on the Mitákshará.

Jímûta-váhana makes subsequent mention (§ 5.) of another unauthorized variation of the text.

* Mudga, Phaseolus Mungo, green kidney beans. Másha, Phaseolus max. v. radiatus; black kidney beans.

† Çríkṛshṇa. ‡ Nárada, 13, 35. (*a*) See 1 Morl. Dig. 483.—

2. The mention of kinsmen is intended to show, that, if such be forthcoming, other persons should not be witnesses. Accordingly [since a recourse to witnesses is forbidden when kinsmen are forthcoming,*] Yájñavalkya says, "When partition is de the fact of it may be ascertained by the evidence of kinsmen, relatives and witnesses, and by written proof; or by separate possession of house or field."†

2. Exposition of the text. A similar passage of Yájñavalkya.

3. In the first place "kinsmen" or persons allied by community of funeral oblations, are witnesses. On failure of them, relatives, as signified by the term bandhu. In default of these, strangers may be witnesses. For, if they were equally admissible, the specific mention of "kinsmen" and "relatives" would be unmeaning; since they are comprehended under the term "witnesses."

3. Order in which the various proofs are admissible.

4. Hence also Çankha says, "Should a doubt arise on the subject of a partition of the wealth of kindred, the family may give evidence, if the matter be not known to the relations sprung from the same race." "Relations sprung from the same race" are 'kinsmen.' If the matter be not known to them, "the family" or relatives [as the maternal uncles and the rest.‡] map give evidence: but not a stranger [while a person of the family can bear testimony.§] But, if these also be uninformed, any other person may be a witness.

4. A passage of Çankha expounded.

5. Accordingly, kinsmen are stated by Nárada (§ 1.) as the chief evidences: and a different reading, jñárbhiḥ, 'persons acquainted with the matter,' [instead of jñátibhiḥ, 'kinsmen,'] is unfounded.

5. The reading of Narada's text confirmed.

6. Next the proof is by written evidence: but written proof is [in general] superior to oral testimony: being so declared [by an express passage of law: Testimony is better than presumption; and writing is better than oral evidence."‖]

6. Written evidence in this case some after oral evidence.

7. In the next place, the proof is by the circumstance of separate transaction of affairs (§ 1.) as it is stated by Nárada, "Gift and acceptance of gift, cattle, grain, house, land and attendants, must be considered as distinct among separated, brethren, as also diet, religious duties,

7. Next presumptive proof is admitted; as directed by Nárada:

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7. With their co-heirs.] This is according to the reading of the text, as it is expounded in the Smṛti-chandriká. But copies of Jímúta-váhana exhibit svarithataḥ 'with their own wealth,' instead of svarikthéshu 'with their co-heirs,' or atharikthinám the correspondent reading which occurs in the Ratnákara. As neither Jímúta-váhana, nor his commentators, explain the passage, it has been thought expedient to follow the reading which preserves the best sense.

* Çríkṛshṇa.
§ Çríkṛshṇa.
† Yájñavalkya, 2. 150.
‖ Achyuta and Çríkṛshṇa.
‡ Víramitrodaya.

income and expenditure. Separated, not unseparated, brethren may reciprocally bear testimony, become sureties, bestow gifts and accept presents. Those, by whom such matters are publicly transacted with their co-heirs, may be known to be separate even without written evidence."*

8. So Vṛihaspati : " A violent crime, immovable property, a deposit, and a previous partition among co-heirs, may be ascertained by presumptive proof, if there be neither writing nor witnesses. The exertion of force, a blow, or the plunder, may be evidence of a violent crime ; possession of the land may be proof of property ; and separate wealth is an argument of partition. They, who have their income, expenditure and wealth distinct, and have mutual transactions of money-lending and traffic, are undoubtedly separate.

8. And by Vṛihaspati.

One brother gives and another accepts, or they have separate house and land, or their income and expenditure [of wealth†] and abode are separate ; or, when a loan or other affair is transacted by one, another is made witness to it, or becomes surety ; or they have mutual transactions of money-lending or the like ; or one, having bought certain goods from another person, sells it for traffic to his brother ; in these and similar instances, since any such act can only take place among divided brethren, a presumption of partition is deduced from it by the intelligent.

9. Interpretation of the text.

10. It is not to be concluded from the use of the plural number in the phrase "by whom such matters are transacted" (§ 7.), that the concurrence of all those circumstances is required. For these texts are founded on reason ; and the reason is equally applicable in every several instance.

10. Any one of the stated proofs is sufficient.

11. By saying "if there be neither writing nor witnesses," (§ 8.) it is intimated, that presumptive proof is to be admitted only in default of written and oral evidence.

11. Presumptive proof is admitted for want of direct evidence.

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8. Exertion of force, a blow, &c.] The commentary of Çríkṛishṇa confirms and explains the reading, as exhibited in Jímūta-váhana's quotation. But, in the Smṛti-chandriká, the text is read and interpreted culánubandha 'a family feud,' instead of balánubandha 'an exertion of force,' and Vyágháta is expounded 'rivalship' instead of 'mark of a blow.'

11. By saying "if there be neither writing nor witnesses."] This remark confirms the reading of the passage, as exhibited in the text. But, in the Smṛti-chandriká, it is read "if there be no witnesses ;" na syur yatra cha sákshinaḥ; in place of na syátám Patra-sákshinau.

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* Nárada, 13. 38. 40.

† Çríkṛishṇa.

CHAPTER XV.

Peroration.

1. Gratification cannot be afforded in this work, to those whose comprehension of the principles of the law of inheritance is impeded by submission to the authority of teachers : but the author's labour has been devoted to reconcile the doctrines of sages whose intellect was governed by evidence [of holy writ.]

2. This treatise, composed by Jímúta-váhana, should be considered as adapted to clear the doubts which arise from the various interpretations of preceding authors.

3. Thus, in the Dharmaratna, or gem of the law, composed by the great doctor the fortunate Jímúta-váhana, the Dáya-bhága, or law of inheritance, is finished.

ANNOTATIONS.

1. The authority of teachers.] As Çríkara-miçra and the rest.

Sages whose intellect, &c.] Achyuta and Çríkṛishṇa notice another reading of this passage, manísha sambádé, instead of munínám sambáde. According to that reading, the sense is "devoted to reconcile the doctrines of those who attend to proof and demonstration."

THE LAW OF INHERITANCE,

FROM THE

MITÁKSHARÁ,

A COMMENTARY BY VIJÑANEÇVARA ON THE INSTITUTES OF YA'JÑAVALKYA.

CHAPTER I.

SECTION I.

Definition of Inheritance; and of Partition.—Disquisition on Property.

1. Evidence, human and divine, has been thus explained with [its various] distinctions; the partition of heritage is now propounded by the image of holiness.

1. Subject proposed.

2. Here the term heritage (dáya) signifies that wealth, which becomes the property of another, solely by reason of relation to the owner.

2. Inheritance defined.

ANNOTATIONS.

1. Evidence human and divine.] Intending to expound with great care the chapter on inheritance, the author shows by this verse the connexion of the first and second volumes of the book. Subodhiní.

The image of holiness.] Yájñavalkya, bearing the title of contemplative saint (Yogíçvara,) and here termed the image of holiness (Yogamurti.) Bálam-Bhaṭṭa.

2. Solely by reason of relation.] "Solely" excludes any other cause, such as purchase or the like. "Relation," or the relative condition of parent and offspring and so forth, must be understood of that other person, a son or kinsman, with reference to the owner of the wealth. Bálam-Bhaṭṭa.

[illegible]ing is this. Wealth, which becomes the property of another, (as a son or other person bearing relation,) in right of the relation of offspring and parent or the like, which he bears to his father or other relative who is owner of that wealth, is signified by the term heritage. Subodhiní.

3. It is of two sorts: unobstructed (Apratibandha,) or liable to obstruction (Sapratibandha.) The wealth of the father or of the paternal grandfather, becomes the property of his sons or of his grandsons, in right of their being his sons or grandsons: and that is an inheritance not liable to obstruction. But property devolves on parents (or uncles,) brothers and the rest, upon the demise of the owner, if there be no male issue: and thus the actual existence of a son and the survival of the owner are impediments to the succession; and, on their ceasing, the property devolves [on the successor] in right of his being uncle or brother. This is an inheritance subject to obstruction. The same holds good in respect of their sons and other [descendants.]

3. It is lineal, or collateral.

4. Partition (vibhága) is the adjustment of divers rights regarding the whole, by distributing them on particular portions of the aggregate.

4. Partition defined.

5. Entertaining the same opinion, Nárada says, "Where a division of the paternal estate is instituted by sons, that becomes a topic of litigation called by the wise partition of heritage."* "Paternal" here implies any relation, which is a cause of property. "By sons" indicates propinquity in general.

5. Nárada describes this head of actions.

ANNOTATIONS.

3. In right of their being his sons or grandsons.] A son and a grandson have property in the wealth of a father and of a paternal grandfather, without supposition of any other cause but themselves. Theirs consequently is inheritance not subject to obstruction. Subodhiní.

Property devolves on parents, &c.] Viçveçvara-Bhaṭṭa reads "parents, brothers and "the rest" (pitṛ-bhrátrádínám) and expounds it 'both parents, as well as brothers and so forth.' Bálam-Bhaṭṭa writes and interprets 'an uncle and a brother or the like,' (pitṛvya-bhrátrádínám;) but notices the other reading. Both are countenanced by different copies of the text.

The same holds good in respect of their sons, &c.] Here the sons or other descendants of the son and grandson are intended. The meaning is this: if relatives of the owner be forthcoming, the succession of one, whose relation to the owner was immediate, is inheritance not liable to obstruction: but the succession of one, whose relation to the owner was mediate or remote, is inheritance subject to obstruction, if immediate relatives exist. Subodhiní.

In respect of their sons, &c.] Meaning sons and other descendants of sons and grandsons, as well as of uncles and the rest. If rolatives of the owner be forthcoming, the succession of one, whose relation was immediate, comes under the first sort; or mediate, under the second. Bálam-Bhaṭṭa.

4. Partition is the adjustment of divers rights.] The adjustment, or special allotment severally, of two or more rights, vested in sons or others, relative to the whole undivided estate, by referring or applying those rights to parcels or particular portions of the aggregate, is what the word 'partition' signifies. Subodhiní and Bálam-Bhaṭṭa.

5. "When division of the paternal estate," &c.] Considerable variations occur in this text as cited by different authors. It is here read paitrasya; and Bálam-Bhaṭṭa states the etymology of paítra signifying 'of or belonging to a father.' He censures the reading in the Kalpataru, pitryasya, as ungrammatical. It is read in the Madana-

* Narada, 13. 1.

6. The points to be explained under this [head of inheritance*], are, at what time, how, and by whom, a partition is to be made, of what. The time, the manner, and the persons, when, in which, and by whom, it may be made, will be explained in the course of interpreting stanzas on those subjects respectively. What that is, of which a partition takes place, is here considered.

6. Topics included in it.

What is property?

7. Does property arise from partition? or does partition of pre-existent property take place? Under this [head of discussion,†] proprietary right is itself necessarily explained: [and the question is] Whether property be deduced from the sacred institutes alone, or from other [and temporal] proof.

7. Does it arise from partition, or pre-exist? and is it inferred from spiritual or temporal proof?

8. [It is alleged, that] the inferring of property from the sacred code alone is right, on account of the text of Gautama; "An owner is by inheritance, purchase, partition, seizure,‡ or finding.§ Acceptance is for a Bráhmaṇa

8. Property supposed to be spiri-

ANNOTATIONS.

ratna, pitrádéḥi 'of a father, &c.' Other variations occur upon other terms of the text: which is here read tanayaiḥi for putraiḥi; kalpyaté for prakalpyaté; and vyavahára-padam for tad-viváda-padam. The last in noticed by the commentator Bálam-Bhaṭṭa. A disagreement also occurs respecting the pronoun yatra, for which some substitute yas tu, and others yat tu. See Jímúta-váhana C. 1. § 2.

Paternal here implies, &c.] Tne meaning, here expressed, is that the word "paternal," as it stands in Nârada's text, intends what has been termed [by the author in his definition of heritage,] 'relation to the owner, a reason of property.' Subodhiní.

It intends any relation to the owner, as before mentioned, which becomes a cause of property; and it consequently includes the paternal grandfather and other [predecessors.] The author accordingly observes, 'that "by sons" indicates propinquity in general;' meaning any immediate relative. Bálam-Bhaṭṭa.

7. Does property arise from partition.] Here the inquiry is twofold: for the substance, which is to be divided, is the subject of disquisition; and the doubt is, whether partition be of property, or of what is not property. For the sake of this, another question is considered: Is partition the cause of property, or not? If it be not the cause of property, but birth alone be so; then, since property is by birth, it follows that partition is of property. This is one disquisition, which the author proposes by the question "does property arise from partition, &c." Another inquiry relates to the subject of property. The author introduces it, saying "proprietary right is explained." Here the right of property is the subject of discussion: and the doubt is whether it results from the holy institutes only, or be demonstrable by other and temporal proof. That question the author proposes. Subodhiní.

The substance, which is to be divided, is the subject of the first disquisition. Here the question is, whether partition of what is not property, be the cause of proprietary right: and thus right, arising from partition, would not be antecedent to it, since partition, which becomes the cause of that right, had not yet taken place. Or is partition not the reason of property, but birth alone? and thus, since proprietary right thence arose, partition would be of property. This is one disquisition, which the author proposes: "Does property arise, &c." He introduces a second question, which serves towards the solution of the first. Bálam-Bhaṭṭa.

8. It is alleged that the inferring of property from the sacred code alone is right.] The author here states the opponent's argument. Subodhiní.

Bálam-Bhaṭṭa. † Bâlam-Bhaṭṭa. ‡ Apprehensio, vel occupatio. § Inventio.

an additional mode ; conquest for a Kshatriya ; gain for a Vaiçya or Çúdra."* For, if property were deducible from other proof, this text would not be pertinent. So the precept, ("A Bráhmaṇa, who seeks to obtain any thing, even by sacrificing or by instructing, from the hand of a man, who had taken what was not given to him, is considered precisely as a thief ;"†) which directs the punishment of such as obtain valuables, by officiating at religious rites, or by other similar means, from a wrongdoer who has taken what was not given to him, would be irrelevant if property were temporal. Moreover, were property a worldly matter, one could not say "My property has been wrongfully taken by him ;" for it would belong to the taker. Or, [if it be objected that] the property of another was seized by this man, and it therefore does not become the property of the usurper ; [the answer is,] then no doubt could exist, whether it appertain to one or to the other, any more than in regard to the species, whether gold, silver, or the like. Therefore property is a result of holy institutes exclusively.

9. To this the answer is, property is temporal only, for it effects transactions relative to worldly purposes, just as rice or similar substances do : but the consecrated fire and the like, deducible from the sacred institutes, do not

9. But it is tem-

ANNOTATIONS.

On account of the text of Gautama.] If property were deducible from other, that is from temporal, proof, this passage of Gautama's institutes would not be pertinent, since it would be useless if it were a mere repetition of what was otherwise known. Bálam-Bhaṭṭa.

For it would belong, &c.] The thing would belong to the taker ; since that relation would be alone the subject of perception. Bálam-Bhaṭṭa.

Therefore property is a result of holy institutes exclusively.] If property be worldly it would follow, that, when the goods of one man have been seized by another, should the person, who has been despoiled, affirm concerning them, "my property has been taken away by this man," a doubt would not, upon hearing that, arise in the minds of the judges, whether it be the property of one, or of the other. As no doubt exists regarding the species, whether gold or something else, when gold, silver, or any other worldly object, is inspected ; so none would exist in regard to property, for [according to the supposition] it is a worldly matter. But doubt does arise. Therefore it cannot be affirmed, that the usurper has no property. Or [the meaning may be this] the opponent, who contends that it is not the property of the captor, because that, which has been seized by him, is another's property, must be asked, Is there or is there not, proof, that property is not vested in the captor ? [The opponent] impeaches the first part of the alternative : "then no doubt could exist, &c." The notion is this ; As no doubt arises concerning the species, when there is demonstration that it is gold or silver ; so likewise, in the proposed case, no doubt could arise. Nor is the second part of the alternative admissible : for, if no evidence arise, it could not be affirmed, that the captor has not property. Omitting, however, this part of the reasoning, the author closes the adversary's argument, concluding that property is deduced solely from the sacred code. Subodhiní and Bálam-Bhaṭṭa.

9. Property is temporal only.] The author proves his proposition, that property is secular, by logical deduction. Property is worldly for it effects transactions relative to worldly purposes. Whatever does effect temporal ends, is temporal : as rice and other similar substances. Such too is property. Therefore, it is temporal. But whatever is not worldly, promotes not secular purposes as a consecrated fire and other spiritual matters. Subodhiní.

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* Gautama, 10. 39.—42. Vide infra. § 13. † Manu 8. 340.

give effect to actions relative to secular purposes. [It is asked] does not a consecrated fire effect the boiling of food; and so, of the rest? [The answer is] No; for it is not as such, that the consecrated flame operates the boiling of food; but as a fire perceptible to the senses: and so, in other cases. But, here, it is not through its visible form, either gold or the like, that the purchase of a thing is effected, but through property only. That, which is not a person's property in a thing, does not give effect to his transfer of it by sale or the like. Besides, the use of property is seen also among inhabitants of barbarous countries, who are unacquainted with the practice directed in the sacred code: for purchase, sale, and similar transactions are remarked among them.

10. Moreover, such as are conversant with the science of reasoning, deem regulated means of acquisition a matter of popular recognition. In the third clause of the Lipsá sútra,* the venerable author has stated the adverse opinion, after [obviating] an objection to it, that, 'if restrictions, relative to the acquisition of goods, regard the religious ceremony, there could be no property, since proprietary right is not temporal;' [by showing, that] 'the efficacy of acceptance and other modes of acquisition in constituting proprietary right, is matter of popular recognition.' Does it not follow, 'if the mode of acquiring the goods concern the religious ceremony, there is no right of property, and consequently no celebration of a sacrifice?' [Answer] 'It is a blunder of any one who affirms, that acquisition does not produce a proprietary right; since this is a contradiction in terms.' Accordingly, the author, having again acknowledged property to be a popular notion, when he states the demonstrated doctrine, proceeds to explain the purpose of the disquisition in this manner. Therefore a breach of the restriction affects the person, not the religious ceremony:' and the meaning of this passage is thus

10. This doctrine is confirmed by the Mímánsá.
Statement of opponent's
Objection.
Answer.
The right doctrine asserted.
Purpose of the disquisition explained.

ANNOTATIONS.

For it is not as such that the consecrated flame, &c.] A hallowed fire has two characters: the spiritual one of consecration; and the worldly one of combustion. It effects the boiling of food in its worldly capacity as fire; not in its spiritual one as consecrated. For, if it did so in its last mentioned capacity, a secular fire, wanting the spiritual character of consecration, would not effect the boiling of food. Therefore the objection does not hold. Then, in the proposed case, gold or other valuable would effect the secular purpose of sale and purchase, in its character of gold or the like, not in that of property. The author replies to that objection: "It is not through its visible form &c." Besides, the use of property is observable among barbarians, to whom the practice enjoined by the sacred institutes is unknown: and, since that cannot be otherwise accounted for, there is evidence of property being secular. Subodhiní.

10. The lipsá sūtra.] The sūtra, or aphorism, here quoted, is on the desire of acquisition (lipsá), and is the second topic (adhikaraṇa) in the first section (páda of the fourth book (adhyáya) of aphorisms by Jaimini, entitled Mímánsá. Subodhiní and Bálam-Bhaṭṭa.

* Memánsū, 4. 1. 2. 3.

expounded,* 'If restrictions, respecting the acquisition of chattels, regard the religious ceremony, its celebration would be perfect, with such property only, as was acquired consistently with those rules; and not so, if performed with wealth obtained by infringing them; and consequently, according to the adverse opinion, the fault would not affect the man, if he deviated from the rule: but, according to the demonstrated conclusion, since the restriction, regarding acquisitions, affects the person, the performance of the religious ceremony is complete, even with property acquired by a breach of the rule; and it is an offence on the part of a man, because he has violated an obligatory rule.' It is consequently acknowledged, that even what is gained by infringing restrictions, is property: because, otherwise, there would be no completion of a religious ceremony.

Deduction.

ANNOTATIONS.

In the third clause of the lipsá sútra.] In the first clause (varṇaka), the distinction between religious and personal purposes is examined. In the second, the inquiry is whether the milking of kine and similar preparatives be relative to the person or to the act of religion. In the third, the question examined is whether restrictions, noticed in primeval revelation, as to the means of acquisition, (such as these, 'let a Bráhmaṇa acquire wealth by acceptance or the like, a Kshatriya by victory and so forth, and a Vaiçya by agriculture, &c.') must be taken as relative to the person or to the religious ceremony [performed by him.] Subodhiní and Bálam-Bhaṭṭa.

The position of the adversary is, that, injunctions regarding the means of acquisition concern the religious ceremony, through the medium of the goods used by the agent; for, unless that be admitted, the precept would be nugatory, because there would be no one whom it affected. Subodhiní.

The meaning is this: As in the case of an acquisition of goods under a precept relative to sacrifice, such as this "purchase the moon-plant,"† the injunction regarding the acquisition of goods concerns the religious ceremony; so does the injunction respecting acceptance and other means of acquisition. Bálam-Bhaṭṭa.

The author states an objection to this position of the adversary. The objection is this: the question, considered in the third clause of the Lipsá-sútra, is whether injunctions regarding acquisition of goods concern the religious ceremony or the person. The opponent's position is, that they concern the ceremony. That is not congruous. For, if the injunctions, regarding acquisition of goods, concern the religious ceremony, no property would arise; since property, being spiritual, would have no worldly cause to produce it; and no other means are shown in scripture; and the injunctions regarding acquisition, being relative to the ceremony, are not relative to any thing else: thus, for want of property, the religious rites would not be complete with that which was not property; and consequently the position, that injunctions, regarding acquisition of goods, concern the act of religion, is incongruous. Subodhiní.

He revives the position by answering that objection; and the notion is this: the injunctions, regarding acceptance and the like, accomplish property; and they will become relative to the religious ceremony through the medium of goods adapted to the performance of the ceremony: as the husking of grain, which effects the removal of the chaff, concerns the religious ceremony through the medium of clean rice which is adapted to the ceremony. But the wise consider property as a worldly matter [resulting from birth,] like the relation of a son to his father. Consequently there is no failure in the completion of religious rites [as supposed in the objection.]

* By the commentator on the Mímánsá: Prabhákara surnamed Guru.

† Soma, Asclepias acida. Roxb.

11. It should not be alleged, that even what isobtained by robbery and other nefarious means, would be property. For proprietary right in such instances is not recognised by the world; and it disagrees with received practice.

11. An objection obviated.

12. Thus, since property, obtained by acceptance or any other [sufficient] means, is established to be temporal; the acceptance of alms, as well as other [prescribed] modes for a Bráhmaṇa, conquest and similar means for a Kshatriya, husbandry and the like for a Vaiçya, and service and the rest for a Çúdra, are propounded as

12. Certain means of acquisition are restricted to particular tribes, for spiritual reasons.

ANNOTATIONS.

Admitting, that, because injunctions regarding acquisition concern the religious ceremony, the acquisition likewise must relate to the ceremony; does it not follow, since it relates not to anything else, that there is no such thing as property? and would not a failure of the religious ceremony ensue? [Wherefore the adversary's position is erroneous.] The author states the objection and confutes it with derision. 'Some one has blundered, affirming that acquisition does not produce property, for it is a contradiction in terms.' Such is the construction of the sentence; and the meaning is this: Acquisition, which is an accident of the acquirer, is a relation between two objects [the owner and his own] like that of mother and son. Consequently, there can be no acquisition without a thing to be acquired; and it is a contradiction in terms to say 'acquisition does not produce a proprietary right,' as it is to affirm 'my mother is a barren woman.' Subodhiní and Bálam-Bhaṭṭa.

The demonstrated conclusion is, that, since valuables, being intended for every purpose, must be relative to the person, restrictions, regarding the acquisition of them, must concern the person also. Bálam-Bhaṭṭa.

The purpose of the disquisition under this topic of inquiry is stated. It is interpreted by the venerable author (Prabhákara-Guru.) The implied sense is this. According to the adversary's position, there is no offence affecting the person, in violating the injunction. But the religious ceremony is not duly accomplished with goods acquired by a breach of the injunction. It is the religious ceremony, therefore, which is affected. But, according to the demonstrated doctrine, since the restrictions concern the person, the offence is his if he infringe the rule; and the religious ceremony is not affected. Subodhiní.

The author, by way of closing the argument, states the result as applicable to the subject proposed. It is acknowledged by the maintainer of the right doctrine, that even what is gained by infringing the rule, much more what is acquired by other means, is property. Bálam-Bhaṭṭa.

Otherwise, that is, if a right of property in wealth acquired even by infringing the rule, be not admitted; then, since no property is temporal because the restrictions concern the religious ceremony [and that, which is thus acquired, does so likewise,] therefore the means of living would be unattainable, since no temporal property could exist; and consequently there could be no religious ceremony, for there would be nobody to perform it. Subodhiní and Bálam-Bhaṭṭa.

11. It should not be alleged, that even what is obtained by robbery.] If property be acknowledged in that which is acquired by infringing the restriction, might it not be supposed, that even what is obtained by robbery and other nefarious means, becomes property? The author obviates that objection. It does not become so. He removes the inconsequence of the reason. For the employment of it as such in sale and other transactions is not familiarly seen in practice. Bálam-Bhaṭṭa.

12. Thus since property obtained by acceptance, &c.] Property being thus proved to be temporal, the author successively refutes the several arguments before cited in support of the notion, that it is not temporal. Bálam-Bhaṭṭa.

Other means are common to all.

restrictions intended for spiritual purposes ; and inheritance and other modes are stated as means common to all. "An owner is by inheritance, purchase, partition, seizure or finding."*

13. Unobstructed heritage is here denominated "inheritance." "Purchase" is well known. "Partition" intends heritage subject to obstruction. "Occupation" or seizure is the appropriation of water, grass, wood and the like not previously appertaining to any other [person as owner.†]. "Finding" is the discovery of a hidden treasure or the like. 'If these reasons exist, the person is owner.' If they take place, he becomes proprietor. 'For a Bráhmaṇa, that, which is obtained by acceptance or the like, is additional ;' not common [to all the tribes]. "Additional" is understood in the subsequent sentence : 'for a Kshatriya, what is obtained by victory, or by amercement or the like, is peculiar.' In the next sentence, "additional" is again understood : what is gained or earned by agriculture, keeping of cattle, [traffic,] and so forth, is for a Vaiçya peculiar ; and so is, for a Çúdra, that which is earned in the form of wages, by obedience to the regenerate and by similar means.' Thus likewise, among the various causes of property which are familiar to mankind, whatever has been stated as peculiar to certain mixed classes in the direct or inverse order of the tribes, (as the driving of horses, which is the profession of the Sútas,‡ and so forth,) is indicated by the word "earned" (nirvishṭa) : for all such acquisitions assume the form of wages or hire ; and the noun (nirvésa) is exhibited in the Trikáṇḍi§ as signifying wages.

13. Gautama's enumeration of the modes of acquisition expounded.

As for the precept respecting the succession of the widow and the daughter, &c.,‖ the declaration [of the order of succession,] even in that text is intended to prevent mistake, (although the right of property be a matter fami-

14. Another objection obviated.

ANNOTATIONS.

Common to all.] Including even the mixed classes. Bálam-Bhaṭṭa.

13. If these reasons exist, the person is owner.] If such reasons are known [to exist,] the owner is known. Subodhiní and Bálam-Bhaṭṭa.

Both commentaries read jñátéshu jñáyaté svámí, 'such reasons existing, an owner exists.' But copies of the text exhibit játéshu jáyaté svámí, 'Such reasons being known, the owner is known.'

Additional.] The meaning of the term is 'excellent.' Bálam-bhaṭṭa.

14. As for the precept respecting the succession.] The author obviates an objection, that, if property be a worldly matter, the import of the text here cited is inconsistent, as it provided by precept, that the widow and certain other persons shall inherit on the owner's demise. Subodhiní and Bálam-bhaṭṭa.

* Gautama, 10. 39 already cited in § 8. † Bálam-Bhaṭṭa.

‡ According to a text of Uçanas, from which these words are taken.

§ The dictionary of Amarasiṁha in three books (Káṇḍas.) The passage here cited occurs in the 3rd book of the Amarakosha. Ch. 4. v. 217.

‖ Vide infra. C. 2. Sect. 1. § 1.

liar to the world,) where many persons might [but for that declaration] be supposed entitled to share the heritage by reason of their affinity to the late owner. The whole is therefore unexceptionable.

15. As for the remark, that, if property were temporal, it could not be said "my property has been taken away by him;"* that is not accurate, for a doubt respecting the proprietary right does arise through a doubt concerning the purchase, or other transaction, which is the cause of that right.

15. The argument refuted, on which the first supposition was grounded.

16. The purpose of the preceding disquisition is this. A text expresses "When Bráhmaṇas have acquired wealth by a blameable act, they are cleared by the abandonment of it, with prayer and rigid austerity."† Now, if property be deducible only from sacred ordinances, that, which has been obtained by accepting presents from an improper person, or by other means which are reprobated, would not be property, and consequently would not be partible among sons. But if it be a worldly matter, then even what is obtained by such means, is property, and may be divided among heirs; and the atonement aboyementioned regards the acquirer only: but sons have the right by inheritance, and therefore no blame attaches to them, since Manu declares "There are seven virtuous means of acquiring property: viz. inheritance, &c."‡

16. Purpose of the disquisition explained.

Property, however acquired, is partible among the heirs of the acquirer.

17. Next, it is doubted whether property arise from partition, or the division be of an existent rig]

17. The first question (§ 7.) resumed.

ANNOTATIONS.

The declaration of the order of succession.] Bálam-bhatta notices as a variation in the reading, the words here supplied; krama-smaraṇam 'declaration of the order of succession,' instead of smaraṇam 'declaration.'

15. As for the remark, that if property were temporal.] The sense is this: in such a case, the proposition 'another's property has been taken by him' is simply apprehended from the affirmation of the complainant. But that is apprehension, not proof. Accordingly, if it be contradicted, a doubt arises respecting the cause of right. Thus, if the complainant declare, "my goods have been taken by him," and the defendant affirm the contrary, a doubt arises in the minds of umpires, whether the thing were unjustly seized by that man, or were fairly obtained by purchase or other title: and so, from a doubt respecting a purchase or other cause of property, arises a doubt concerning property which is the effect. Subodhiní.

16. The purpose of the preceding disquisition is this.] Admitting property to be a worldly matter; still [its nature] seems to be an unfit [subject of inquiry] under the head of inheritance, since it matters not whether property be temporal or spiritual. Apprehending this objection, the author proceeds to explain the purpose of the disquisition. Subodhiní.

* Vide § 8.

† The text is apparently referred to Manu by the commentator Bálam-bhaṭṭa: but it is not found in Manu's institutes. A passage of similar import does, however, occur, Ch. 10. v. 111.

‡ Manu, 10. 115.

18. Of these [positions], that of property arising from partition is right; since a man, to whom a son is born, is enjoined to maintain a holy fire: for, if property were vested by birth alone, the estate would be common to the son as soon as born; and the father would not be competent to maintain a sacrificial fire and perform other religious duties which are accomplished by the use of wealth.

18. Property supposed to arise from partition.

19. Likewise the prohibition of a division of that, which is obtained from the liberality of the father previous to separation, would not be pertinent: since no partition of it can be supposed, for it has been given by consent of all parties. But Nárada does propound such a prohibition: "Excepting what is gained by valour, the wealth of a wife, and what is acquired by science, which are three sorts of property exempt from partition; and any favour conferred by a father."*

19. The supposition, that it is vested by birth, disagrees with a passage of Nárada exempting from partition the father's donations.

20. So the text concerning an affectionate gift, ("What has been given by an affectionate husband to his wife, she may consume as she pleases, when he is dead, or may give it away, excepting immoveable property;"†(*a*) would be pertinent, if property were vested by birth alone. Nor is it right to connect the words "excepting immoveable property" with the terms "what has been given" [in the text last cited;] for that would be a forced construction by connexion of disjoined terms.

20. And with one which recognises a husband's donations to his wife.

ANNOTATIONS.

18. Is enjoined to maintain a holy fire.] For it is ordained by a passage of the Veda, "that he, who has a son born and who has black [not grey] hair, should consecrate a holy fire:" and the meaning of that passage is this; 'one who has issue (for the term son implies issue in general;) and whose hair is [yet] black, or who is in the prime of life; that is, who is capable; one, in short, who is qualified; must perform the consecration and maintenance of a holy fire.' Does not this relate to the consecration of sacrificial fires, not to the rise of property from partition? Anticipating this objection, he adds "if property were by birth &c." The meaning is this: 'if property arose from birth alone, a son would, even at the instant of his birth, have ownership; and since the goods are thenceforward in common, the father would not be competent to the consecration of sacrificial fires and other religious acts (as funeral repasts, rites on the birth of children, and other indispensable ceremonies,) which must be performed by the husband and wife, and which can only be accomplished by expenditure of wealth.' Subodhiní and Bálam-bhaṭṭa.

20. The text.....would not be pertinent, if property were vested by birth.] For, if property were vested at the instant of birth, no such gift could be made; since he would be incompetent even with the consent of the child, and one cannot give away what is common to others. Subodhiní and Bálam-bhaṭṭa.

* Nárada, 13. 6.

† Vishṇu according to a subsequent quotation (§ 25.) But Nárada cited by Jímúta-váhana (C. 4. Sect. 1. § 23.)

(*a*) See 1 Mad. H. C. Rep. 91: 2 Strange H. L. 430: 1 Morl. Dig 259 (2), 596.—*Ed.*

21. As for the text "The father is master of the gems, pearls and corals, and of all [other moveable property :] but neither the father, nor the grandfather, is so of the whole immoveable estate;"* and this other passage "By favour of the father, clothes and ornaments are used, but immoveable property may not be consumed, even with the father's indulgence;"† which passages forbid a gift of immoveable property through favour : they both relate to immoveables which have descended from the paternal grandfather. When the grandfather dies,(*b*) his effects become the common property of the father and sons ; but it appears from this text alone, that the gems, pearls and other moveables belong exclusively to the father, while the immoveable estate remains common.

21. The exception of immoveables does not imply property by birth.

Passages, excepting them, regard the ancestral estate.

22. Therefore property is not by birth, but by demise of the owner, or by partition. Accordingly [since the demise of the owner is a cause of property,‡] there is no room for supposing, that a stranger could not be prevented from taking the effects because the property was vacant after the death of the father before partition. So likewise, in the case of an only son, the estate becomes the property of the son by the father's decease ; and does not require partition.

22. Property supposed to be by partition, or by demise of the owner.

23. To this the answer is : It has been shown, that property is a matter of popular recognition ; and the right of sons and the rest, by birth, is most familiar to the world, as cannot be denied : but the term partition is generally understood to relate to effects belonging to several owners, and does not relate to that which appertains to another, nor to goods vacant or unowned. For the text of Gautama expresses "Let ownership of wealth be taken by birth ; as the venerable teachers direct."§

23. That supposition is wrong. Property is vested by birth : as expressly declared by Gautama.

ANNOTATIONS.

Nor is it right to connect, &c.] Is not the text, so far from being in contradiction to the right by birth, actually founded on it ? for the construction is this 'what has been given, excepting immoveable property, by an affectionate husband to his wife, she may consume as she pleases, when he is dead :' thus, a right of property by birth being true in regard to immoveables, since the gift of them is forbidden; and, by analogy, the same being true of other goods, a gift of wealth other than immoveables is permitted by the provisions of the law : why then should not this text be propounded ? Apprehending that objection, he says "Nor is it right to connect, &c." The construction stated would be requisite : but it is not a proper one ; for the style would be involved, if the construction connect disjoined terms. Subodhiní.

21. As for the text "The father is master of the gems, &c."] Apprehending the objection, that, since a gift of immoveables through partial affection is forbidden by the plain construction of two other passages of law, birth and not partition is the cause of property, he obviates it. Subodhiní.

23. "Let ownership of wealth, &c."] 'By birth alone the heir may take the thing which is denominated ownership of wealth : as the venerable teachers hold.' Subodhiní.

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* Yájñavalkya cited by Jímúta-váhana (C. 2. § 22.)

† The name of the author is not given with any quotation of this text.

‡ Subodhiní and Bálam-bhaṭṭa. § Not found in Gautama's institutes.

(*b*) See 1 Morl. Dig. 307. n. b.

24. Moreover the text above cited "The father is master of the gems, pearls, &c." (§ 21) is pertinent on the supposition of a proprietary right vested by birth. Nor is it right to affirm, that it relates to immoveables which have descended from the paternal grandfather: since the text expresses "neither the father, nor the grandfather." This maxim, that the grandfather's own acquisition should not be given away while a son or grandson is living, indicates a proprietary interest by birth. As, according to the other opinion, the precious stones, pearls, clothes, ornaments and other effects, though inherited from the grandfather, belong to the father under the special provisions of the law; so, according to our opinion, the father has power, under the same text, to give away such effects, though acquired by his father. There is no difference.

24. The passage before cited (§ 21) does imply property by birth.

25. But the text of Vishṇu (§ 20), which mentions a gift of immoveables bestowed through affection, must be interpreted as relating to property acquired by the father himself and given with the consent of his son and the rest: for, by the passages [above cited, as well as others not quoted,* viz.] "The father is the master of the gems, pearls, &c." (§ 21), the fitness of any other but immoveables for an affectionate gift was certain.

25. Another passage before cited (§ 20) relates to the father's acquisitions.

26. As for the alleged disqualification for religious duties which are prescribed by the Veda, and which require for their accomplishment the use of wealth, (§ 18) sufficient power for such purposes is inferred from the cogency of the precept [which enjoins their performance].

26. A preceding objection (§ 18) refuted.

27. Therefore it is a settled point, that property in the paternal or ancestral estate is by birth, [although†] the father have independent power in the disposal of effects other than immoveables(*a*), for indispensable acts of duty and for purposes prescribed by text of law, as gifts through affection, support of the family, relief from distress, and so forth: but he is subject to the control of his sons and the rest, in regard to the immoveable estate, whether acquired by himself or inherited from his father or other predecessor; since it is ordained, "Though immoveables or bipeds have been acquired by a man himself, a gift or sale of

27. Property is by birth: but the father has power over moveables; and is controlled in respect of immoveables: as shown by passages of law.

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Bálam-bhatta notices a variation in the reading: artha-svámitvat, in the ablative case, instead of artha-svámitvam, in the nominative. That reading is found in the Dáya-tatva; and the text is there explained in an entirely different sense. See Jímúta-váhana, C. 1. § 19.

27. "No gift or sale should be made."] The close of the passage is read otherwise by Raghunandana: "The dissipating of the means of support is censured;" vṛttilopo vigarhitaḥ, instead of na dánau na cha vikrayaḥ.

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* Bálam-bhaṭṭa. † Bálam-bhaṭṭa.

(*a*) See 1 Morl. Dig. 40: 2 Strange H. L. 6, 9.—

them should not be made without convening all the sons. They, who are born, and they who are yet unbegotten, and they who are still in the womb, require the means of support, no gift of sale should, therefore, be made."*

28. An exception to it follows: "Even a single individual may conclude a donation, mortgage, or sale, of immoveable property, during a season of distress, for the sake of the family, and especially for pious purposes(*a*)."†

28. A further text authorizes sale, &c., by a single owner.

29. The meaning of that text is this: while the sons and grandsons are minors, and incapable of giving their consent to a gift and the like; or while brothers are so and continue unseparated; even one person, who is capable, may conclude a gift, hypothecation, or sale, of immoveable property, if a calamity affecting the whole family require it, or the support of the family render it necessary, or indispensable duties, such as the obsequies of the father or the like, make it unavoidable(*b*).

29. Explanation of the text.

30. The following passage "Separated kinsmen, as those who are unseparated, are equal in respect of immoveables; for one has not power over the whole, to make a gift, sale or mortgage:"‡ must be thus interpreted: 'among unseparated kinsmen, the consent of all is indispensably requisite, because no one is fully empowered to make an alienation, since the estate is in common:' but, among separated kindred, the consent of all tends to the facility of the transaction, by obviating any future doubt, whether they be separate or united: it is not required, on account of any want of sufficient power, in the single owner; and the transaction is consequently valid even without the consent of separated kinsmen.

30. Another passage expounded.

Consent of separated kinsmen tends to the facility of the transactions.

31. In the text, which expresses, that "Land passes by six formalities; by consent of townsmen, of kinsmen, of neighbours, and of heirs, and by gift of gold and of water;"(*c*)§ consent of townsmen is required for the publicity of the transaction, since it is provided, that "Acceptance of a gift, especially of land, should be public:"‖ but the contract is not invalid without their consent. The approbation of neighbours serves to obviate any dispute concerning the boundary. The use of the consent of kinsmen and of heirs has been explained.

31. Like the consent of townsmen, &c. required by another text.

* Vyása as cited in other compilations. † Vṛhaspati cited in the Ratnakara, &c.

‡ Vṛhaspati as cited in the Ratnakara. § The author of this passage is not named.

‖ This passage also is anonymous.

(*a*) See 6 Moo. I. A. Ca. 393. 407 for authorities as to the power of a manager or guardian in possession to alienate ancestral estate.—*Ed.*

(*b*) See 1 Strange H. L. 20: 2 Ibid. 338, 340: 1 Morl. Dig. 43n. 445n.—

(*c*) See 2 Strange H. L. 7, 427.—*Ed.*

32. By gift of gold and of water.] Since the sale of immoveables is forbidden ("In regard to the immoveable estate, sale is not allowed; it may be mortgaged by consent of parties interested;"*) and since donation is praised ("Both he who accepts land, and he who gives it, are performers of a holy deed, and shall go to a region of bliss;"†) if a sale must be made, it should be conducted, for the transfer of immoveable property, in the form of a gift, delivering with it gold and water [to ratify the donation.]

32. Gift of gold and water assimilates the sale to a gift of land.

33. In respect of the right by birth, to the estate paternal or ancestral, we shall mention a distinction under a subsequent text. (Section 5. § 3.)

33. A distinction regarding the right by birth will noticed. (Sect. § 3.)

SECTION II.

Partition equable or unequal.—Four periods of partition.—Provision for wives.—Exclusion of a son who has a competence.

1. At what time, by whom, and how, partition may be made, will be next considered. Explaining those points, the author says, "When the father makes a partition, let him separate his sons [from himself] at his pleasure, and either [dismiss] the eldest with the best share, or [if he choose] all may be equal sharers."‡

1. Other topics resumed. Text of Yájñavalkya.

2. When a father wishes to make a partition, he may at his pleasure separate his children from himself, whether one, two or more sons.

2. Exposition of the passage.

3. No rule being suggested (for the will is unrestrained,) the author adds, by way of restriction, "he may separate (for this term is again understood) the eldest with the best share," the middlemost with a middle share, and the youngest with the worst share.

3. Distribution by the father may be unequal.

4. This distribution of best and other portions is propounded by Manu. "The portion deducted for the eldest is the twentieth part of the heritage, with the best of all the chattels; for the middlemost, half of that; for the youngest, a quarter of it."§

4. Manu describes this distribution.

ANNOTATIONS.

2. Separate his children.] Make them distinct and several by giving to shares of the inheritance. Bálam-bhaṭṭa.

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* The origin of this quotation likewise has not been found.

† Bráhma-vaivarta-puráṇa.

Yájñavalkya, 2. 115.

§ Manu, 9, 112. Vide infra. Sect. 3. § 3.

5. The term "either" (§ 1) is relative to the subsequent alternative "or all may be equal sharers." That is, all, namely the eldest and the rest, should be made partakers of equal portions.

5. Explanation of the close of the former text.

6. This unequal distribution supposes property by himself acquired. But, if the wealth descended to him from his father, an unequal partition at his pleasure is not proper: for equal ownership will be declared.

6. The estate must have been acquired by him: else the rights are equal

7.(*a*) One period of partition is when the father desires separation, as expressed in the text. "When the father makes a a partition." (§ 1) Another period is while the father lives, but is indifferent to wealth and disinclined to pleasure, and the mother is incapable of bearing more sons; at which time a partition is admissible, at the option of sons, against the father's wish: as is shown by Nárada; who premises partition subsequent to the demise of both parents ("Let sons regularly divide the wealth when the father is dead;"* and adds "Or when the mother is past child-bearing and the sisters are married, or when the father's sensual passions are extinguished."† Here the words "let sons regularly divide the wealth" are understood. Gautama likewise, having said "After the demise of the father, let sons share his estates;"‡ states a second period, "Or when the mother is past child-bearing;"§ and a third, "While the father lives, if he desire separation."‖ So, while the mother

7. Four periods of partition; 1st by the father's desire; 2d on his retiring from worldly affairs: as is shown by Nárada.

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7. One period of partition is when the father desires separation.] There are four periods of partition. One is, while the father lives, if he desire partition. Another is, when the mother ceases to be capable of bearing issue, and the father is not desirous of sexual intercourse and is indifferent to wealth; if his sons then require partition, though he do not wish it. Again another period is, while the mother is yet capable of bearing issue, and the father, though not consenting to partition, is old, or addicted to vicious courses, or afflicted with an incurable disease; if the sons then desire partition. The last period is, after the decease of the father. Viçveçvara in the Madana-Párijáta.

There are four periods of partition in the case of wealth acquired by the father. Viçveçvara in the Subodhiní.

Four periods of partition among sons have been stated by the author (Vijñáneçvara,) which are compendiously exhibited in a twofold division by the contemplative saint (Yájñavalkya.) Here, three cases may occur under that of distribution during the life of the father: viz., with, or without, his desire for separation: the case of his not desiring it being also twofold; viz., 1st, when the mother has ceased to be capable of bearing children and the father is disinclined to pleasure, &c. 2d, when the mother is not incapable of bearing issue, but the father is disqualified by vicious habits or the like. Subodhiní.

The doctrine of the eastern writers [Jímúta-váhana, &c.] who maintain, that two periods only are admissible, the volition of the father and his demise, and not any third period;¶ and that the text, relative to the mother's incapacity for bearing more issue, regards the estate of the paternal grandfather or other ancestor; is refuted. Bálambhatta.

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* Nárada, 13. 2. † Nárada, 13. 3. ‡ Gautama, 28. 1.

§ Gautama, 28. 2. ‖ Gautama, 28. 2. ¶ See Jímúta-váhana, C. 1. § 44.

(*a*) This section refers to the law governing the division of property generally, *a Mudali* v. *Subbiramaniya Mudali*, 1 Mad. H. C. Rep. 79.—*Ed.*

is capable of bearing more issue, a partition is admissible by the choice of the sons, though the father be unwilling, if he be addicted to vice or afflicted with a lasting

4th on account of his disqualification: as stated by Çankha.

That Çankha declares: "Partition of inheritance takes place without the father's wish, if he be old, disturbed in intellect, or diseased."*

8. Two sorts of partition at the pleasure of the father have been stated; namely, equal and unequal. The author adds a particular rule in the case of equal partition; "If he make the allotments equal, his wives, to whom no separate property has been given by the husband or the father-in-law, must be rendered partakers of life-portions."†

8. Provision for wives.

Text of Yajñavalkya.

9. When the father, by his own choice, makes all his sons partakers of equal portions, his wives, to whom peculiar property had not been given by their husband, or by their father-in-law, must be made participant of shares equal to those of sons. But, if separate property have been given to a woman, the author subsequently directs half a share to be allotted to her: "Or if any had been given, let him assign the half."‡

9. Exposition of it.

The wife shares like a son.

10. But, if he give the superior allotment to the eldest son, and distribute similar unequal shares to the rest, his wives do not take such portions, but receive equal shares of

10. Excepting the deductions for

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We hold, that while the father survives and is worthy of retaining uncontrolled power, his will alone is the cause of partition. If he be unworthy of such power, in consequence of degradation, or of retirement from the world, or the like, the son's will is likewise a cause of partition. But, in the case of his demise, the successor's own choice is of course the reason. By this mode, the periods are three. Else there must be great confusion, in the uncertainty of subject and accident, if many reasons, as extinction of worldly propensities and so forth, must be established collectively and alternatively. Thus the mention of certain reasons in some texts, and the omission of them in others, are suitable: for the extinction of the temporal affections, and the other assigned reasons, indicate the single circumstance of the father's want of uncontrolled power; since it is easy to establish that single foundation of the text. Víramitrodaya.

When the father's passions are extinguished.] Jímúta-vahana's reading of the passage is different: and there are other variations of this text. See note on Jímutavahana. Ch. 1. § 33.

Partition of inheritance takes place without the father's wish.] A text of a contrary import is cited from the same author, by Jímúta-vahana. See note on Jímutavahana. C. 1. § 43.

9. The author subsequently directs half a share.] This and the passage cited may be supposed to bear reference to a passage which occurs near the close of the head of inheritance. (C. 2. Sect. 11. § 34.): but the quotation is not exact, and the text relates to a different subject.

10. The furniture in the house, &c.] The chairs, and the earthen and stone utensils, and the ornaments worn by her, are the wife's deducted allotment. Haradatta¶ says the furniture, as well as the car, is the father's; and the ornaments are the wife's. Bálam-bhaṭṭa.

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* Cited as a passage of Hárita in the Vyavahára máyukha.

† Yájñavalkya, 2. 116. ‡ Vide infra. C. Sect. 11. § 34.

¶ The scholiast of Gautama.

the first boru, &c. But she takes her ornaments and the

the aggregate from which the son's deductions have been subtracted, besides their own appropriate deductions specified by Ápastamba: "The furniture in the house and her ornaments are the wife's [property]."*

11. A trifle may be given to a son who needs not a full share.

Text of Yájñavalkya.

11. To the alternative before stated (§ 1) the author propounds an exception: "The separation of one, who is able to support himself and is not desirous of participation, may be completed by giving him some trifle(*a*)."†

12. Interpretation of the text.

12. To one who is himself able to earn wealth, and who is not desirous of sharing his father's goods, any thing whatsoever, though not valuable, may be given, and the separation or division may be thus completed by the father; so that the children, or other heirs, of that son, may have no future claim of inheritance.

13. An illegally partial distribution is improper.

Text of Yájñavalkya.

13. The distribution of greater and less shares has been shown (§ 1.) To forbid, in such case, an unequal partition made in any other mode than that which renders the distribution uneven by means of deduction, such as are directed by the law, the author adds "A legal distribution, made by the father among sons separated with greater or less shares, is pronounced valid."‡

14. Explanation of the passage.

Confirmed by a quotation from Nárada.

14. When the distribution of more or less among sons separated by an unequal partition is legal, or such as ordained by the law; then that division, made by the father, is completely made, and cannot be afterwards set aside: as is declared by Manu and the rest. Else it fails, though made by the father. Such is the meaning; and in like manner, Nárada declares "A father, who is afflicted with disease, or influenced by wrath, or whose mind is engrossed by a beloved object, or who acts otherwise than the law permits, has no power in the distribution of the estate."§

ANNOTATIONS.

13. In any other mode.] The commentator Bálam-bhaṭṭa prefers another reading ayathácástra 'not according to law' instead of anyathá 'in any other mode.'

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* Vide infra. Sect. 3. § 6. Yájñavalkya, 2. 117.

† Yájñavalkya, 2. 117.

§ Nárada, 13. 16.

(*a*) See 1 Morl. Dig. 24.—*Ed.*

SECTION III.

Partition after the Father's decease.

1. Distribution among brothers should be equable; by the text of Yájñavalkya.

1. The author next propounds another period of partition, other persons as making it, and a rule respecting the mode. "Let sons divide equally both the effects and the debts, after [the demise of] their two parents(*a*)."*

2. Interpretation of the passage.

2. After their two parents.] After the demise of the father and mother: here the period of the distribution is shown. The sons.] The persons, who make the distribution, are thus indicated. Equably.] A rule respecting the mode is by this declared: in equal shares only should they divide the effects and debts.

3. Objection to the restriction of equal shares; since an unequal division is authorized by Manu.

3. But Manu, having premised "partition after the death of the father and the mother,"† and having declared. "The eldest brother may take the patrimony entire,(*b*) and the rest may live under him as under their father;"‡ has exhibited a distribution with deductions, among brethren separating after the death of their father and mother: "The portion deducted for the eldest is the twentieth part of the heritage with the best of all the chattels; for the middlemost, half of that; for the youngest, a quarter of it."§ The twentieth part of the whole amount of the property [to be divided,‖] and the best of all the chattels, must be given [by way of deduction¶] to the eldest; half of that, or a fortieth part, and a middling chattel, should be allotted to the middlemost; and a quarter of it, or the eighteenth part, with the worst chattel, to the youngest. He has also directed an unequal partition, but without deductions, among brethren separating after their parents' decease; allotting two shares to the eldest, one and a half to the next born, and one apiece to the younger brothers: "If a deduction be thus made, let equal shares of the residue be allotted: but, if there be no deduction, the shares must be distributed in this manner; let the eldest have double share, and the next born a share and a half, and the younger sons each a share: thus is the law settled."** The author himself†† has sanctioned an unequal distribution when a division is made during the father's life-time ("Let him either dismiss the eldest with the best share, &c."‡‡). Hence an unequal partition is admissible in every period. How then is a restriction introduced, requiring that sons should divide only equal shares?

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* Yájñavalkya, 2. 118. † Manu, 9. 104. ‡ Manu, 9. 105.
§ Manu, 9. 112. ‖ Bálam-bhaṭṭa. ¶ Ibid.
** Manu, 9. 116—117. †† Yájñavalkya. ‡‡ Vide Sect. 2. § I.
(*a*) See 1 Morl. Dig. 315.—*Ed.* (*b*) See 1 Strange, H. L. 331.—

4. Answer. Unequal distribution is disused; through popular prejudice; like the slaughter of kine.

The question is thus answered: True, this unequal partition is found in the sacred ordinances; but it must not be practised,(*a*) because it is abhorred by the world; since that is forbidden by the maxim "Practise not that which is legal, but is abhorred by the world, [for*] it secures not celestial bliss:"† as the practice [of offering bulls] is shunned, on account of popular prejudice, notwithstanding the injunction "Offer to a venerable priest a bull or a large goat;"‡ and as the slaying of a cow is for the same reason disused, notwithstanding the precept "Slay a barren cow as a victim consecrated to Mitra and Varuṇa."§

* 5. It is declared obsolete in a passage of law.

5. It is expressly declared, "As the duty of an appointment [to raise up seed to another,] and as the slaying of a cow for a victim, are disused, so is partition with deductions [in favour of elder brothers]."‖

6. A'pastamba, after describing an unequal partition, cites a passage of the Veda, which implies an equal distribution only.

6. A'pastamba also, having delivered his own opinion, "A father, making a partition in his life-time, should distribute the heritage equally among his sons;" and having stated, as the doctrine of some, the eldest's succession to the whole estate. ("Some hold, that the eldest is heir;") and having exhibited, as the notion of others, a distribution with deductions. ("In some countries, the gold, the black kine, and the black produce of the earth,

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4. As the slaying of a cow is for the same reason disused.] This is a very remarkable admission of the former prevalence of a practice, which is now held in the greatest abhorrence.

5. The duty of an appointment.] So the term (niyoga-dharma) is here interpreted by the author of the Víramitrodaya. But it is explained in the Subodhiní, as intending the injunction of an observance, such as the offering of a bull, &c.

6. In some countries the gold, &c.] The sense of the text is this: In certain countries, the gold, the black kine, the black produce of earth, as Másha¶ and other dark-coloured grain, or as black iron, (for so some interpret the word;) appertain to the eldest son; the car, and the furniture in the house, or utensils such as stools and the like, belong to the father;** the jewels worn by her are the wife's, as well as property which she has received from the father and other kinsmen. Such respectively are the portions of the eldest son, of the father, and of his wife. Subodhiní; and Haradatta cited by Bálam-bhaṭṭa.

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* Subodhiní and Bálam-bhaṭṭa.

† A passage of Yájñavalkya, according to the quotation of Mitra Miçra in the Víramitrodaya; but ascribed to Manu in Bálam-bhaṭṭa's commentary. It has not, however, been found either in Manu's or in Yájñavalkya's institutes.

‡ This also is a passage of Yájñavalkya, according to Mitra Miçra's quotation; but has not been found in the institutes of that author.

§ A passage of the Veda, as the preceding one is of the Smṛti, according to the remark of the Subodhiní and Bálam-bhaṭṭa.

‖ Smṛti-sangraha as cited in the Víramitrodaya. ¶ Phaseolus radiatus.

** See a different interpretation. Sect. 2. § 10.

(*a*) See 2 Strange, H. L. 382—3; 1 Morl. Dig. 305.—

belong to the eldest son; the car appertains to the father; and the furniture in the house and her ornaments are the wife's;* as also the property [received by her] from kinsmen: so some maintain;") has expressly forbid it as contrary to the law; and has himself explained its inconsistency with the sacred codes: "It is recorded in scripture, without distinction, that Manu distributed his heritage among his sons."†

7. Unequal division should not be practised.

7. Therefore unequal partition, though noticed in codes of law, should not be practised, since it is disapproved by the world and is contrary to scripture. For this reason, a restriction is ordained, that brethren should divide only in equal shares.

8. The mother's peculiar property goes to her daughter.

8. It has been declared, that sons may part the effects after the death of their father and mother. The author states an exception in regard to the mother's separate property; "The daughters share the residue of their mother's property, after payment of her debts."‡

9. Exposition of Yájñavalkya's text.

9. Let the daughters divide their mother's effects remaining over and above the debts; that is, the residue after the discharge of the debts contracted by the mother.(*a*) Hence, the purport of the preceding part of the text is, that sons may divide their mother's effects, which are equal to her debts or less than their amount.

10. Sons, not daughters, are to discharge the mother's debts: but her wealth goes to her daughters, as the father's devolves on the sons.

10. The meaning is this: A debt, incurred by the mother, must be discharged by her sons, not by her daughters; but her daughters shall take her property remaining above her debts: and this is fit; for by the maxim "A male child is procreated if the seed predominate, but a female if the woman contribute most to the fœtus;" the women's property goes to her daughters, because portions of her abound in her female children; and the father's estate goes to his sons, because portions of him abound in his male children.

ANNOTATIONS.

Among his sons.] Bálam-bhatta reads putreṇa "son" in the singular; but all copies of the Mitákshará and Subodhiní, which have been collated, exhibit the term in the plural (putrebhyaḥ "sons;") and so does the Víramitrodaya, quoting this passage from the Mitákshará.

8. Sons may divide their mother's effects, which are equal to her debts or less.] They may take the goods and must pay the debts. Bálam-bhaṭṭa.

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* Vide supra. Sect. 2. § 10.

† A passage of the Taittiríya Veda, cited by Apastamba; as here remarked by Bálam-bhaṭṭa.

‡. 118. (*a*) See 2 Strange, H. L. 383.—

11. On the subject [of daughters*] a special rule is propounded by Gautama: "A woman's property goes to her daughters, unmarried, or unprovided."† His meaning is this: if there be competition of married and unmarried daughters, the woman's separate property belongs to such of them as are unmarried; or, among the married, if there be competition of endowed and unendowed daughters, it belongs exclusively to such as are unendowed: and this term signifies 'destitute of wealth.'

11. It goes first to unmarried or unprovided daughters.

12. In answer to the question, who takes the residue of the mother's goods, after payment of her debts, if there be no daughter? the author adds "And the issue succeeds in their default."‡

12. On failure of daughters, it goes to her sons.

13. On failure of daughters, that is, if there be none, the son, or other male offspring, shall take the goods. This, which was right under the first part of the text ("Let sons divide equally both the effects and the debts;"§) is here expressly declared for the sake of greater perspicuity.

13. Interpretation of the text of Yájñavalkya.

SECTION IV.

Effects not liable to Partition.

1. The author explains what may not be divided "Whatever else is acquired by the co-parcener himself, without detriment to the father's estate, as a present from a friend, or a gift at nuptials, does not appertain to the co-heirs. Nor shall he, who recovers hereditary property, which had been taken away, give it up to the parceners: nor what has been gained by science."‖

1. Certain acquisitions are exempt from partition.

2. That, which had been acquired by the co-parcener himself without any detriment to the goods of his father or mother; or which has been received by him from a friend,(*a*) or obtained by marriage, shall not appertain to the co-heirs of brethren. Any property, which had descend-

2. Exposition of Yájñavalkya's text,

ANNOTATIONS.

11. **Unmarried or unprovided.**] The text is explained otherwise by Jímúta-váhana. (C. 4. Sect. 2. § 13. and 23.)

Married and unmarried.] Married signifies espoused; unmarried, maiden. Subodhiní.

Endowed and unendowed.] Endowed signifies supplied with wealth; unendowed, unfurnished with property. Bálam-bhaṭṭa.

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* Bálam-bhaṭṭa. † Gautama, 28. 22. ‡ Yájñavalkya, 2. 118,

§ Vide § 1. ‖ Yájñavalkya, 2. 119—120.

(*a*) See *Rewun Persad* v. *Mt. Radha Beeby*, 4 Moore, I. A. Ca. 162 per Wigram

ed in succession from ancestors, and had been seized by others, and remained unrecovered by the father and the rest through inability or for any other cause, he, among the sons, who recovers it with the acquiescence of the rest, shall not give up to the brethren or other co-heirs: the person recovering it shall take such property.

3. If it be land, he takes the fourth part, and the remainder is equally shared among all the brethren. So Çankha ordains "Land, [inherited] in regular succession, but which had been formerly lost and which a single [heir] shall recover solely by his own labour, the rest may divide according to their due allotments, having first

3. Çankha directs, that, if land be recovered by one co-heir, he shall have a quarter of it.

4. In regular succession.] Here the word "inherited" must be understood.

4. A word supplied in the text.

5. He need not give up to the co-heirs, what has been gained by him, through science, by reading the scriptures or by expounding their meaning: the acquirer shall retain such gains.

5. The close of the passage of Yájñavalkya (§ 1.) explained.

6. Here the phrase "any thing acquired by himself, without detriment to the father's estate," must be every where understood: and it is thus connected with each member of the sentence; what is obtained from a friend, without detriment to the paternal estate; what is received in marriage, without waste of the patrimony; what is redeemed, of the hereditary estate, without expenditure of ancestral property; what is gained by science, without use of the father's goods. Consequently, what is obtained from a friend, as the return of an obligation conferred at the charge of the patrimony; what is received at a marriage concluded in the form termed Á́sura or the like; what is recovered, of the hereditary estate, by the expenditure of the father's goods; what is earned by science acquired at the expense of ancestral wealth; all that must be shared with the whole of the brethren and with the father.

6. The acquisition must have been made without charge to the patrimony.

ANNOTATIONS.

4. Inherited must be understood.] The author supplies the deficiency in the text cited by him. The words "in succession" are in the text; "inherited" must be understood to complete the sense. Subodhiní.

6. Any thing acquired by himself.] Here, according to Bálam-bhaṭṭa's remark, either a different reading is proposed (kinchit for anyat,) or an interpretation of the words of the text, "whatever else (anyat)" being explained by (kinchit) 'any thing.'

It is connected with every other member of the sentence.] More is implied: for the same phrase is understood in every instance, stated in other codes, of acquisitions exempt from partition. Subodhiní.

In the form termed A'sura.] For, at such a marriage, wealth is received from the bridegroom by the father or kinsmen of the bride. See Manu, 3. 31.

(*b*) See 2 Str. H. L. 379.-

7. Thus, since the phrase "without detriment to the father's estate" is in every place understood; what is obtained by simple acceptance, without waste of the patrimony, is liable to partition. But, if that were not understood with every member of the text, presents from a friend, a dowry received at a marriage, and other particular acquisitions, need not have been specified.

7. And acquisitions so made, but not included in the enumerated sorts, are divisible.

8. But, it is alleged, the enumeration of amicable gifts and similar acquisitions is pertinent, as showing, that such gains are exempt from partition, though obtained at the expense of the patrimony. Were it so, this would be inconsistent with the received practice of unerring persons, and would contradict a passage of Nárada: "He, who maintains the family of a brother studying science, shall take, be he ever so ignorant, a share of the wealth gained by science."* Moreover the definition of wealth, not participable, which is gained by learning, is so propounded by Kátyáyana: "Wealth, gained through science which was acquired from a stranger while receiving a foreign maintenance, is termed acquisition through learning."(*a*)

8. An objection refuted.

Passages of Nárada and Kátyáyana, on the gains of science.

9. Thus, if the phrase "without detriment to the father's estate," be taken as a separate sentence, any thing obtained by mere acceptance would be exempt from partition, contrary to established practice.

9. It is a condition in the exemption, that the gain be without loss to the patrimony.

ANNOTATIONS.

7. Thus since the phrase &c.] A different reading is noticed by Bálam-bhaṭṭa "Not thus;" na tathá instead of "Thus" tathá. It is taken as a distinct sentence; and is explained as intimating, that, on the other hand, amicable gifts and the like, acquired without detriment to the patrimony, are not liable to partition. According to this reading and interpretation, that short sentence belongs to the preceding paragraph.

In the following sentence there seems to be another difference of reading, in the phrase "without waste (or with waste) of the patrimony." But the reading, which is countenanced by the exposition given in the Subodhiní, has been preferred.

Since the phrase "without detriment to the father's estate."] Since that portion of the text is applicable to amicable gifts and other acquisitions which are specified as exempt from partition, therefore, as those acquisitions made at the charge of the patrimony are liable to be shared, so any thing obtained by mere acceptance, not being included among such acquisitions, must be subject to partition, though procured without use of the paternal goods. Subodhiní.

8. As showing that such gains are exempt from partition.] A difference in the reading of this passage, bhájyatvát (in the ablative case) instead of bhájyatváya (in the dative), is mentioned by Bálam-bhatta; but he makes no difference in the interpretation.

Would contradict a passage of Nárada.] Since the support of the family is here stated as a reason for partaking of the property, the right of participation in the gains of science is founded on a special cause; and is not a natural consequence of relation as a brother: and the gains of science are not naturally liable to partition, and are therefore mentioned as excepted from distribution.

* Nárada, 13. 10.

(*a*) See *Laximon Row Sadasew* v. *Mullar Row Bajee*, 2 Knapp P. C. Rep. 60 63.—

10. This [condition, that the acquisition be without detriment to the patrimony,*] is made evident by Manu: "What a brother has acquired by his labour, without using the patrimony, he need not give up to the co-heirs; nor what has been gained by science."(a)†

10. This is corroborated by a passage of Manu.

11. By labour] by science, war or the like.

11. Exposition of the text.

12. Is it not unnecessary to declare, that effects obtained as presents from friends, and other similar acquisitions made without using the patrimony, are exempt from partition: since there was no ground for supposing a partition of them? That what is acquired, belongs to the acquirer, and to no other person, is well known: but a denial implies the possible supposition of the contrary.

12. An objection stated.

13. Here a certain writer thus states grounds for supposing a partition. By interpreting the text, "After the death of the father, if the eldest brother acquire any wealth, a share of that belongs to the younger brothers; provided they have duly cultivated science;"‡ in this manner, 'if the eldest, youngest or middlemost, acquire property before or after the death of the father, a share shall accrue to the rest, whether younger or elder;' grounds do exist for supposing friendly presents and the like to be liable to partition, whether or not the father be living: that is accordingly denied.

13. An erroneous solution of it quoted.

14. The argument is erroneous: since there is not here a denial of what might be supposed; but the text is a recital of that which was demonstratively true: for most texts, cited under this head, are mere recitals of that which is notorious to the world.

14. Refutation of it and solution of the difficulty.

15. Or you may be satisfied with considering it as an exception to what is suggested by another passage, "All the brethren shall be equal sharers of that which is acquired by them in concert:"§ and it is therefore a mere error to deduce the suggestion from an indefinite import of the word "eldest" in the text before cited (§ 13). That passage must be interpreted as an exception to the general doctrine, deduced from texts concerning friendly gifts and the rest, that they are exempt from partition, both before the father's death and after his demise.

15. Another solution proposed.

16. Other things exempt from partition, have been enumerated by Manu; "Clothes, vehicles, ornaments, prepared food, women, sacrifices and pious acts, as well as the common way, are declared not liable to distribution."‖

16. Manu enumerates other things exempted.

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* Subodhiní.

† Manu, 9. 208. The close of this passage is read differently by Kullúka-bhaṭṭa, Jímúta-váhana, &c. See Jímútá-váhana Ch. 6. Sect. 1, § 3.

‡ Manu, 9. 204.

§ Vṛihaspati cited in the Ratnákara. ‖ Manu, 9. 219.

(a) See 2 Strange H. L. 357.-

17. Exposition of the text.
The apparel of the brethren is retained by them.
The father's apparel is given away at his obsequies.
A passage of Vṛihaspati confirms this.
New clothes may be distributed.

17. Clothes, which have been worn, must not be divided. What is used by each person, belongs exclusively to him; and what had been worn by the father, must be given by brethren parting after the father's decease, to the person who partakes of food at his obsequies: as directed by Vṛihaspati; "The clothes and ornaments, the bed and similar furniture, appertaining to the father, as well as his vehicle and the like, should be given, after perfuming them with fragrant drugs and wreaths of flowers, to the person who partakes of the funeral repast." But new clothes are subject to distribution.

18. Vehicles] The carriages, as horses, litters or the like. Here

18. So of vehicles.
Cattle may be distributed in some cases.
If few, they go to the eldest brother: conformably to a passage of Manu.

), that, on which each person rides, belongs exclusively to him. But the father's must be disposed of as directed in regard to his clothes. If the horses or the like be numerous, they must be distributed among co-heirs who live by the sale of them. If they cannot be divided, the number being unequal, they belong to the eldest brother: as ordained by Manu; "Let them never divide a single goat or sheep, or a single beast with uncloven hoofs: a single goat or sheep belongs to the first born."*

19. The ornaments worn by each person are exlusively his. But what has not been used, is common and liable to partition. "Such ornaments, as are worn by women during the life of her husband, the heirs of the husband shall not divide among themselves: they, who do so, are degraded from their tribe."† It appears from the condition here specified ("such ornaments as are worn,") that those, which are not worn may be divided(*a*).

19. Ornaments likewise belong to the wearer, under the text of Manu.
Unworn ornaments may be shared.

20. Prepared food is to be consumed.

20. Prepared food, as boiled rice, sweet cakes and the like, must be similiarly exempted from partition. Such food is to be consumed according to circumstances.

ANNOTATIONS.

18. The number being ... Inequality here signifies insufficiency for shares; not imparity for number. And this is fit. Suppose three horses and three sons: since the number is adequate to the allotment of shares, the horses may be divided. Suppose four horses and either three or five sons: since the horses do not answer to the number of co-heirs, and cannot be distributed into shares in their kind, and since a distribution by means of the value is forbidden, and the cattle is directed to be given to the eldest brother, the horses may be divided so far as they are adequate to the shares, and the surplus shall be given to the eldest. Throughout this title, imparity must be so understood. Subodhiní.

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* Manu, 9. 119. † Manu, 9. 200.

(*a*) See 1 Strange, H. L. 50: 2 Ibid. 370.—*Ed.*

21. Water, or a reservoir of it, as a well or the like, being unequal [to the allotment of shares,] must not be distributed by means of the value; but is to be used [by the co-heirs] by turns.

21. A well is to be used by turns.

22. The women or female slaves, being unequal [in number, to the shares,] must not be divided by the value, but should be employed in labour [for the co-heirs] alternately. But women (adulteresses or others) kept in concubinage by the father, must not be shared by the sons, though equal in number: for the text of Gautama forbids it. "No partition is allowed in the case of women connected [with the father or with one of the co-heirs."*

22. Female slaves are to labour for the heirs by turns; but concubines are not to be shared.

Gautama forbids it.

23. The term yogakshema is a conjunctive compound resolvable into yoga and kshema. By the word yoga is signified a cause of obtaining something not already obtained: that is, a sacrificial act to be performed with fire consecrated according to the Veda and the law. By the term kshema is denoted an auspicious act which becomes the means of conservation of what has been obtained: such is the making of a pool or a garden, or the giving of alms elsewhere than at the altar. Both these, though appertaining to the father, or though accomplished at the charge of the patrimony, are indivisible; as Laugákshí declares. "The learned have named a conservatory act kshema, and a sacrificial one yoga; both are pronounced indivisible: and so are the bed and the chair.

23. Interpretation of Yoga and Kshema sacrifices and pious acts, in

24. Some hold, that by the compound term yoga-kshema, those, who effect sacrificial and conservatory acts (yoga and kshema), are intended, as the king's counsellors, the stipendiary priests, and the rest. Others say, weapons, cowtails, parasols, shoes and similar things are meant.

24. Other interpretations of the same term.

25. The common way, or road of ingress and egress to and from the house, garden, or the like, is also indivisible.

25. The common way is indivisible.

ANNOTATIONS.

21. Being unequal.] It is thus hinted, that, if the number be adequate, partition takes place. Bálam-bhatṭa.

22. "Women connected."] Enjoyed, or kept in concubinage. Subodhiní.

Female slaves, being taken for enjoyment by any one of the brethren or co-heirs, belongs exclusively to him. Haradatta on Gautama.

24. Some hold.] The interpretation, given by Medhátithi and the Kalpataru, is stated. Bálam-bhatṭa.

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* Gautama, 28. 45.

26. The exclusion of land from partition, as stated by Uçanas, ("Sacrificial gains, land, written documents, prepared food, water, and women, are indivisible among kinsmen even to the thousandth degree;") bears reference to sons of a Bráhmaṇa by women of the military and other inferior tribes: for it is ordained [by Vṛihaspati:] "Land, obtained by acceptance of donation, must not be given to the son of a Kshatriyá or other wife of inferior tribe: even though his father give it to him, the son of the Bráhmaṇí may resume it, when his father is dead."*

26. A text of Uçanas, concerning land, is restricted to the case of inferior sons; like a passage of Vṛihaspati.

27. Sacrificial gains] acquired by officiating at religious ceremonies.

27. A term in the text explained.

28. What is obtained through the father's favour, will be subsequently declared exempt from partition.† The supposition that any thing, acquired by transgressing restrictions regarding the mode of acquisition, is indivisible, has been already refuted.‡

28. In general the father's donations to his sons are not divisible.

29. It is settled, that whatever is acquired at the charge of the patrimony, is subject to partition. But the acquirer shall, in such a case, have a double share, by the text of Vasishṭha. "He, among them, who has made an acquisition, may take a double portion of it."§

29. The acquirer has a double share if the patrimony have been used: by the text of Vasishṭha.

30. The author propounds an exception to that maxim. "But, if the common stock be improved, an equal division is ordained.(*a*)"‖

30. Not however, where the common stock is improved.

31. Among unseparated brethren, if the common stock be improved or augmented by any one of them, through agriculture, commerce or similar means, an equal distribution nevertheless takes place(*b*); and a double share is not allotted to the acquirer.

31. Exposition of the text of Yájñavalkya.

ANNOTATIONS.

29. He, among them.] Among the brethren. Subodhiní.

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* This is a passage of Vṛihaspati, according to the remark of Bálam-bhaṭṭa; and it is cited as such by Jímúta-váhana, C. 9. § 19.

† Sect. 6. § 13. 16. ‡ Sect. 1. § 16. § Vasishtha, 17. 42. ‖ Yájñavalkya, 2. 121.

(*a*) See 2 Str. H. L.

(*b*) But there is no rule of law which precludes one member of an undivided family, though living together, from entering into an agreement with his co-parceners in respect of the expenditure upon the family property and repayment of self-acquired funds; and such an agreement is rendered more reasonable and probable where portions of the family property are occupied and enjoyed by each of the members living separately. See *Muttusvámi Gaunḍan* v. *Subbiramaniya Gaunḍan* 1 Mad. H. C. Rep. 311 and see 1 Strange, H. L. 198: 2 W. Macn. P. H. L. 162: 6 Moo. I A. Ca. 547.—

SECTION V.

Equal rights of Father and Son in property ancestral.

1. Grandsons share the allotment which their deceased father would have had.

1. The distribution of the paternal estate among sons has been shown; the author next propounds a special rule concerning the division of the grandfather's effects by grandsons. "Among grandsons by different fathers, the allotment of shares is according to the fathers."*

2. Exposition of Yájñavalkya's text.

2. Although grandsons have by birth a right in the grandfather's estate, equally with sons; still the distribution of the grandfather's property must be adjusted through their fathers, and not with reference to themselves. The meaning here expressed is this: if unseparated brothers die, leaving male issue; and the number of sons be unequal, one having two sons, another three, and a third four; the two receive a single share in right of their father, the other three take one share appertaining to their father, and the remaining four similarly obtain one share due to their father. So, if some of the sons be living and some have died leaving male issue; the same method should be observed: the surviving sons take their own allotments, and the sons of their deceased brothers receive the shares of their own fathers respectively. Such is the adjustment prescribed by the text.

3. The right of father and son in property ancestral, is equal.

3. If the father be alive, and separate from the grandfather, or if he have no brothers, a partition of the grandfather's estate with the grandson would not take place; since it has been directed, that shares shall be allotted, in right of the father, if he be deceased: or, admitting partition to take place, it would be made according to the pleasure of the father, like a distribution of his own acquisitions: to obviate this doubt the author says; "For the ownership of father and son is the same in land, which was acquired by the grandfather, or in a corrody, or in chattels [which belonged to him."]†

ANNOTATIONS.

1. Grandsons by different fathers.] Children of distinct fathers; meaning sons of brothers. Another reading also occurs: pramíta-pitṛkánám "whose fathers are deceased," instead of aneka-pitṛkánám "whose fathers are different." Subodhiní.

Bálam-bhaṭṭa notices another variation of the reading, but with disapprobation; aneka-pitṛkánám. It intends the same meaning, though inaccurately expressed.

3. If he be deceased.] A variation in the reading and punctuation of the passage is noticed by Bálam-bhatta: 'vibhágo n'ásti dhriyamáne; apitari pitṛto bhága kalpanetyuktatvát,' (instead of vibhágo n'ásti; adhriyamáne pitari pitṛto, &c.) "partition would not take place, if he be living, since it is directed that shares shall be allotted in right of the father, if he be deceased."

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* Yájñavalkya, 2. 121.

† Yájñavalkya, 2. 122.

4. Land] a rice-field or other ground. A corrody] So leaves receivable from a plantation of betel [4] or so many nuts from an orchard of areca. Chattels] gold, silver, or other moveables.

4. Explanation of Yájñavalkya's text.

5. In such property, which was acquired by the paternal grandfather, through acceptance of gifts, or by conquest or other means [as commerce, agriculture, or service,*] the ownership of father and son is notorious: and therefore partition does take place. For, or because, the right is equal, or alike, therefore partition is not restricted to be made by the father's choice; nor has he a double share.

5. Since the right is equal, partition is not by the father's choice only; nor has he a double share.

6. Hence also it is ordained by the preceding text, that "the allotment of shares shall be according to the fathers," (§ 1.) although the right be

6. For the same reason, the distribution is as before stated (§ 1.)

7. The first text "When the father makes a partition, &c." (Sect. 2. § 1.) relates to property acquired by the father himself. So does that which ordains a double share: "Let the father, making a partition, reserve two shares for himself."† The dependence of sons, as affirmed in the following passage, "While both parents live, the control remains, even though they have arrived at old age;"‡ must relate to effects acquired by the father or mother. This other passage, "They have not power over it (the paternal estate) while their parents live;"§ must also be referred to the same subject.

7. Other passages reconciled.

ANNOTATIONS.

To obviate this doubt the author says.] If the father be alive, and separated from his own father, or if, being an only son with no brothers to participate with him, he be alive and not separated from his own father; then, since in the first mentioned case he is separate, no participation of the grandson's own father, in the grandfather's estate, can be supposed, and therefore, as well as because he is surviving, the grandson cannot be supposed entitled to share the grandfather's property, since the intermediate person obstructs his title: and, in the second case, although the grandson's own father have pretensions to the property, since he is not separated, still the participation of the grandson in his grandfather's estate cannot be supposed, for his own father is living: hence no partition of the grandfater's effects, with the grandson whose father is living, can take place in any circumstances. Or, admitting that such partition may be made, because he has a right by birth; still, as the father's superiority is apparent, (since a distribution by allotment to him is directed, when he is deceased; and that is more assuredly requisite, if he be living;) it follows, that partition takes place by the father's choice and that a double share belongs to him. Subodhiní.

For the ownership of father and son.] The Kalpataru and Aparárka read "The ownership of both father and son" instead of "For the ownership of father and son:" chobhayoh instead of chaiva hi.

4. Betle peper.] Piper betle. Linn. Betle leaf.

Areca.] Areca Faufel. Goert. Betle nut.

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* Bálam-bhaṭṭa. † Nárada, 13. 12.

‡ The remainder of this passage has not been found; nor is the text cited in other compilations. Bálam-bhaṭṭa ascribes it to Manu; but it is not found in his Institutes.

§ Manu, 9. 204.

8. Partition of the grandfather's estate may be exacted by the sons from their father.

8. Thus, while the mother is capable of bearing more sons, and the father retains his worldly affections and does not desire partition, a distribution of the grandfather's estate does nevertheless take place by the will of the son(*a*).

9. The grandson may interpose to prevent the dissipation of the inherited property by the father; but not his acquired property.

9. So likewise, the grandson has a right of prohibition, if his unseparated father is making a donation, or a sale, of effects inherited from the grandfather: but he has no right of interference, if the effects were acquired by the father. On the contrary, he must acquiesce, because he is dependant.

10. The distinction stated explicitly.

10. Consequently the difference is this: although he have a right by birth in his father's and in his grandfather's property; still, since he is dependant on his father in regard to the paternal estate, and since the father has a predominant interest as it was acquired by himself, the son must acquiesce in the father's disposal of his own acquired property: but, since both have indiscriminately a right in the grandfather's estate, the son has a power of interdiction [if the father be dissipating the property.*]

11. A passage of Manu cited and explained.

11. Manu likewise shows, that the father, however reluctant, must divide with his sons, at their pleasure, the effects acquired by the paternal grandfather; declaring, as he does ("If the father recover paternal wealth not recovered by his co-heirs, he shall not, unless willing, share it with his sons; for in fact it was acquired by him:")† that, if the father recover property, which had been acquired by an ancestor, and taken away by a stranger, but not redeemed by the grandfather, he need not himself share it, against his inclination, with his sons; any more than he need give up his own acquisitions.

SECTION VI.

Rights of a posthumous son and of one born after the partition.

1. A son, born partition, is entitled to share: conformably with the text of Yájñavalkya.

1. How shall a share be allotted to a son born subsequently to a partition of the estate? The author replies "When the sons have been separated, one who is [afterwards] born of a woman equal in class, shares the distribution."‡

* Subodhiní. † Manu, 9, 209. ‡ Yájñavalkya, 2. 123.

(*a*) This section, like sec. 10, applies to divisions of ancestral property, *Nágalinga Mudali* v. *Subbiramaniya Mudali*, 1 Mad. H. C. Rep. 796, and see 1 Morl. Dig. 307.—*Ed.*

2. The sons being separated from their father, one, who shall be afterwards born of a wife equal in class, shall share the distribution. What is distributed, is distribution, meaning the allotments of the father and mother: he shares that; in other words, he obtains after [the demise of*] his parents, both their portions: his mother's portion, however, only if there be no daughter; for it is declared that "Daughters share the residue of their mother's property, after payment of her debts."†

2. He takes e allotments of his father and mother.

3. But a son by a woman of a different tribe, receives merely his own proper share, from his father's estate, with the whole of his mother's property [if there be no daughter.‡]

3. Born of a woman of a different tribe, he takes only his proper allotment (Sect. 8.)

4. The same rule is propounded by Manu: "A son, born after a division, shall alone take the parental wealth."§ The term parental (pitryam) must be here interpreted 'appertaining to both father and mother:' for it is ordained, that "A son, born before partition, has no claim on the wealth of his parents; nor one, begotten after it, on that of his brother."‖

4. Passages of Manu and Vṛhaspati of like import.

5. The meaning of the text is this: one, born previously to the distribution of the estate, has no property in the share allotted to his father and mother who are separated [from their elder children¶]; nor is one, born of parents separated [from their children], a proprietor of his brother's allotment.

5. Exposition of the text last cited.

6. Thus, whatever has been acquired by the father in the period subsequent to partition, belongs entirely to the son born after separation. For it is so ordained: "All the wealth, which is acquired by the father himself, who has made a partition with his sons, goes to the son begotten by him after the partition: those, born before it, are declared to have no right."**

6. The father's subsequent acquisitions belong to the son born after separation.

ANNOTATIONS.

2. If there be no daughter.] But, if there be a daughter, the son does not take his mother's portion. Subodhiní.

3. His own proper share] See Section 8.

From his father's estate.] Bálam-bhatta here notices a different reading; pitryam in the accusative, for pitryát in the ablative: and afterwards, mátṛkan "maternal" for mátuḥ "his mother's." The sense is not materially affected by these variations.

4. On the wealth of his parents.] This passage, being read differently by Jímúta-váhana (Ch. 7. § 5.), who writes pitrye "parental or paternal" instead of pitroḥ "of both parents," is not less ambiguous according to that reading, than the text cited from Manu.

5. In the share.] Bálam-bhaṭṭa censures another reading, vibháge "in the division," for bháge "in the share."

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* Bálam-bhaṭṭa. † Yájñavalkya, 2. 118. Vide supra. Sect. 3. § 8. ‡ Subodhiní.
§ Manu, 9. 216. ‖ Vṛhaspati. ¶ Bálam-bhaṭṭa.
** Vṛhaspati. See Jímúta-vahana, Ch. 7. § 6.

7. But the son, born subsequently to the separation, must, after the death of his father, share the goods with those who reunited themselves with the father after the partition: as directed by Manu; "Or he shall participate with such of the brethren, as are reunited with the father."*

7. To be shared however with such brothers as were reunited.

8. When brethren have made a partition subsequently to their father's demise, how shall a share be allotted to a son born afterwards? The author replies "His allotment must absolutely be made, out of the visible estate corrected for income and expenditure."†

8. Right of a posthumous son; declared in a passage of Yájñavalkya.

9. A share allotted for one who is born after a separation of the brethren, which took place subsequently to the death of the father, at a time when the mother's pregnancy was not manifest, is "his allotment." But whence shall it be taken? The author replies, "from the visible estate" received by the brethren, "corrected for income and expenditure." Income is the daily, monthly or annual produce. Liquidation of debts contracted by the father, is expenditure. Out of the amount of property corrected by allowing for both income and expenditure, a share should be taken and allotted to the [posthumous son.]

9. Exposition of the text.

10. The meaning here expressed is this: Including in the several shares the income thence arisen, and subtracting the father's debts, a small part should be taken from the remainder of the shares respectively, and an allotment, equal to their own portions, should be thus formed for the [posthumous] son born after partition.

An equal share is formed for him, out of the allotments of the rest; making allowance for gain and for debts.

ANNOTATIONS.

6. **Absolutely.**] The particle vá is here employed affirmatively. The meaning is, that an allotment for them should be made only from the visible estate corrected for income and expenditure. Subodhiní.

9. **His allotment.**] The pronoun "his" refers to the son born after partition. Subodhiní.

Corrected for income and expenditure.] If agriculture or the like have been practised by the brethren with their several shares after separation, the gain is "income." The payment of the father's debts, the support of their own families, and similar disbursements constitute "expenditure." Counting the income in the shares, and deducting the expenditure from the allotments, as much as may be in each instance proper, should be taken from each portion, and an allotment be thus adjusted for a son born of a pregnancy which existed at the moment of the father's decease, as well as at the time of the partition, though not then manifest. Subodhiní.

10. **Including in the several shares, &c.**] It is the patrimony though divided, as much as when undivided. Since then the offspring, though yet in the mother's womb, is entitled to a share of the father's goods, as being his issue, therefore that offspring is entitled to participate in the gain arising out of the patrimony. Here again, if it be a male child, he has a right to an equal share [with others of the same class]. But, if a female child, she participates for a quarter of the share due to a brother of the same rank with herself. This, which will be subsequently explained, should be here understood. Subodhiní.

* Manu, 9.216.

† Yájñavalkya, 2.

11. This must be understood to be likewise applicable in the case of a nephew, who is born after the separation of the brethren; the pregnancy of the brother's widow, who was yet childless, not having been manifest at the time of the partition(*a*).

11. The posthumous son of a brother has the same right.

12. But, if she were evidently pregnant, the distribution should be made, after awaiting her delivery; as Vasishṭha directs, "Partition of heritage [takes place] among brothers [having waited] until the delivery of such of the women, as are childless [but pregnant]."* This text should be interpreted, 'having waited until the delivery of the women who are pregnant.'

12. If the pregnancy be manifest, the partition should be postponed until after the delivery: as directed by Vasishṭha.

13. It has been stated, that the son, born after partition, takes the whole of his father's goods and of his mother's.† But if the father, or the mother, affectionately bestow ornaments or other presents on a separated son, that gift must not be resisted by the son born after partition; or, if actually given, must not be resumed. So the author declares: "But effects, which have been given by the father, or by the mother, belong to him on whom they were bestowed."‡

13. Presents of parents to their children are incontestible: according to Yájñavalkya.

ANNOTATIONS.

11. Who was yet childless.] This is according to the reading and interpretation followed by Bálam-bhaṭṭa. He notices, however, another reading, (aprajasya instead of aprajasi,) which connects the epithet of "childless" with the brother.

12. Such of the women as are childless but pregnant.] Váchespati-miçra connects the word "women" (or 'wives') with the term "brothers." The Kalpataru, and other compilations, also understand the wives of brothers to be meant; but, in the Smṛti-chandriká, the passage is interpreted as relating to the widows of the father. All concur in explaining it as meant of pregnant widows.

This text should be interpreted.] The most natural construction of the original text is 'Partition of heritage is among brothers and women who are childless; until the birth of issue.' The authors of the Kalpataru and Chintámaṇi follow that interpretation, and conclude that 'a share should be set apart for the widow who is likely to have issue (being supposed pregnant): and when she is delivered, the share is assigned to her son, if she bear male issue; but, if a son be not born, the share goes to the brethren and the woman shall have a maintenance.' The author of the Smṛti-chandriká acknowledges that to be the natural construction of the words; but rejects the consequent interpretation, because it contains a contradiction, and because widows are not entitled to participate as heirs. He expounds the text, nearly as it is explained in the Mitákshará, viz. 'Among brothers, who have continued to live together, until the delivery of the child-

* The first part of this passage corresponds with a text of Vasishṭha's institutes (17. 36.); but the sequel of it is not to be found in that work.

† Vide supra. § 1.—§ 7.

‡ Yájñavalkya, 2. 124.

(*a*) See 7 Moo. I. A. Ca. 182.—*Ed.*

14. What is given (whether ornaments or other effects,) by the father and by the mother, being separated from their children, to a son already separated, belongs exclusively to him; and does not become the property of the son born after the partition.

14. Whether given after a division;

15. By parity of reason, what was given to any one, before the separation, appertains solely to him.

it.

16. So, among brethren, dividing the allotment of their parents who were separated from them, after the demise of those parents, (as may be done by the brothers; if there be no son born subsequently to the original partition,) what had been given by the father and mother to each of them, belongs severally to each, and is shared by no other. This must be understood.

16. This equally holds good when the separated sons are the heirs.

SECTION VII.

Shares allotted to provide for widows and for the nuptials of unmarried daughters.—The initiation of uninitiated brothers defrayed out of the joint funds.

1. When a distribution is made during the life of the father, the participation of his wives, equally with his sons, has been directed. ("If he make the allotments equal, his wives must be rendered partakers of like portions."*) The author now proceeds to declare their equal participation, when the separation takes place after the demise of the father: "Of heirs dividing after of the father, let the mother also take an equal share."†

1. The widows of the father are entitled to equal shares with the sons; as provided by Yájñavalkya.

2. Of heirs separating after the decease of the father, the mother shall take a share equal to that of a son; provided no separate property had been given to her. But, if any had been received by her, she is entitled to half a share, as will be explained(*a*).‡

2. Exposition of the text.

They take only half, if they have peculiar property.

ANNOTATIONS.

2. Provided no separate property had been given.] Peculiar property of a woman (stridhana.) Vide C. 2. Sect. 11. § 1.

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* Section 2. § 8. † Yájñavalkya, 2. 124. ‡ Vide C. 2. Sect. 11. § 34.

(*a*) See 2 Str. H. L. 307, 383, 404.—*Ed.*

3. The initiation of brothers should be completed out of the common funds.

3. If any of the brethren be uninitiated, when father dies, who is competent to complete their initiation? The author replies: "Uninitiated brothers should be initiated by those, for whom the ceremonies have been already completed."*

4. Exposition of Yájñavalkya's text.

4. By the brethren, who make a partition after the decease of their father, the uninitiated brothers should be initiated at the charge of the whole estate.

5. For the marriage of sisters, quarter shares are allotted.

5. In regard to unmarried sisters, the author states a different rule: "But sisters should be disposed of in marriage, giving them as an allotment, the fourth part of a brother's own share(*a*)."†

6. Explanation of Yájñavalkya's text.

A quarter is not to be taken from every brother's share; but a portion, equal to a quarter of the amount of a brother's share, is assigned to the sister.

6. The purport of the passage is this: Sisters also, who are not already married, must be disposed of, in marriage, by the brethren, contributing a fourth part out of their own allotments(*b*). Hence it appears, that daughters also participate after the death of their father. Here, in saying "of a brother's own share," the meaning is not, that a fourth part shall be deducted out of the portions allotted to each brother, and shall be so contributed; but that the girl shall be allowed to participate for a quarter of such a share as would be assignable to a brother of the same rank with herself. The sense expressed is this: if the maiden be daughter of a Bráhmaṇí, she has a quarter of so much as is the amount of an allotment for a son by a Bráhmaṇí wife.

ANNOTATIONS.

3. Initiation.] Sanskára; a succession of religious rites commencing on the pregnancy of the mother and terminating with the investiture of the sacerdotal thread, or with the return of the student to his family and finally his marriage.

4. By the brethren, who make a partition, &c.] By such, for whom all the initiatory ceremonies, including marriage, have been completed. Bálam-bhaṭṭa.

After the decease of their father.] In like manner, while the father is living but disqualified by degradation from his tribe or other incapacity, if the brethren be themselves the persons who make the partition, the same rule must be understood in regard to the initiation of brothers at the charge of the common stock. Bálam-bhaṭṭa.

6. The purport of the passage is this.] As commentators disagree in their interpretation of the text, and a subtile difficulty does arise, the author proceeds to show, that his own exposition, and no other, conveys the real sense of the passage. Taking the phrase "the uninitiated should be initiated" as here understood from the preceding sentence (§ 3), he expounds the text; "Sisters also, who are not already married, &c.'

Some thus interpret the words "own share:" "After assigning as many shares as there are brothers, a quarter part should be given to a sister, out of their several allotments: so that, if there be two or more sisters, a quarter of every share must be given to each of them.'

But others thus expound those terms: 'Deducting a quarter from each of their shares, the brothers should give that to a sister. If there be two or more sisters, they and their brothers shall respectively take the same subtracted share [and residue:] and no separate deduction shall be made [for each.']

* Yájñavalkya, 2. 125.

(*a*) See 2 Str. H. L. 313.—

† Yájñavalkya, 2. 125.

See 1 Strange, H. L. 404.—

7. For example, if a certain person had only a Bráhmaṇí wife, and leaves one son and one daughter; the whole paternal estate should be divided into two parts, and one such part be subdivided into four; and, the quarter being given to the girl, the remainder shall be taken by the son. Or, if there be two sons and one daughter, the whole of the father's estate should be divided into three parts; and one such part be subdivided into four: and, the quarter having been given to the girl, the remainder shall be shared by the sons. But, if there be one son and two daughters, the father's property should be divided into thirds, and two shares be severally subdivided into quarters: then, having given two [quarter] shares to the girls, the son shall take the whole of the residue. It must be similarly understood in any case of an equal or unequal number of brothers and sisters alike in rank.

7. Example, where the brothers and sisters are of the same tribe.

8. But, if there be one son of a Bráhmaṇí wife and one daughter by a Kshatriyá woman, the paternal estate should be divided into seven parts; and the three parts, which would be assignable to the son of a Kshatriyá woman, must be subdivided by four: then, giving such fourth part to the daughter of the Kshatriyá wife, the son of the Bráhmaṇí shall take the residue. Or, if there be two sons of the Bráhmaṇí and one daughter by the Kshatriyá wife, the father's estate shall be divided into eleven parts; and three parts, which would be assignable to a son by a Kshatriyá wife, must be subdivided by four: having given such quar-

8. Instance, where they are of different tribes.

ANNOTATIONS.

Both interpretations are unsuitable: 'for, according to the first, if there be one brother and seven or eight sisters,* nothing will remain for the brother, if a quarter must be given to each sister; or, if there be no sister and many brothers, the sister has a greater allotment than a brother, if a quarter must be given to her by each of her brothers; and this is inconsistent with a text, which indicates, that a daughter should have less than a son.

Under the second exposition, if there be one sister and numerous brothers, the same objection arises, which was before stated; or, in the case of one brother and seven or eight sisters, suppose the amount of the brother's share to be a nishca, the quarter of that is very inconsiderable, and the allotment of shares out of it is still more trifling: the terms of the text "giving them, as an allotment, the fourth part," (§ 5) would be impertinent; or, admitting that the precept is observed, still there would be an inconsistency.

But, according to our method, since each sister has exactly a quarter of a share, there is nothing contradictory to the terms of the text, "a fourth part" (§ 5). Subodhiní.

7. Divided into two parts, and one such part .... into four.] If the text were not so explicit, it might have rather concluded, that the estate should be divided into five parts; one for the sister, and four for the brother: which would be exactly an allotment of a quarter of the amount of a brother's share to a sister. But, according to the distribution exemplified in the text, the sister receives one quarter of that which she would have received, had she been male instead of female. It is, however, in the instance first stated, a seventh only of what her brother actually reserves for himself.

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* If there be four sisters, nothing will remain for the brother; if there be a greater number, the allotment of a quarter to each is impossible. C.

ter share to the daughter of the Kshatriya, the two sons of the Bráh ..... shall share and take the whole of the remainder. Thus the ... of distribution may be inferred in any instance of an equal or number of brothers and sisters dissimilar in rank.

9. Nor is it right to interpret the terms of the text (" giving the fourth part" § 5) as signifying 'giving money sufficient for her marriage,' by considering the word " fourth" as indefinite. For that contradicts the text of Manu " To the maiden sisters, let their brothers give portions out of their own allotments respectively : to each the fourth part of the appropriate share; and they, who refuse to give it, shall be degraded."*

9. The allotment of a fourth is not indefinite; intending merely a sufficiency for defraying the charges of the marriage.

10. The sense of this passage is as follows. Brothers, of the sacerdotal and other tribes, should give to their sisters belonging to the same tribes, portions out of their own allotments; that is, out of the shares ordained for persons of their own rank, as subsequently explained.† They should give to each sister a quarter of their own respective allotments. It is not meant, that a quarter should be deducted from the share of each and be given to the sister. But, to each maiden, should be severally allotted the quarter of a share ordained for a son of the same class. The mode of adjusting the division, when the rank is dissimilar and the number unequal, has been stated: and the allotment of such a share appears to be indispensably requisite, since the refusal of it is pronounced to be a sin; " They, who refuse to give it, shall be degraded." (§ 9.)

10. Explanation of a text of Manu of like import.

11. If it be alleged, that, here also, the mention of a quarter is indeterminate, and the allotment of property sufficient to defray the expenses of the nuptials is all which is meant to be expressed: the answer is, no; for there is not any proof, that the allotment of a quarter of a share is indefinite in both codes; and the withholding of it is pronounced to be a sin.

11. An objection answered.

ANNOTATIONS.

This is consonant.] Medhatithi's interpretation of a parallel passage of Manu: where he observes, that 'if the maiden sisters be numerous, the portions are to be adjusted at the fourth part of an allotment for a brother of the same class: thus the meaning is, let the son take three parts, and let the damsel take the fourth.'

9. For her marriage.] Sanskára (§ 3.) signifies, in this instance, marriage: since the previous ceremonies are not performed for females, but only for male children. Subodhiní, &c.

" Out of their own allotments respectively."] A difference in the reading of this passage is remarked in the notes on Jímúta-váhana (C. 3. Sect. 2. § 36). A further variation occurs in the commentary by Medhátithi, who reads Svábhyaḥ svábhyaḥ " to their own sisters;" that is, 'sisters of their own classes respectively.'

" To each the fourth part of the appropriate share."] This part of the text is understood differently by Jímúta-váhana. C. 3. Sect. 2. § 36.

11. In both codes.] In the text of Yájñavalkya and in that of Manu. Subodhiní.

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* Manu, 9. 118. † Sect. 8. § 4. ‡ Vide infra. § 9.

12. As for what is objected by some, that a sister, who brothers, would be greatly enriched, if the of a [fourth*] part were positively meant; and that a brother, who has many sisters, would be entirely destitute of wealth; the consequence is obviated in the manner before explained:† it is not here directed, that a quarter shall be deducted out of the brother's own share and given to his sister; whence any consequence should arise.

12. A further objection confuted.

13. Hence the interpretation of Medhátithi who has no compeer, as well as of other writers, who concur with him, is square and accurate; not that of Bháruchi.

13. Medhátithi's doctrine is right, not Bháruchi's.

14. Therefore, after the decease of the father, an unmarried daughter(*a*) participates in the inheritance. But, before his demise, she obtains that only, whatever it be, which her father gives; since there is no special precept respecting this case. Thus all is unexceptionable.

14. Before the father's demise, a daughter can have only what he pleases to give her.

SECTION VIII.

Shares of Sons belonging to different tribes.

1. The adjustment of a distribution among brothers alike in rank, whether made with each other, or with their father, has been propounded in preceding passages ("When the father makes a partition, &c."‡). The author now describes partition among brethren dissimilar in class: "The sons of a Bráhmaṇa, in the several tribes, have four shares, or three, or two, or one; the children of a Kshatriya have three portions, or two, or one; and those of a take two parts, or one."§

1. Partition among sons by women of different tribes, declared by Yájñavalkya.

ANNOTATIONS.

Pronounced to be a sin.] In Manu's text. (§ 9.)

13. Who has no compeer.] Who is independent of control. Bálam-bhaṭṭa.

This commentator treats Asaháya as an epithet of the author next named (Medhátithi.) The word occurs, however, as a proper name in the Vivádа-ratnákara, in commenting on a passage of Manu (9. 165.) The meaning may be that 'the opinion of Asaháya, Medhátithi, and the rest is accurate: not that of Bháruchi.'

* Bálam-bhaṭṭa.

† Section 2, § 1.

‡

§ Yájñavalkya, 2. 126.

(*a*) See 2 Str. H. L. 311.—*Ed.*

2. Under the sanction of the law,* instances do occur of a Bráhmaṇa having four wives; a Kshatriya, three; and a Vaiçya, two: but a Çúdra, one. In such cases, the sons of a Bráhmaṇa, born to him by women of the several tribes, shall have four shares, three, two, or one, in the order of these tribes.

2. Explanation of the text.

3. The several tribes (varṇaças.)] Women of the different classes the sacerdotal and the rest, are here signified by the word tribe (varṇa.) The termination ças, subjoined to a noun in the singular number and locative or other case, bears a distributive sense, conformably with the grammatical rule.†

3. Etymology of a term contained in it.

4. The meaning here expressed is this: The sons of a Bráhmaṇa, by a Bráhmaṇí woman, take four shares apiece: his sons by a Kshatriya wife, receive three shares each; by a Vaiçyá woman, two; by a Çúdrá, one.

4. Distribution among the sons of a Bráhmaṇa.

5. The sons of a Kshatriya, born to him by women of the several tribes, (for that is here understood,) have three shares, or two, or one, in the order of the tribes: that is, the sons of a Kshatriya man, by a Kshatriyá woman, take three shares each; by a Vaiçyá woman, two; by a Çúdrá wife, one.

5. Among the sons of a Kshatriya.

6. The sons of a Vaiçyá, by women of the several tribes, (for here, again, the same term is understood,) have two shares, or one, in the order of the classes: that is, the sons of a Vaiçyá man, by a Vaiçyá woman, take two shares apiece; by a Çúdrá woman, one.

6. Among the sons of a Vaiçyá.

7. Since a man of the servile tribe cannot have a son of different class from his own, because one wife only is allowed to him, (for "a Çúdrá woman only must be the wife of a Çúdra man;"‡) partition among his children takes place in the manner beforementioned.

7. Among the sons of a Çúdra.

ANNOTATIONS.

Medhátiṭhi is a celebrated commentator on Manu: and his exposition of Manu's text (§ 9.) agrees with the author's explanation of Yájñavalkya's (§ 5.)

Bháruchi, an ancient author, probably maintained the opinion and interpretation which are refuted in the present Section.

2. Under the sanction of the law.] The initial words of a passage of Yájñavalkya (1. 57.) are cited in the text, for the sanction of the practice here noticed.

3. Conformably with the grammatical rule.] The author quotes a rule of grammar. (Páṇini, 5. 4. 43.)

7. In the manner beforementioned.] As directed by the texts above cited. (Yájñavalkya, 2. 115. and 118. Vide Sect. 2. and 3.) Subodhiní.

* Yájñavalkya, 1. 57.

† Páṇini, 5. 4. 43.

‡ Manu, 3. 13.

Although no restriction be specified in the text (§ I.), it must be understood to relate to property other than land obtained by the acceptance of a gift. For it is declared [by Vṛhaspati*] "Land obtained by acceptance of donation, must not be given to the son of a Kshatriyá or other wife of inferior tribe: even though his father give it to him, the son of the Bráhmaṇí may resume it, when his father is dead."

8. Land received in gift is exclusively taken by the Bráhmaṇí's son: as directed by Vṛhaspati.

9. Since acceptance of donation is here expressly stated, land obtained by purchase or similar means appertains also to the son of a Kshatriyá or other inferior woman. For the son by a Çúdrá woman is specially excepted ("The son, begotten on a Çúdrí woman by any man of a twice-born class, is not entitled to a share of land."†) Now, if land acquired by purchase and similar means did not belong to the sons of a Kshatriyá or Vaiçyá wife, the special exception of a son by a Çúdrá woman would be impertinent.

9. Acquired by other means, as purchase, &c. it is shared by the sons of the Kshatriya and Vaiçyá; but not by the Çúdrá's son.

10. But the following text. "The son of a Bráhmaṇa, a Kshatriya, or a Vaiçya, by a woman of the servile class, shall not share the inheritance; whatever his father may give him, let that only be his property:"‡ relates to the case where something, however inconsiderable, has been given by the father, in his life-time, to his son by a Çúdrá woman. But, if no affectionate gift have been bestowed on him by his father, he participates for a single share [of the moveables]. Thus there is nothing contradictory.

10. The entire exclusion of the son by a Çúdrá woman, as ordained by Manu, supposes something to have been bestowed on him by his father.

Else he shares the moveables.

ANNOTATIONS.

9. Begotten on a Çúdrí woman.] Çúdrí does not here bear its regular signification of 'wife of a Çúdra man,' but intends a wife of the regenerate man, being a Çúdrá woman. Subodhiní and Bálam-bhatta.

The special exception of a son by a Çúdrá woman would be impertinent.] Since the son of the Çúdrá is specially excepted, it follows, that the sons of the Kshatriya wife and those of the Vaiçyá do participate. Subodhiní.

10. Where something.....has been given.] Where an affectionate gift has been bestowed. In some copies, the reading is so: (prasáda-dattam in place of pradattam. Bálam-bhaṭṭa.

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* Bálam-bhaṭṭa supplies the author's name.

† This also is a passage of Vṛhaspati. See Jímúta-váhana, Ch. 9. § 22.

‡ Manu, 9. 155.

SECTION IX.

Distribution of effects discovered after partition.

1. Something is here added respecting the residue after a general distribution of the estate. "Effects, which have been withheld by one co-heir from another, and which are discovered after the separation, let them again divide in equal shares: this is a settled rule."*

1. Yájñavalkya directs the distribution of goods which were withheld from partition.

2. What had been withheld by co-parceners from each other, and was not known at the time of dividing the aggregate estate, they shall divide in equal proportions, when it is discovered after the partition of the patrimony. Such is the settled rule or maxim of the law.

2. When discovered, they shall be divided.

3. Here, by saying "in equal shares" the author forbids partition with deductions. By saying "let them divide," he shows, that the goods shall not be taken exclusively by the person who discovers them.

3. In equal shares, by all the co-heirs.

4. Since the text is thus significant, it does not imply, that no offence is committed by embezzling the common property.

4. The embezzlement was an offence.

5. Is it not shown by Manu to be an offence on the part of the eldest brother, if he appropriate to himself the common property; and not so, on the part of younger brothers? "An eldest brother, who from avarice shall defraud his younger brothers, shall forfeit the honours of his primogeniture, be deprived of his [additional] share, and be chastised by the king."†

5. Is it so, only if committed by an elder brother, as in a passage of Manu?

6. That inference is not correct; for, by pronouncing such conduct criminal in an elder brother, who is independent and represents the father, it is more assuredly shown (by the argument exemplified in the loaf and staff) to be criminal in younger brothers, who are subject

6. No. If criminal in an elder brother, it is so, a fortiori, in a younger brother.

ANNOTATIONS.

6. By the argument exemplified in the loaf and staff.] If a staff, to which a loaf is attached, be taken away by thieves, it is inferred, that assuredly the loaf also has been stolen by them.‡ So, in the case under consideration, if the eldest, who is independent and represents the father, be criminal for withholding the goods, the same may surely be affirmed concerning the rest, if they do so. Subodhiní.

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* Yájñavalkya, 2. 127. † Manu, 9. 213.

‡ See Jimúta-váhana, 2. 25. & 3. 1. 15.

A passage of the Veda declares the guilt in general terms.

to the control of the eldest and hold the place of sons. Accordingly it is declared [in the Veda*] to be an offence without exception or distinction: "Him indeed, who deprives an heir of his right share, he does certainly destroy; or, if he destroy not him, he destroys his son, or else his grandson."†

7. Explanation of that passage.

7. Whoever debars, or excludes, from participation, an heir, or person entitled to a share, and does not yield to him his due allotment; he, being thus debarred of his share, destroys or annihilates that person who so debars him of his right: or, if he do not immediately destroy him, he destroys his son or his grandson.

8. Embezzlement of common property is criminal in any person.

8. It is thus pronounced to be criminal in any person to withhold common property, without any distinction of eldest [or youngest.]

9. The use of it, under the supposition of a right to do so, is argued to be innocent.

9. It is argued, that blame is not incurred by one who takes the goods, thinking them his own, under the notion, that the common property appertains also to him.

10. But still the offence is committed.

10. That is wrong. He does incur blame: for, though he took it thinking it his own; still he has taken the property of another person, contrary to the injunction which forbids his so doing.

11. An illustration from the Mímánsá.

11. As in answer to a proposed solution of a difficulty "If an oblation of green kidney beans‡ be not procurable, and black kidney beans§ be used in their stead, by reason of the resemblance, the maxim, which prohibits the employment of these in sacrifices, is not applicable, because they were used by mistake for ground particles of green kidney beans;" it is on the contrary maintained, as the right opinion, that, 'although the ground particles of green kidney beans be taken as being unforbidden, still the ground particles of black kidney beans are also actually employed: and the prohibitory command is consequently applicable in this case.'

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11. As in answer to a proposed solution.] The author here adduces an example of reasoning from the Mímánsá, in the 6th book (Adhyáya,) 3d section (páda) and 6th topic (Adhikarana.) Subodhiní.

The black kidney bean, with certain other kinds of grain, is declared by a passage of the Veda unfit to be used at sacrifices. An oblation of green kidney beans, by another passage of the same, is directed to be made on certain occasions. If then the green sort be not procurable, may the black kind be used in its stead? The solution

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* Bálam-bhaṭṭa. † A passage of the Veda, as observed by Bálam-bhaṭṭa.

‡ Mudga: Phaseolus Mungo; green kidney beans.

§ Másha: Phaseolus Max. v. radiatus: black kidney beans.

12. Therefore it is established, both from the letter of the law and from reasoning, that an offence is committed by taking common property.

12. Conclusion.

SECTION X.

Rights of the Dvyámushyáyaṇa or son of two fathers.

1. Intending to propound a special allotment for the Dvyámushyáyaṇa (or son of two fathers,) the author previously describes that relation. "A son, begotten by one, who has no male issue, on the wife of another man, under a legal appointment, is lawfully heir, and giver of funeral oblations, to both fathers.*

1. The issue of one by the wife of another, is heir to both.

2. A son, procreated by the husband's brother or other person (having no male issue), on the wife of another man, with authority from venerable persons, in the manner before ordained, is heir of both the natural father and the wife's husband: he is successor to their estates, and giver of oblations to them, according to law.

2. Interpretation of Yájñavalkya's text.

3. The meaning of this is as follows. If the husband's brother, or other person, duly authorized, and being himself destitute of male issue, proceed to an intercourse with the wife of a childless man, for the sake of raising issue both for himself and for the other; the son, whom he so begets, is the child of two fathers and denominated Dvyámushyáyaṇa. He is heir to both, and offers funeral oblations to their manes.

3. Further explanation of it.

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first proposed is, that the black sort may be substituted for the green kind, in like manner as wild rice is used in place of the cultivated sort: and, in answer to the argument drawn from the special prohibition, it is pretended, that the prohibition holds against the use of the black kidney bean as such, and not against its use when ground particles of this and other sorts are taken with particles of green kidney beans as being unforbidden. But the correct and demonstrated opinion is, that the black kind is altogether unfit to be used at sacrifices, being expressly prohibited: its particles, therefore, although intermixed with other sorts, are to be avoided; and for this reason they must not be used as a substitute for the other kind. Subodhiní and Bálam-bhaṭṭa.

1. Dvyámushyáyaṇa, or son of two fathers.] As here described, the Dvyámushyáyaṇa is restricted to one description of adoptive son, the Kshetraja or son of the wife: but the term is applicable to any adopted son retaining his filial relation to his natural father with his acquired relation to his adoptive parent. See Sect. 11. § 32.

2. In the manner before ordained.] The initial words of another passage of Yájñavalkya are here cited. It is as follows: "Let the husband's brother, or a kinsman near or remote, having been authorized by venerable persons, and being anointed with butter, approach the childless wife at proper seasons, until she become pregnant. He, who approaches her in any other mode, is degraded from his tribe. A child, begotten in that mode, is the husband's son, denominated (kshetraja) son of the wife."†

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* Yájñavalkya, 2. 128.

† Yájñavalkya, 1. 69—70.

4. But, if one, who has male issue, being so authorized, have intercourse with the wife for the sake of raising up issue to her husband only; the child, so begotten by him, is son of the husband, not of the natural father: and, by this restriction, he is not heir of his natural father, nor qualified to present funeral oblations to his manes. It is so declared by Manu: "The owners of the seed and of the soil may be considered as joint owners of the crop, which they agree, by special compact, in consideration of the seed, to divide between them."*

4. But, if the natural father have other male issue, the child is son of the husband only; as appears from a passage of Manu.

5. By special compact.] When the field is delivered by the owner of the soil to the owner of the seed, on an agreement in this form, "let the crop, which will be here produced, belong to us both;" then the owners both of the soil and of the seed are considered by mighty sages as sharers or proprietors of the crop produced in that ground.

5. Exposition of the text.

6. So [the same author.] "Unless there be a special agreement between the owners of the land and of the seed, the fruit belongs clearly to the land-owner; for the soil is more important than the seed."†

6. Another passage of the same author.

7. But produce, raised in another's ground, without stipulating for the crop, or without a special agreement that it shall belong to both, appertains to the owner of the ground: for the receptacle is more important than the seed; as is observed in the case of cows, mares and the rest.

7. If there be no stipulation, the child belongs to the mother's husband.

8. Here, however, the commission for raising up issue is relative to a woman who was only betrothed, since any other such appointment is forbidden by Manu. For, after thus premising a commission, "On failure of issue, the desired offspring may be procreated, either by his brother or some other kinsman, on the wife who has been duly authorized: anointed with liquid butter, silent, in the night, let the kinsman, thus appointed, beget one son, but a second by no means, on the widow [or childless wife;]"‡ Manu has himself prohibited the practice: "By regenerate men, no widow must be authorized to conceive by any other: for they, who authorize her to conceive by any other, violate the primeval law. Such a commission is no where mentioned in the nuptial prayers; nor is the

8. The commission to raise up issue is restricted to an affianced wife: as appears from a comparison of passages of Manu.

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8. The commission ..... is relative to a woman who was only betrothed.] The commentator, Bálam-bhaṭṭa, dissents from this doctrine: and cites passages of law to show, that, after troth verbally plighted, should the intended husband die before the actual celebration of marriage, the damsel is at the disposal of her father to be given in marriage to another husband. It is unnecessary to go into his explanation of the passages cited in the text, in support of another opinion.

* Manu, 9. 53. † Manu, 9. 52. ‡ Manu, 9. 59.—60.

marriage of widows noticed in laws concerning wedlock. This practice, fit only for cattle, and reprehended by learned priests, was introduced among men, while Vena had sovereign sway. He, possessing the whole earth, and therefore eminent among royal saints, gave rise to a confusion of tribes, when his intellect was overcome by passion. Since his time, the virtuous censure that man, who, through delusion of mind, authorizes a widow to have intercourse for the sake of progeny."*

9. Nor is an option to be assumed from the [contrast of] precept and prohibition. Since they, who authorize the practice, are expressly censured: and disloyalty is strongly reprobated in speaking of the duties of women; and continence is no less praised. This, Manu has shown: "Let the faithful wife emaciate her body by living voluntarily on pure flowers, roots, and fruits; but let her not, when her lord is deceased, even pronounce the name of another man. Let her continue till death forgiving all injuries, performing harsh duties, avoiding every sensual pleasure, and cheerfully practising the incomparable rules of virtue, which have been followed by such women, as were devoted to one only husband. Many thousands of Brâhmaṇas, having avoided sensuality from their early youth, and having left no issue in their families, have ascended nevertheless to heaven; and, like those abstemious men, a virtuous wife ascends to heaven, though she have no child, if, after the decease of her lord, she devote herself to pious austerity: but a widow, who, from a wish to bear children, slights her deceased husband, brings disgrace on herself here below, and shall be excluded from the abode of her lord."† Thus the legislature has forbidden the recourse of a widow or wife to another man, even for the sake of progeny. Therefore it is not right to deduce an option from the injunction contrasted with the prohibition.

9. An option must not be inferred from the injunction contrasted with the prohibition: For Manu enjoins continence to a widow.

10. The authorizing of a woman sanctified by marriage, [to raise up issue to her husband by another man,] being thus prohibited, what then is a lawful commission [to raise up issue?] The same author explains it: "The damsel, whose husband shall die after troth verbally plighted, his brother shall take in marriage according to this rule: having espoused her in due form, she being clad in a white robe, and pure in her conduct, let him privately approach her once in each proper season, until issue be had."‡

10. Manu explains the occasion on which she may be authorized to raise up issue to her husband.

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9. It is not right to deduce an option.] For an option is inferred in the case of equal things: but here a censure is passed on those persons, who authorize such a practice, and none upon those who forbid it. The injunction and the prohibition are consequently not equal; and therefore an option is not inferred. Subodhiní.

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* Manu, 9. 64—68. † Manu, 5. 157—161. ‡ Manu, 9. 69—70.

11. It appears from this passage, that he, to whom a damsel was verbally given, is her husband without a formal acceptance on his part. If he die, his own brother of the whole blood, whether elder or younger, shall espouse or take in marriage the widow. "In due form," or as directed by law, "having espoused" or wedded her, and "according to this rule," namely with an inunction of clarified butter and with restraint of voice, &c. let him "privately" or in secret, "approach her, clad in a white robe, and pure in her conduct," that is, restraining her mind, speech and gesture, "once" at a time, until pregnancy ensue.

11. Interpretation of the text.

12. These espousals are nominal, and a mere part of the form in which an authorized widow shall be approached; like the inunction of clarified butter and so forth. They do not indicate her becoming the wedded wife of her brother-in-law.

12. The intercourse of the widow with her husband's kinsman is a nominal marriage.

13. Therefore the offspring, produced by that intercourse, appertains to the original husband, not to the brother-in-law. But, by special agreement(*a*), the issue may belong to both.

13. The issue belongs to the husband; or, by special agreement, to both.

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These espousals are nominal.] The notion is this: as an inunction of clarified butter, and other observances, are prescribed as mere forms in approaching an authorized widow; so these espousals are a mere part of that intercourse, and not a principal and substantive act, whence the parties might be supposed to become a married couple. Subodhiní and Bálam-bhaṭṭa.

For the woman cannot become a lawful wedded wife, being twice-married. Bálam-bhaṭṭa.

13. Therefore the offspring, &c.] The child is not a legitimate son (aurasa) of both parents; but is (kshetraja) son of the soil or wife, and appertains to the husband or owner of the soil, provided no agreement were made to this effect: 'the offspring, here produced, shall belong to us both.' But, if such a stipulation exist, he is son of both. Subodhiní and Bálam-bhaṭṭa.

He is not legitimate son (aurasa) of the natural father, but similar to a legitimate son; as will be made evident in the sequel.* Bálam-bhaṭṭa.

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* Vide Sect. 11. § 4.

(*a*) See 1 Strange, H. L. 83.-

SECTION XI.

Sons by birth and by adoption.

1. Sons by birth and by adoption are described by Yáj̃ñavalkya.
1st. The legitimate son.
2nd. Son of an appointed daughter.
3rd. Son of the wife.
4th. Son of hidden origin.
5th. Son of an unmarried woman.
6th. Son of a twice married woman.
7th. Son given.
8th. Son bought.
9th. Son made.
10th. Son self-given.
11th. Son of a pregnant bride.
12th. Son deserted.

1. A distribution of shares, among sons equal or unequal in class, has been explained. Next, intending to show the rule of succession among sons principal and secondary, the author previously describes them. "The legitimate son is one procreated on the lawful wedded wife. Equal to him is the son of an appointed daughter. The son of the wife is one begotten on a wife by a kinsman of her husband, or by some other relative. One, secretly produced in the house, is a son of hidden origin. A damsel's child is one born of an unmarried woman: he is considered as son of his maternal grandsire. A child, begotten on a woman whose [first] marriage had not been consummated, or on one who had been deflowered [before marriage], is called the son of a twice-married woman. He, whom his father or his mother give for adoption, shall be considered as a son given. A son bought is one who was sold by his father and mother. A son made is one adopted by man himself. One, who gives himself, is self-given. A child accepted, while yet in the womb, is one received with a bride. He, who is taken for adoption, having been forsaken by his parents, is a deserted son."*

2. Exposition of the text.
Legitimate son.

2. The issue of the breast (uras) is a legitimate son (aurasa). He is one born of a legal wife. A woman of equal tribe(*a*), espoused in lawful wedlock, is a legal wife; and a son, begotten [by her husband†] on her, is a true and legitimate son; and is chief in rank.

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1. Son of his maternal grandsire.] In the numerous quotations of this passage, some read sutaḥ "son," others smṛtaḥ "called," and others again mataḥ "considered." The sense is not materially affected by these differences; as either term, being not expressed must be understood.

2. A son, begotten on a woman of equal tribe.] In fact it is not to be so understood. For it contradicts the author's own doctrine, since he includes the Mūrdhávasikta and others, born in the direct order of the tribes, among legitimate issue (§ 41.) They are not sons begotten on a woman of equal tribe: and, if issue by women of different tribes be not deemed legitimate, being considered as born of wives whom it was

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* Yájñavalkya, 2. 129—133.

† Bálam-bhaṭṭa directs this to be supplied in conformity with passages of Vishṇu (15. 2.) and Manu (9. 166.)

(*a*) See 1 Strange, H. L. 40.—.

3. The son of an appointed daughter (putrikâ-putra) is equal to him; that is equal to the legitimate son. The term signifies son of a daughter. Accordingly he is equal to the legitimate son; as described by Vasishṭha: "This damsel, who has no brother, I will give unto thee, decked with ornaments: the son, who may be born of her, shall be my son."* Or that term may signify a daughter becoming by special appointment a son. Still she is only similar to a legitimate son; for she derives more from the mother than from the father. Accordingly she is mentioned by Vasishṭha as a son, but as third in rank: "The appointed daughter is considered to be the third description of sons."†

3. Son of an appointed daughter, described by Vasishṭha; and daughter appointed to be a son; as also described by Vasishṭha.

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not lawful to marry, then it might follow, that other persons would take the heritage, although such sons existed. Hence the mention of a wife equal by tribe intends only the preferableness [of her or her offspring:] and the restriction, that she be a lawful wife, excludes the kshetraja or issue of the soil, and the rest. Víramitrodaya.

The son by a woman of equal tribe espoused in any of the irregular forms of marriage (A'sura, &c.) is a legitimate son: and the sons of a Bráhmaṇa, by wives espoused in the direct order of the classes (Kshatriya, &c), denominated the Mûrdhávasikta, the Ambashtha, and the Páraçava or Nisháda; and the sons of a Kshatriya by wives of the Vaiçyá or Çûdra tribe, named the Mahishya and the Ugra; and the son of a Vaiçyá by a Çûdrá woman, called the Karaṇa; are all legitimate sons. Viçveçvara bhaṭṭa in the Madana-Párijáta.

By the term "lawful" is excluded a woman espoused by one to whom such marriage was not permitted: therefore the sons by women of superior tribe are not legitimate; [See 1 Morl. Dig. 310.—*Ed.*] and, for this purpose, the word "lawful" has been introduced into the text (§ 1.) A lawful wife for a man of a regenerate tribe is a woman of a regenerate tribe; and, for a Çûdra man, a Çûdrá woman. [See *R. A. No.* 45 *of* 1860, 1 Mad. H. C. Rep. 478—*Ed.*] For want of a wife of preferable description, one analogous is allowed. Consequently it is not indispensable, that the wife be of the preferable description. Even a Çudrá woman may be the wife of a regenerate man; and her issue is legitimate, as will be shown. Bálam-bhaṭṭa. [See 7 Moo. I. A. Ca.

3. Equal to the legitimate son.] The daughter appointed to be a son, and the son of an appointed daughter, are either of them equal to the legitimate son. Viçveçvara in the Madana Párijáta.

Since the son of an appointed daughter is son of legitimate female issue, therefore he is equal to a legitimate son: but he is not literally a legitimate son, being one remove distant. Viçveçvara in the Subodhiní.

Or that term may signify, &c.] It may signify a daughter who becomes by appointment a son; that is, who is put in place of a son. Although she be legitimate, yet being female, she is merely equal to a son. Víramitrodaya.

"Equal to him," equal to the legitimate son, is the putriká-putra or daughter appointed to be a son: for, since all the terms of the definition of a legitimate son, excepting sex, are applicable to her, she is similar to him. Aparárka.

The Putriká-putra is of four descriptions. The first is the daughter appointed to be a son. She is so by a stipulation to that effect. The next is her son. He obtains of course the name of 'son of an appointed daughter,' without any special compact. This distinction, however, occurs: he is not in place of a son, but in place of a son's son, and is a daughter's son. Accordingly he is described as a daughter's son in the text of Çankha and Likhita: "An appointed daughter is like unto a son; as Práchetasa has declared: her offspring is termed son of an appointed daughter: he offers funeral oblations to the maternal grandfathers and to the paternal grandsires. There is no dif-

* Vasishṭha, 17. 16.

† Vasishṭha, 17. 14.

4. Son of two fathers. (Sect. 10.)

4. The son of two fathers (dvyámushyáyaṇa)* is inferior to the natural father's legitimate son, because he is produced in another's soil.

5. Son of the wife.

5. A child, begotten by another person, namely by a kinsman, or by a brother of the husband, is a wife's son (kshetraja).

6. Son of hidden origin.

6. The son of hidden origin (gúdhaja) is one secretly brought forth in the husband's house. By excluding the case of a child begotten by a man of inferior or superior tribe, this must be restricted to an instance where it

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ference between a son's son and a daughter's son in respect of benefits conferred." The third description of son of an appointed daughter is the child born of a daughter who was given in marriage with an express stipulation in this form "the child, who shall be born of her, shall be mine for the purpose of performing my obsequies."† He appertains to his maternal grandfather as an adopted son. The fourth is a child born of a daughter who was given in marriage with a stipulation in this form: "The child, who shall be born of her, shall perform the obsequies of both." He belongs, as a son, both to his natural grandfather and to his maternal grandfather. But, in the case where she was in thought selected for an appointed daughter,‡ she is so without a compact, and merely by an act of the mind. Hemádri.

The son of the appointed daughter belongs in general only to the maternal grandfather: but, by special compact, to the natural father also. Thus Yama says: "Let the son of an appointed daughter perform the obsequies of his maternal ancestors exclusively: but, if he succeed to the property of both, let him perform the obsequies of both." Accordingly this child also is denominated dvyámushyáyana or son of two fathers. Bálam-bhaṭṭa.

"The appointed daughter is the third description of sons."] "For she, who has no brother, reverts to her male ancestors and obtains a renewed filiation." Vasishtha.§

The adopted daughter is counted by Vasishṭha as the third: not by Yájñavalkya. Subodhiní.

Mitra-miçra reads second instead of third; against the authority of the institutes and of every compiler who has cited this passage.

4. Is inferior to the legitimate son.] He is similar to the son of the body. Bálambhaṭṭa.

Is not the son of two fathers the offspring of his natural father? Is he then a legitimate son? or one or other of the various descriptions of adoptive and secondary sons? Anticipating this question, the author says: "He is not different from him;" he is equal to a son of the body. Subodhiní.

The commentary last cited reads aviçishṭa 'not different' instead of apakṛishṭa 'inferior.' Both readings are noticed by Bálam-bhaṭṭa.

5. A child, begotten by another person, ... is a wife's son.] There are two descriptions of kshetraja or wife's son; the first of them is son of both fathers (dvipitṛka;) the other is adopted son of the wife's husband. Víramitrodaya.

A son begotten, under a formal authority, by a kinsman being of equal class, or by another relative, is a wife's son. Viçveçvara in the Madana-Párijáta.

6. He must belong to the same tribe.] A child secretly conceived by a woman, in her husband's house, from a man of the same tribe, but concerning whom it is not certainly known who the individual was, is named a son of concealed origin. The ignorance as to the particular person must be the husband's, not the wife's: and the knowledge of his equality in tribe may be obtained through her; for surely she must

* Vide Sect. 10.

† Manu, 9.

‡ Manu, 9. 136.

§ Vasishṭha, 17. 15.

is not ascertained who is the father, but it is certain that he must belong to the same tribe.

7. Son of an unmarried woman; described by Manu.

7. A damsel's child (kánína) is the offspring of an unmarried woman by a man of equal class (as restricted in the preceding instance): and he is son of his maternal grandfather, provided she be unmarried and abide in her father's house. But, if she be married, the child becomes son of her husband. So Manu intimates; "A son, whom a damsel conceives secretly in the house of her father, is considered as the son of her husband, and denominated a damsel's son, as being born of an unmarried woman."*

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know who he is. But, if she really do not know his tribe, having been secretly violated by a stranger [in a dark night,†] then the child bears the name of a son of hidden origin, but is not so fit a son as the one before-described. Viçveçvara in the Madana-Párijata.

In such circumstances, the child must be abandoned, say others. Bálam-bhaṭṭa.

Since the natural father is not known, the child belongs to the same tribe with his mother. But, if there be a suspicion, that he was begotten by a man of inferior tribe, he is contemned. Váchespati miçra in the Çráddha-chintámaṇi.

A son, who is born of the wife, and concerning whom it is not certainly known who is the natural father, is adoptive son of the mother's husband, and called son of concealed origin. Being son of the adoptive father's own wife and begotten on her by another man, he is similar to the son of the wife, and therefore described after him. Aparárka.

7. By a man of equal class.] As the son before described must be one begotten by a man of like tribe, so must this son also be the offspring of a man of equal class. "Damsel" does not here signify unmarried only: for, even with that import, the term is frequently used in the sense of 'unconnected with man.' But it signifies a woman with whom a regular marriage has not been consummated. Bálam-bhaṭṭa.

The meaning of the passage of the Mitákshará is this: "Unmarried" signifies one, whose nuptials have not been commenced; "married," whose nuptials are begun. The affix here implies an act begun and not past. For a child begotten by a paramour alike in class, on a woman whose marriage is complete, is a son of concealed origin. Víramitrodaya.

The child, born of an unmarried woman, is denominated son of a damsel; and is considered by Manu and the rest as son of his maternal grandfather. Being produced in a soil which in some measure appertains to him, namely his daughter, the child is similar to the son of concealed origin, and is therefore mentioned by Yájñavalkya next after him. Aparárka.

If the maternal grandfather have no male issue, then the damsel's son is deemed his son; if he have issue, then the child is son of the husband. If both be childless, he is adoptive son of both. Párijáta cited in the Ratnákara and Çuddhi-viveka.

If either of them be destitute of male issue, the child is his son; but, if both be so, the child is son of both. Bálam-bhaṭṭa.

So Manu intimates.] The meaning of the passage cited from Manu is as follows: a young woman, betrothed, but whose nuptials have not been completed; and who is consequently a maiden, since she is not yet become the wife of her intended husband: a son (we say) borne by such a damsel is denominated a damsel's child, and is considered as son of the bridegroom; that is, of the person by whom she is espoused. Accordingly the condition "in the house of her father" is pertinent as an explanatory phrase: for, after marriage, she inhabits the house of her husband. Víramitrodaya.

* Manu, 9. 172.

† Bálam bhaṭṭa.

8. The son of a woman twice-married is one begotten by a man of equal class, on a twice-married woman, whether the first marriage had or had not been consummated.

8. Son of a twice-married woman.

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8. Whether, &c] Whether the marriage had or had not been consummated by the first husband, and whether she have been forsaken by her husband in his life time or be a widow. Such is the meaning. Accordingly Vishṇu so declares: "He, whom a woman, either forsaken by her husband, or a widow, and again becoming a wife by her own choice, conceived [by a second husband,] is called the son of a woman twice-married."* The child is son of the natural father: for the first husband's right to the woman is annulled by his death or relinquishment; and she has not been authorized to raise up issue to him; and she takes a second husband solely by her own choice. Bálam-bhaṭṭa.

There are two descriptions of twice-married women: the first is a woman whose marriage has not been consummated, but only contracted, and who is espoused by another man. The other is a woman who has been blemished by intercourse with a man, before marriage. The offspring of such a woman is (paunar-bhava)(*a*) son of a twice-married woman. Accordingly it is so expressed in the text. Víramitrodaya.

"A woman, whose marriage had not been consummated, and who is again espoused, is a twice-married woman. So is she, who had previous intercourse with another man, though she be not actually married a second time." Vishṇu.†

A child begotten "on a woman, whose [first] marriage had not been consummated;" on the wife of an impotent man or the like, whether she have become a widow or not; or on his own wife "who had been deflowered;" who had been enjoyed by strangers, and who is taken back, and again espoused; the child (we say) begotten on such a woman, is called 'son by a woman twice-married.' The twice-married woman has been described in the first book [of Yájñavalkya's Institutes.] Aparárka.

"Whether a virgin or deflowered, she who is again espoused with solemn rites, is a twice-married woman: but she, who deserts her husband and through lust co-habits with another man of the same tribe, is a self-guided woman." Yájñavalkya.‡

There are two descrptions of women termed anyapúrvá§ or previously connected with another: namely the punarbhú or women twice-married, and the svairiṇí or self-guided and unchaste woman. The twice-married woman also is of two descriptions; according as she has or has not been deflowered. She, who is not a virgin, is blemished by her intercourse with man before the nuptial ceremony: she, who is yet a virgin, is blemished by the repetition of the ceremony of marriage. But one, who deserts the husband of her youth, and through desire co-habits with another man of the same tribe, is a self-guided woman (svairiní.) Mitákshará.‖

A woman, who, having been married, whether she be yet a virgin or not, is again espoused in due form by her original husband or by another, is a twice-married woman. She is so described by Manu: "If she be still a virgin, or if she left her original husband and return to him, she may again perform the marriage ceremony with her second [or, in the latter case, her original] husband:"¶ and by Vasishṭha; "She, who, having deserted the husband to whom she was married in her youth, and having co-habited with others, returns to his family, is a twice-married woman. Or she, who deserts a husband impotent, degraded, or insane, and marries another husband, or does so after the death of the first, is a twice-married woman."** The repetition of the nuptial ceremony constitutes her a twice-married woman. But she, who leaves her husband and through desire co-habits, without marriage, with a man of the same tribe, is a self-guided woman. Aparárka.

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* Manu, 9. 175. Erroneously cited as a passage of Vishṇu. † Vishnu, 15. 8.—9.

‡ Yájñavalkya, 1. 68. § Same with parapúrvá. See Manu, 5. 163.

‖ On Yájñavalkya, 1. 68. ¶ Manu, 9. 176. ** Vasishṭha, 17. 18.—19.

(*a*) See 1 Morl. Dig. 310.—*Ed.*

9. He, who is given by his mother with her husband's consent, while her husband is absent, [or incapable though present,*] or [without his assent†] after her husband's decease, or who is given by his father, or by both, being of the same class with the person to whom he is given, becomes his given son (dattaka.) So Manu declares: "He is called a son given (dattrima,) whom his father or mother affectionately gives as a son,

9. Son given, described by Manu.

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9. He, who is given by his mother with her husband's consent] Vasishtha says "Let not a woman either give or accept a son, unless with the assent of her husband."‡ He had before said "Man, produced from virile seed and uterine blood, proceeds from his father and his mother, as an effect from its cause. Therefore both his father and his mother have power to give, to sell, or to abandon their son.(*a*)§

Concerning the mother's authority to give away her son, when she is a widow, see a subsequent note. In regard to a widow's power of adopting a son, there is much diversity of opinions. Váchespati miçra, who is followed by the Maithila school, maintains that neither a woman, nor a Çūdrá, can adopt a dattaka or given son; because the prescribed ceremony (§ 13) includes a sacrifice, which they are incapable of performing. This difficulty may be obviated by admitting a substitute for the performance of that ceremony: and accordingly adoption by a woman, under an authority from her husband, is allowed by writers of the other schools of law. Nanda paṇdita, however, in his treatise on adoption, restricts this to the case of a woman whose husband is living, since a widow cannot, he observes, have her husband's sanction to the acceptance of a son. On the other hand, Bálam-bhatta contends, that a woman's right of adopting, as well as of giving, a son, is common to the widow and to the wife. This likewise is the opinion of the author of the Vyavahára-mayūkha: but, while he admits, that a widow may adopt a son without her husband's previous authority, he requires, that she should have the express sanction of his kindred. Writers of the Gaura school, on the contrary, insist on a formal permission from the husband declared in his life-time.

Being of the same class with the person to whom he is given.] Or being given to a person of the same class. The two readings, (savarṇáya in the dative, or savarṇo yaḥ in the nominative,) both noticed by the commentator Bálam-bhaṭṭa, give the same sense.

The adopted son must be of the same tribe with the giver or natural parent as well as with the adoptive parent, according to the remark of Aparárka cited with approbation by Nanda paṇdita in his treatise on adoption.

Becomes his given son.] The son given (dattaka or dattrima) is of two sorts; 1st simple, 2d son of two fathers (dvyámushyáyaṇa.) The first is one bestowed without any special compact; the last is one given under an agreement to this effect "he shall belong to us both." Vyavahára-mayūkha.

"Whom his father or mother gives." Medhátithi reads and interprets "whom his father and mother give;" (inserting the conjunctive particle cha instead of the disjunctive vá.) Bálam-bhaṭṭa condemns that reading; and infers from the disjunctive particle and dual number in the text, that three cases are intended; viz. 1st. The mother may give her son for adoption with her husband's consent, if he be absent or incapable; and without it, if he be dead or the distress be urgent. 2d. The father may give away his son without his wife's consent, if she be dead, or insane, or otherwise incapable; but, with her consent, if she reside in her own father's house. 3d. The father and mother may conjointly give away their son, if they be living together.

"Whom his father or mother affectionately gives."] Amicably: not from avarice or intimidation. In the Víramitrodaya, the word is expressly stated to be used adverbially: but Bálam-bhaṭṭa considers it as an epithet of the son to be adopted, and as implying, that the adoption is not to be made against his will or without his free consent.

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* Bálam-bhaṭṭa. † Bálam-bhaṭṭa. ‡ Vasishṭha, 15. 4.

§ Vasishṭha, 15. 1—2. (*a*) See 7 Moo. I. A. Ca. 201: 1 Strange, H. L. 80.—*Ed.*

being alike [by class,] and in a time of distress; confirming the gift with water."*

10. Distress is requisite to justify a parent in giving

10. By specifying distress, it is intimated, that the son should not be given unless there be distress. This prohibition regards the giver [not the taker.†]

11. The person must not be an only son: so Va-

11. So an only son must not be given [nor accepted.‡] For Vasishtha ordains "Let no man give or accept an

12. Nor, though a numerous progeny exist, should an eldest son be given: for he chiefly fulfils the office of a son; as is shown by the following text. "By the eldest son, as soon as born, a man becomes the father of male issue."(*a*)‖

12. Nor the eldest son: according to Manu.

13. The mode of accepting a son for adoption is propounded by Vasishṭha: "A person, being about to adopt a son, should take an unremote kinsman or the near relation of a kinsman, having convened his kindred and an-

13. The form to be observed in this adoption is

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"Being alike."] This is interpreted by Medhátithi as signifying 'alike, not by tribe, but by qualities suitable to the family: accordingly a Kshatriya, or a person of any other inferior class, may be the given son (dattaka) of a Bráhmaṇa.' Bálam-bhaṭṭa and the author of the Mayúkha censure this doctrine: since every other authority concurs in restricting adoption to the instance of a person of the same tribe.

10. By specifying distress.] "Distress" is explained in Prakáça cited by Chandeçvara, 'inability [of the natural father] to maintain his offspring.'(*b*) Nanda paṇdita, in his treatise on adoption, expounds it as intending the necessity for adoption arising from the want of issue. But Bálam bhatta rejects this, and supports the other interpretation; explaining the term as signifying 'famine or other calamity.'

This prohibition regards the giver.] If he give away his son, when in no distress, the blame attaches to him, not to the taker. Bálam-bhaṭṭa.

11. So an only son should not be given.] Nor should such a son be accepted. The blame attaches both to the giver and to the taker, if they do so. Bálam-bhaṭṭa.

"Let no man give or accept an only son."] "For he is [destined] to continue the line of his ancestors." Such is the sequel of Vasishṭha's text. Bálam-bhaṭṭa.(*c*)

13. The mode of accepting a son ..... is propounded by Vasishtha.] Raghunandana, in the Udváha-tatva, has quoted a passage from the Kálika-puráṇa, which, with

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(*a*) See 1 Strange, H. L. 81.—*Ed.*

(*b*) In *Special Appeal No.* 412 *of* 1862 (1 Mad. H. C. Rep. 54) the Madras High Court held that the adoption of an only son was, when made, valid according to Hindú law; and agreed with Sir T. Strange that "with regard to both these prohibitions respecting an eldest and an only son, where they most strictly apply, they are directory only; and an adoption of either, however blameable in the giver, would nevertheless to every legal purpose, be good; according to the maxim of the civil law prevailing, perhaps, in no code more than in that of the Hindús, *factum valet quod fieri non debuit.*' See, too, cases noted in 1 Morl. Dig. 17.—*Ed.*

(*c*) As to the validity of the adoption of an eldest son, see *Reg. Appeal No.* 49 of 1853. Mad. Ṣadr Dec. of 1854 p. 31.—*Ed.*

* Manu, 9. 168. † Subodhiní and Bálam-bhaṭṭa. ‡ Bálam-bhaṭṭa.

§ Vasishṭha, 15. 3. ‖ Manu, 9. 106.

described by Vasishtha.

nounced his intention to the king,(*a*) and having offered a burnt offering with recitation of the holy words, in the middle of his dwelling."*

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the text of Vasishṭha,† constitutes the groundwork of the law of adoption, as received by his followers. They construe the passage as an unqualified prohibition of the adoption of a youth or child whose age exceeds five years and especially one whose initiation is advanced beyond the ceremony of tonsure. This is not admitted as a rigid maxim by writers in other schools of law; and the authenticity of the passage itself, is contested by some, and particularly by the author of the Vyavahára-mayúkha, who observes truly, that it is wanting in many copies of the Káliká-puráṇa. Others, allowing the text to be genuine, explain it in a sense more consonant to the general practice, which permits the adoption of a relation, if not of a stranger, more advanced both in age and in progress of initiation. The following version of the passage conforms with the interpretation of it given by Nanda pandita in the Dattaka-mímánsá. "Sons given and the rest, though sprung from the seed of another, yet being duly initiated [by the adopter] under his own family name, become sons [of the adoptive parent.] A son, having been regularly initiated under the family name of his [natural] father, unto the ceremony of tonsure, does not become the son of another man. When indeed the ceremony of tonsure and other rites of initiation are performed [by the adopter] under his own family name, then only can sons given and the rest be considered as issue: else they are termed slaves. After their fifth year, O King, sons are not to be adopted. [But,] having taken a boy five years old, the adopter should first perform the sacrifice for male issue."‡

The putreshti or sacrifice for male issue, mentioned at the close of this passage, is a ceremony performed according to the instructions contained in the following text of the Veda: "He who is desirous of issue, should offer to fire parent of male offspring, an oblation of kneaded rice roasted upon eight potsherds; and to Indra father of male offspring, a similar oblation of rice roasted on eleven potsherds: fire grants him progeny; Indra renders it old."

"An unremote kinsman or the near relation of a kinsman."] This very obscure passage, which is variously read and interpreted, is here translated according to the elaborate gloss of Nanda pandita in his treatise entitled Dattaka mímánsá. Yet the same writer in his commentary on Vishṇu (15. 19.), citing this passage, gives the preference to another reading (adúra-bándhavam asannikṛshtam eva), which he expounds 'one whose whole kindred dwell in a near country, and one not connected by affinity.' Which of these readings he has adopted in his commentary on the Mitákshará, is not ascertained. From a remark in the text (§ 14.), the author himself, Vijñáneçvara, appears to have read and understood it differently: "Should take, in the presence of his kin, one whose kinsmen are not remote." For copies of the Mitákshará exhibit the reading, adúra-bándhavam bandhu-sannikṛshta eva. But the commentator Bálambhatta seems to have read, as the Dattaka mímánsá, bandhu-sannikṛshtam (in the accusative instead of the locative;) though he explain the terms a little differently and transpose them: 'should take a kinsman nearly related (bandhu-sannikṛshtam), as a brother's son or the like; but, on failure of such, one whose kinsmen are not remote (adúra-bándhavam); that is, any other person, whose father and the rest of his relations abide in a near country and whose family and character are consequently known.' The authors of the Kalpataru and Ratnákara read, like the scholiast of Vishnu, adúre bandhavam asannikṛshtam eva, and thus interpret the passage 'should take one whose kinsmen, namely his maternal uncle and the rest, are near, [and whose name and tribe, with other particulars, can therefore be ascertained; or, for want of such kindred,§] even one whose good or bad qualities are not known, [or one whose kinsmen are not at hand; for his name and family may be ascertained by other sufficient proof.'‖]

"Announced his intention to the king."] Rájá or king, usually signifying the sovereign, is here restricted, according to the remark of Nanda Paṇḍita, to the chief of the town or village.

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* Vasishṭha, 15. 5. † Vasishṭha, 15. 1—7. See preceding quotations.

‡ Kálika-puráṇa. c. antepenult. § Vivada-Ratnákara. ‖ Vivada-Ratnákara.

1 Strange, H. L. 94: 2 Ibid. 109.—*Ed.*

14. Explanation of the text.

14. An unremote kinsman.] Thus the adoption of one very distant by country and language, is forbidden.

15. The same rules applicable to adoption by purchase, &c.

15. The same [ceremonial of adoption*] should be extended to the case of sons bought, self-given, and made [as well as that of a son deserted†]: for parity of reasoning requires it.

16. Son bought; described by Manu.

16. The son bought (kríta) is one who was sold by his father and mother, or by either of them: excepting as before an only son or an eldest one, and supposing distress and equality of tribe. As for the text of Manu, ("He is called a son bought, whom a man, for the sake of having issue, purchases from his father and mother: whether the child be equal or unequal to him,"‡) it must be interpreted 'whether like or unlike in qualities;' not in class: for the author concludes by saying "This law is propounded by me, in regard to sons equal by class."§

17. Son made.

17. The son made (kṛtrima) is one adopted by the person himself,(*a*) who is desirous of male issue; being enticed by the show of money and land, and being an orphan without father or mother: for, if they be living, he is subject to their control.

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"In the middle of his dwelling."] The sequel of Vasishtha's text is as follows. "But, if doubt arise, let him set apart [without initiation and with a bare maintenance] like a Çúdra, one whose kindred are remote. For it is declared [in the Veda] Many are saved by one."‖

15. The same ceremonial] Excepting the sacrifice or burnt offering. However, even that is to be performed at the adoption of a son self-given. Bálam-bhaṭṭa.

16. As for the text of Manu, &c.] Çulapáni, on the other hand, expounds Yájñavalkya by Manu, and admits the inequality of tribe. 'A child, sold by his father and mother, and received for adoption, is a son bought. He may be of dissimilar tribe: for the text [of Manu] expresses "equal or unequal."¶ Chandeçvara quotes the following discordant interpretations: "Equal;" belonging to the same tribe; or, if that be not practicable, one unequal, or not appertaining to the same tribe. So the Párijáta.** But the author of the Prakáça observes, Though the text express "unequal," yet a child of a superior tribe must not be taken as a son, by a man of inferior tribe; nor one of inferior class, by a man of a higher tribe. And the words "equal or unequal," as interpreted by Medhátithi, are relative to similarity in respect of qualities.'††

17. The son made.] One bereft of father and mother and belonging to the same tribe with the adopter, and by him adopted, being enticed to acquiesce by the show of wealth, is a son made by adoption. Viçveçvara in the Madana-Párijáta.

The form, to be observed, is this. At an auspicious time, the adopter of a son, having bathed, addressing the person to be adopted, who has also bathed, and to whom he has given some acceptable chattel, says "Be my son." He replies "I am become thy son." The giving of some chattel to him arises merely from custom. It is not necessary to the adoption. The consent of both parties is the only requisite; and a set form a speech is not essential. Rudradhara in the Çuddhiviveka(*b*).

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* Subodhiní. † Bálam-bhaṭṭa. ‡ Manu, 9. 174. § Yájñavalkya, 2. 134, Vide § 37.

‖ Vasishṭha, 15. 6—7. ¶ Dípakaliká on Yájñavalkya.

** Not the Madana-párijáta, which gives the contrary interpretation.

†† Viváda Ratnákara.

(*a*) See 1 Morl. Dig. 22.—*Ed.* (*b*) See 1 Morl. Dig. 22.—*Ed.*

18. The son self-given is one, who, being bereft of father and mother, or abandoned by them [without cause,*] presents himself, saying "Let me become thy son."

Son given.

19. Son of a pregnant bride.

19. The son received with a bride, is a child, who, being in the womb, is accepted when a pregnant bride is espoused. He becomes son of the bridegroom.

20. Son deserted.

20. A son deserted (apaviddha) is one, who, having been discarded by his father and mother, is taken for adoption. He is son of the taker. Here, as in every other instance, he must be of the same tribe with the adoptive father.

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18. The son self-given] He, who, unsolicited, gives himself saying "let me become thy son," is called a son self-given (svayandatta). Aparárka.

Here also it is requisite, that he belongs to the same tribe with his adoptive father. Viçveçvara in the Madana-Párijáta.

"He who has lost his parents, or been abandoned by them without cause, and offers himself to a man as his son, is called a son self-given." Manu.†

Being abandoned by his father and mother without any sufficient cause, such as degradation from class or the like: but merely inability to maintain him during a dearth, or for a similar reason. Víramitrodaya.

19. The son received with a bride.] If a woman be married while pregnant, the child born of that pregnancy is a son received with a bride (sahodha:) provided the child were begotten by a man of equal class. Viçveçvara in the Madana-Párijáta.

He is distinguished from the son of an unmarried damsel, because the conception preceded the betrothing of the mother; and from the son of concealed origin, because the natural father is known. Then what difference is there? for the son of the unmarried damsel was conceived before troth plighted. True: yet there is a great difference, since one is born before marriage, and the other after marriage. This son received with a bride is a son of him who takes the hand of the pregnant woman in marriage: for the maternal grandfather's right is divested by his giving away the child with the mother. Nanda Paṇḍita in the Vaijayantí on Vishṇu.

Since the bridegroom is specified as the adoptive father, the child does not belong to his natural father. Although the religious ceremony of marriage do not take place in the case of a pregnant woman, since a text of law restricts the prayers of the marriage ceremony to the nuptials of virgins, and forbids their use in the instance of women who are not virgins, as a practice which has become obsolete among mankind; and it would be inconsistent with a passage of the Veda [used at the nuptial ceremony as a prayer] expressing "the virgin worships the generous in the form of fire;" nevertheless the term "marry" [in the text of Manu‡] intends a religious ceremony different from that but consisting of burnt offerings, and so forth, according to the remark of the Ratnákara and the rest. Váchespati miçra in the Çráddha chintámaṇi.

20. Discarded.] Abandoned: not for any fault, but through inability to maintain him, or because he was born under the influence of the stars of the scorpion's tail,§ or for any similar reason. Bálam-bhaṭṭa.

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* Bálam-bhaṭṭa. † Manu, 9. 178. ‡ Manu, 9. 173.

§ The birth of a son, while the moon is near the stars of Múla (the scorpion's tail), is dangerous to the father's life, according to Indian astrology; and, on this account, a son born under that influence is exposed or abandoned, if natural affection and humanity do not overcome superstition and credulity.

21. Order in which these different sons succeed to an inheritance: as declared by Yájñavalkya.

21. Having premised sons chief and secondary, the author explains the order of their succession to the heritage: "Among these, the next in order is heir and presents funeral oblations on failure of the preceding."*

22. Of these twelve sons abovementioned, on failure of the first, respectively, the next in order, as enumerated, must be considered to be the giver of the funeral oblation or performer of obsequies, and taker of a share or successor to the effects.

22. Interpretation of the text.

23. If there be a legitimate son and an appointed daughter, Manu propounds an exception to the seeming right of the legitimate son to take the whole estate: "A daughter having been appointed, if a son be afterwards born, the division of the heritage must in that case be equal: since there is no right of primogeniture for the woman."†

23. An appointed daughter shares with a legitimate son; according to a passage of Manu.

24. So the allotment of a quarter share to other inferior sons, when a superior one exists, has been ordained by Vasishṭha: "When a son has been adopted, if a legitimate son be afterwards born, the given son shares a fourth part."(*a*)‡ Here the mention of a son given is

24. Others have a quarter of a share, as directed by Vasishṭha.

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Since that, of which there is no owner, is appropriated by seizure or occupation the child becomes son of him, by whom he is taken. Nanda Pandita in the Vaijayantí on Vishṇu. 15. 24.

22. Of these twelve sons.] The various modes of adoption, added to the legitimate son by birth, raise the number of descriptions of sons to twelve, according to most authorities. That number is expressly affirmed by Manu,§ Nárada,‖ Vasishṭha,¶ Vishṇu,** &c. A passage is however quoted from Devala, asserting the number of fifteen ("The descriptions of sons are ten and five,") and Vṛhaspati is cited as alleging the authority of Manu for thirteen: "Of the thirteen sons, who have been enumerated by Manu in their order, the legitimate son and appointed daughter(*b*) are the cause of lineage. As oil is declared to be a substitute for liquid butter, so are eleven sons by adoption substituted for the legitimate son and appointed daughter." Nanda Pandita, in his commentary on Vishṇu, observes, that 'the number of thirteen specified by Vṛhaspati, and that of fifteen by Devala, intend sub-divisions of the species, not distinct kinds: consequently there is no contradiction; for those sub-divisions are also included in the enumeration of twelve.' It appears, however, from a comparison of texts specifying the various descriptions of sons, that the exact number (as indeed is acknowledged by numerous commentators and compilers) is thirteen; including the son by a Çúdrá woman. Vide § 30.

23. If there be a son and an appointed daughter.] So this passage is interpreted by the commentators Viçveçvara and Bálam-bhaṭṭa. The original is, however, ambiguous and might be explained 'if there be a legitimate son and a son of an appointed daughter.' Bálam-bhaṭṭa remarks, that this can only happen where a legitimate son is born after the appointment of a daughter.

24. So the allotment of a quarter share.] As the appointed daughter participates where there is a legitimate son; so do other sons likewise partake. Subodhiní.

* Yájñavalkya, 2. 133. † Manu, 9. 134. ‡ Vasishṭha, 15. 8. § Manu, 9. 158.
‖ Nárada, 13. 44. ¶ Vasishṭha, 17. 11. ** Vishnu, 15. 1.
(*a*) So held in *Ayyávu Muppanár* v. *Níladátchi Ammál*, 1 Mad. H. C. Rep. 45.
(*b*) See 1 Strange, H. L. 74.—

intended for an indication of others also, as the son bought, son made by adoption, and [son self-given* and] the rest: for they are equally adopted as sons.

25. Kátyáyana allots to them the same portion; provided they be of equal class: else, food and raiment only.

25. Accordingly Kátyáyana says, "If a legitimate son be born, the rest are pronounced sharers of a fourth part, provided they belong to the same tribe; but, if they be of a different class, they are entitled to food and raiment only."

26. The son of the wife, and sons given, bought, made, self-given and discarded, are of equal class; the damsel's son, the son of hidden origin, son of a pregnant bride, and son of a twice-married woman, are of inferior rank.

26. "Those who belong to the same tribe," as the son of the wife, the son given and the rest [namely the sons bought, made, self-given and discarded,†] share a fourth part, if there be a true legitimate son: but those, who belong to a different class, as the damsel's son, the son of concealed origin, the son of a pregnant bride, and the son by a twice married woman, do not take a fourth part, if there be a legitimate son: but they are entitled to food and raiment only(*a*).

27. "Exceptionable sons, as the son of an unmarried damsel, a son of concealed origin, one received with a bride, and a son by a twice-married woman, share neither the funeral oblation, nor the estate." This passage of Vishṇu‡ merely denies the right of those sons to a quarter share, if there be legitimate issue: but, if there be no legitimate son or other preferable claimant, even the child of an unmarried woman and the rest of the adoptive sons may succeed to the whole paternal estate, under the text before cited (§ 21.)

27. A passage of Vishnu, concerning these exceptionable sons, denies their

28. Manu allots to adopted sons, a mere mainte-

28. "The legitimate son is the sole heir of his father's estate; but, for the sake of innocence, he should give a maintenance to the rest."§ This text of

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The mention of a son given.] This is according to the reading of the text as here cited and in the Víramitrodaya and Kamalákara's Vivada-Táṇdava. But, in the Kalpataru, Ratnákara, Chintámani, &c., that restrictive term is wanting: Sa chaturtha-bhága-bhágí syat, instead of Chaturtha-bhága-bhágí syad dattakaḥ.

25. Sharers of a fourth part.] This reading is followed in the Madana-Parijáta, Víramitrodaya, &c. But the Kalpataru, Ratnákara and other compilations read 'a third part.' Vide Jímúta-váhana. C. 10. § 13.

28. Applicable to a case where adopted son (namely the son given, &c.) are disobedient.] It also relates to the damsel's son and the rest: for they are declared entitled to food and raiment only, if there be legitimate issue; and that must be supposed to be founded on the same authority with this text; but Manu has himself propounded a fifth or a sixth part for the son of the wife, if there be ligitimate issue.‖ Víramitrodaya.

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* Bálam-bhaṭṭa. † Subodhiní and Párijáta.

It is not found in the institutes of Vishnu; but is cited from that author in the Madana-párijáta and Víramitrodaya, as in this place.

Manu, 9. 163. ‖ Vide § 29. (*a*) See 1 Strange, H. L. 94.—

nance: supposing their insubordination towards the legitimate son.

Manu must be considered as applicable to a case, where the adopted sons (namely the son given and the rest) are disobedient to the legitimate son and devoid of good qualities.

29. Here a special rule [different from Kátyáyana's*] is propounded by the same author (Manu) respecting the son of the wife: "Let the legitimate son, when dividing the paternal heritage give a sixth part, or a fifth, of the patrimony to the son of the wife."† The cases must be thus discriminated: if disobedience and want of good qualities be united, then a sixth part should be allotted. But, if one only of those defects exist, a fifth part.

29. He assigns a fifth or a sixth part to the son of the wife: according to his relative merits.

30. Manu, having premised two sets of six sons declares the first six to be heirs and kinsmen; and the last to be not heirs but kinsmen: "The true legitimate issue, the son of a wife, a son given, and one made by adoption,(*a*) a son of concealed origin, and one rejected [by his parents,] are the six heirs and kinsmen. The son of an unmarried woman, the son of a pregnant bride, a son bought, a son by a twice-married woman, a son self-given, and a son by a Çúdrá woman, are six not heirs but kinsmen."‡

30. Two classes of sons are distinguished by Manu: one inheriting from collaterals, and the other not.

31. That must be expounded as signifying, that the first six may take the heritage of their father's collateral kinsmen (sapiṇḍas and samánodakas) if there be no nearer heir; but not so the last six. However, consanguinity and the performance of the duty of offering libations of water and so forth, on account of relationship near or remote, belong to both alike.

31. Explanation of the text.

32. It must be so expounded; for the mention of a given son in the following passage is intended for any adopted or succedaneous son. "A given son must never claim the family and estate of his natural father(*b*). The funeral

32. Confirmed by a passage of Manu.

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31. The first six may take the heritage of collateral kinsmen: ..... not so the last six.] The sense of the two passages is, that, if there be no nearer collateral kinsman, the first six inherit the property; but not the six last. Subodhiní.

However, consanguinity, &c.] Medhátithi interprets the text of Manu as signifying that 'the last six are neither heirs nor kinsmen.' But that interpretation is censured by Kulluka-bhaṭṭa; and is supposed by the commentator on the Mitákshará to be here purposely confuted.

32. The mention of a given son is intended for any adopted son.] The meaning, as here expressed, is this: the mention of a son given is in this place intended to denote any succedaneous son. Consequently, since it appears from the text, that adopted sons have a right of inheritance; but, according to the opponent's opinion, it appears from another passage, that they have not a right of succession; it might be concluded from such a contradiction, that the precepts have no authority: therefore, lest the text become futile, the interpretation, proposed by us, is to be preferred. Subodhiní.

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* Bálam-bhaṭṭa. † Manu, 9. 164. ‡ Manu, 9. 159—160.

(*a*) See 1 Strange, H. L. 98: 1 Morl. Dig. 308.—

(*b*) So held in *Srínivása Ayyangár* v. *Kuppu Ayyangár*, 1 Mad. H. C. 180, and see Strange, H. L. 124, 125: 1 Morl. Dig. 23, 24, 307 308.—

oblation follows the family and estate: but of him, who has given away his son, the obsequies fail."*

33. All, without exception, have a right of inheriting their father's estate, for want of a preferable son: since a subsequent passage (" Not brothers, nor parents, but sons, are heirs to the estate of the father,"† purposely affirms the succession of all subsidiary sons other than the true legitimate issue; and the right of the legitimate son is propounded by a separate text (" The legitimate son is the sole heir of his father's estate;"‡) and the word " heir" (dáyada) is frequently used to signify any successor other than a son.

33. Sons of all descriptions may inherit from the father.

34. The variation which occurs in the institutes of Vasishṭha and the rest, respecting some one in both sets, must be understood as founded on the difference of good and bad qualities.

34. Differences in the order of enumeration reconciled: as found in Vasishṭha, &c.

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Of him, who has given away his son, the obsequies fail.] This must be understood of the case where the giver has other male issue. Subodhiní.

But, if he have not, then even that son is competent to inherit his estate and to perform his obsequies; like the son of two fathers (Sect. 10 § 1): for a passage of Çátatapa directs " Let the given son present oblations to his adoptive parent and to his natural father, on the anniversary of decease, and at Gayá, and on other occasions; not, however, if there be other male issue." This indeed can only occur where the natural father is bereft of issue after giving away his son: since, at the time of the gift, it is forbidden to part with an only son (§ 11.) In this manner is to be understood the circumstance of a given son, as son of two fathers, conferring benefits on both. Bálambhaṭṭa.

If either the natural parent or the adoptive father have no other male issue, the dvyámushyáyana or son of two fathers shall present the funeral oblation to him and shall take his estate: but not so, if there be male issue. If both have legitimate sons, he offers an oblation to neither, but takes the quarter of a share allotted to a legitimate son of his adoptive father. Vyavahára-mayukha.

33. The word " heir" is frequently used.] An instance is cited in the text. It is part of a passage, of which the sequal has not been found. The words are " let him compel the heirs to pay."

34. The variation, which occurs in Vasishṭha, &c.] Manu, declaring the appointed daughter equal to the legitimate son, includes her under legitimate issue,§ and proceeds to define the remaining ten succedaneous sons.‖ But Vasishṭha states the appointed daughter as third in rank:¶ which is a disagreement in the order of enumeration. The same must be understood of other institutes of law;** which are here omitted for fear of prolixity. How then is the succession of the next in order on failure of the preceding reconcileable? The author proposes this difficulty with its solution. His notion of the mode of reconciling it is this: Manu, declaring that the first set of six sons by birth or adoption is competent to inherit from collateral kinsmen on failure of nearer heirs, but not so the second set, afterwards proceeds to deliver incidentally definitions of those various sons. It appears therefore to be a loose enumeration, and not one arranged with precision. Accordingly Manu, in saying " Let the inferior in order take

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* Manu, 9. 142. † Manu, 9. 185. ‡ Vide § 28.

§ Manu, 9. 165. ‖ Manu, 9. 166—178. ¶ Vasishṭha, 17. 14.

** As Vishṇu 15. 2—37. Nárada, 13, 44—45. Devala, &c.

35. But the assignment of the tenth place to the son of an appointed daughter, in Gautama's text, is relative to one differing in tribe.

35. And in Gautama.

36. The following passage of Manu, "If, among several brothers of the whole blood, one have a son born, Manu pronounces them all fathers of male issue by means of that son;"* is intended to forbid the adoption of others if a brother's son can possibly be adopted(*a*). It it is not intended to declare him son of his uncle: for that is inconsistent with the subsequent text; "brothers likewise and their sons, gentiles, cognates, &c."†

36. A nephew should be adopted rather than a stranger or a distant relation.

37. The author next adds a restrictive clause by way of conclusion to what had been stated: "This law is propounded by me in regard to sons equal by class."‡

37. The foregoing rules of filiation are restricted to persons of the same tribe.

38. The maxim is applicable to sons alike by class, not to such as differ in rank.

38. Not being applicable when the rank differs.

39. Here the damsel's son, the son of hidden origin, the son received with a bride, and a son by a twice-married woman, are deemed of like class, through their

39. Some adoptive sons are however included,

ANNOTATIONS.

the heritage,"§ does not limit this very order, but intends one different in some respects: and the difference is relative to good and bad qualities. The same method must be used with the variations in other codes. Moreover, what is ordained by Yájñavalkya is consistent with propriety. For the true legitimate son and the son of an appointed daughter are both legitimate issue and consequently equal. The son of the wife, a son of hidden origin, the son of an unmarried damsel, and a son by a twice-married woman, being produced from the seed of the adoptive father or from a soil appertaining to him, have the preference before the son given and the rest. The son received with a bride, being produced from soil which the adoptive father accepts for his own, is placed in the second set by the authority of the text [or because the mother did not appertain to the adoptive father at the time when the child was begotten.‖] The whole is therefore unexceptionable. Subodhiní.

36. That is inconsistent with the subsequent text.] It is incompatible with a passage of Yájñavalkya declaratory of the nephew's right of succession after brothers. For, if he be deemed a son, because all the brethren are pronounced fathers of male issue by means of the son of a brother, he ought to inherit before all other heirs, such as the father and the rest, [who are in that passage preferred to him.] Subodhiní.

The principle of giving a preference to the nephew, as the nearest kinsman, in the selection of a person to be adopted, is carried much further by Nanda paṇḍita in the Dattaka-mímánsá: and, according to the doctrine there laid down, the choice should fall on the next nearest relation, if there be no brother's son; and on a distant relation, in default of near kindred: but on a stranger, only upon failure of all kin. See § 13.

39. They are not within the definition of tribe.] For Yájñavalkya, having described the origin and distinctions of the tribes and classes, [viz. the Múrdhávasikta

* Manu, 9. 182. Yájñavalkya, 2. 134. See 1 Strange, H. L. 84: † Yájñavalkya, 2. 136, Vide infra. C. 2. Sect. 1. § 1. § Manu, 9. 184. ‖ Bálam-bhaṭṭa. 1 Morl. Dig. 18.—*Ed.*

though not within the definition of tribe.

natural father, but not in their own characters: for they are not within the definition of tribe and class.

40. Legitimate issue, of a mixed class, inherits before adoptive sons.

40. Since issue, procreated in the direct order of the tribes, as the Múrdhávasikta and the rest, are comprehended under legitimate issue, it must be understood, that, on failure of these also, the right of inheritance devolves on the son of the wife and the rest.

41. But the Çúdrá's son is restricted to a tenth, by a passage of Manu.

41. But the son by a Çúdrá wife, though legitimate, does not take the whole estate, even on failure of other issue. Thus Manu says, "But, whether the man have sons, or have no sons, [by his wives of other classes,] no more than a tenth part must be given to the son of the Çúdrá."*

42. Interpretation of the text.

42. "Whether he have sons," whether he have male issue of a regenerate tribe; "or have no sons," or have no issue of such a tribe; in either case, upon his demise, the son of the wife or other [adoptive son,] or any other kinsman [and heir,] shall give to the Çúdrá's son, no more than a tenth part of the father's estate.

43. The son of the Kshatriyá or Vaiçyá wife inherits in default of issue by a Bráhmaní.

43. Hence it appears, that the son of a Kshatriyá or Vaiçyá wife takes the whole of the property on failure of issue by women of equal class.

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Ambashṭha, Nisháda, Máhíshya, Ugra and Karana:] adds "This rule concerns the children of women lawfully married.† Víramitrodaya(*b*).

Since these, (viz. the damsel's son and the rest) are bastards; born either in fornication or adultery, their exclusion from class, tribe, &c. has been ordained in the first book on religious observances. Subodhiní.

41. No more than a tenth part.] Is not this wrong? for it has been declared, that the Çúdrá's son shall take a share in a distribution among sons of various tribes (Sect. 8. § 1); but it is here directed, that he shall have a tenth part. No: for the four shares of the Bráhmaṇí's son, with three for the Kshatriyá's child, make seven; and, with two for the Vaiçyá's offspring, make nine: adding that to one for the son, the sum is ten. Thus there is no contradiction; for, in that instance also, his participation for a tenth part is ordained: and the whole is unexceptionable. Subodhiní.

43. Hence it appears.] It so appears from the text of Manu above cited (§ 41) Bálam-bhaṭṭa.

(*b*) The son of a Brahmana by a Kshatriyá is a *múrdhávasikta* or *múrddhábhishikta* by a Vaiçyá is an ambashṭha or vaidya and by a Çudrá, is a Nisháda or páraçava. The son of a Kshatriya by a Vaiçyá is a Máhíshya, by a Çúdrá is an ugra. A karaṇa is the son of a Vaiçya by a Çúdrá. See *Manu*, x. 8, 9: *Yájñavalkya*, I, 91, 92.—*Ed.*

* Manu, 9. 154.

† Yájñavalkya, 1. 93.

SECTION XII.

Rights of a son by a female slave, in the case of a Cúdra's estate.

1. In the instance of a Çúdra's property, his son by a female slave inherits or participates; conformably to a passage of Yájñavalkya.

1. The author next delivers a special rule concerning the partition of a Çúdra's goods. "Even a son begotten by a Çúdra on a female slave, may take a share by the father's choice. But, if the father be dead, the brethren should make him partaker of the moiety of a share: and one, who has no brothers, may inherit the whole property, in default of daughter's sons."(*a*)*

2. Interpretation of the text.

2. The son, begotten by a Çúdra on a female slave, obtains a share by the father's choice, or at his pleasure. But, after [the demise of†] the father, if there be sons of a wedded wife, let these brothers allow the son of the female slave to participate for half a share: that is, let them give him half [as much as is the amount of one brother's‡] allotment. However, should there be no sons of a wedded wife, the son of the female slave takes the whole estate, provided there be no daughters of a wife, nor sons of daughters. But, if there be such, the son of the female slave participates for half a share only.

3. But the son of a regenerate man by a female slave has a maintenance only.

3. From the mention of a Çúdra in this place, [it follows, that] the son begotten by a man of a regenerate tribe on a female slave, does not obtain a share even by the father's choice, nor the whole estate after his demise. But, if he be docile, he receives a simple maintenance(*b*).

ANNOTATIONS.

1. "In default of daughter's sons."] Some interpret this 'on failure of daughters, and in default of their sons.' Bálam-bhaṭṭa.

* Yájñavalkya, 2. 134—135. † Bálam-bhaṭṭa. ‡ Subodhiní and Bálam-bhaṭṭa.

(*a*) See 1 Morl. Dig. 310: 7 Moo. I. A. Ca. 35, 37, 49.—*Ed.*

(*b*) See 1 Strange, H. L. 70: 2 Ibid. 65, 70, 71; 1 Morl. Dig. 438.—

CHAPTER II.

SECTION I.

Right of the widow to inherit the estate of one, who leaves no male issue.

1. The subject of collateral succession is next considered.

1. That sons, principal and secondary, take the heritage, has been shown. The order of succession among all [tribes and classes*] on failure of them, is next declared.

2. Passage of Yájñavalkya on that subject.

2. "The wife, and the daughters also, both parents, brothers likewise, and their sons, gentiles, cognates, a pupil, and a fellow student: on failure of the first among these, the next in order is indeed heir to the estate of one, who departed for heaven leaving no male issue. This rule extends to all [persons and†] classes."(*a*)‡

3. Interpretation of it.

The heir of a person, who leaves no male issue, is the first in succession, according to the enumeration in the text.

3. He, who has no son descriptions abovestated (C. 1. Sect. 11.) is one having 'no male issue.' Of a man, thus leaving no male progeny, and going to heaven, or departing for another world, the heir, or successor, is that person, among such as have been here enumerated, (viz. the wife and the rest,) who is next in order, on failure of the first mentioned respectively. Such is the construction of the sentence.

4. The rule is the same in all tribes and classes.

4. This rule, or order of succession, in the taking of an inheritance, must be understood as extending to all tribes, whether the Múrdhávasikta and others in the direct series of the classes, or Súta and the rest in the inverse order; and as comprehending the several classes, the sacerdotal and the rest.

ANNOTATIONS.

2. "Brothers likewise."] This is understood by Bálam-bhaṭṭa as signifying both brothers and sisters.

"And their sons."] Bálam-bhaṭṭa understands the daughters of brothers, as well as their sons.

3. Such is the construction of the sentence.] The commentator Bálam-bhatta disapproves the reading which is here followed. The difference is, however, immaterial.

* Subodhiní. † Subodhiní, &c. ‡ Yájñavalkya, 2. 136—137.

(*a*) See 1 Morl. Dig. 319: 1 Moo. I. A. Ca. 132.—*Ed.*

5. In the first place, the wife shares the estate. "Wife" (patní) signifies a woman espoused in lawful wedlock; conformably with the etymology of the term as implying a connexion with religious rites(*a*).

5. The widow is first entitled to the succession.

6. Vṛddha-Manu also declares the widow's right to the whole estate. "The widow of a childless man, keeping unsullied her husband's bed, and persevering in religious observances, shall present his funeral oblation and obtain [his] entire share."* Vṛhad-Vishṇu likewise ordains it: "The wealth of him, who leaves no male issue, goes to his wife; on failure of her, it devolves on daughters; if there be none, it belongs to the father; if he be dead, it appertains to the mother."† So does Kátyáyana: "Let the widow succeed to her husband's wealth, provided she be chaste; and, in default of her, the daughter inherits if unmarried.(*b*)‡" And again, in another place: "The widow, being a woman of honest family, or the daughters, or on failure of them the father, or the mother, or the brother, or his sons, are pronounced to be the heirs of one who leaves no male issue."§ Also, Vṛhaspati: "Let the wife of a deceased man, who left no male issue, take his share, notwithstanding kinsmen, a father, a mother, or uterine brethren, be present."

6. Passage of Manu,

Vishṇu,

Kátyáyana,

and Vṛhaspati concur in this.

ANNOTATIONS.

5. Conformably with the etymology.] A rule of grammar is cited in the text: viz. Páṇiṇi, 4. 1. 35.

The author of the Subodhiní remarks, that the meaning of the grammatical rule cited from Páṇiṇi is this: Patní 'wife' anomalously derived from Pati 'husband,' is employed when connexion with religious rites is indicated: for they are accomplished by her means, and the consequence accrues to him. The purport is, that a woman, lawfully wedded, and no other, accomplishes religious ceremonies: and therefore one espoused in lawful marriage is exclusively called a wife (patní.) Although younger wives are not competent to assist at sacrifices or other religious rites, if an eldest wife exist, who is not disqualified; still, since the rest become competent in their turns, on failure of her, or even during her life, if she be afflicted with a lasting malady or be degraded for misconduct, they possess a capacity for the performance of religious ceremonies: and here such capacity only is intended. Or else marriage may be exclusively meant by religious rites: for offerings are made to deities at that ceremony; and such also is a sacrifice or solemn rite. Thus likewise, a woman lawfully espoused, and no other, is a wife (patní.)

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* See a note on this passage in Jímúta-váhana, Ch. 11. Sect. 1. § 7.

† Vishṇu, 17. 4—7. ‡ Vide infra. Sect. 2. § 2.

§ In the Víramitrodaya, this is cited as the text of a different author; but the commentator on the Mitákshará treats it as a further passage from the author before cited.

(*a*) See 1 Morl. Dig. 313: 1 Stra. 57.—*Ed.*

(*b*) When A had two wives, B and C, and B predeceased A, leaving three daughters, and C survived A and was childless, it was held by the Madras High Court that C succeeded to A's property in preference to the three daughters, *Perammál* v. *Venku-[illegible]l*, 1 Mad. H. C. Rep. 223.—*Ed.*

7. Passages, adverse to the widow's claim, likewise occur(*a*). Thus Nárada has stated the succession of brothers, though a wife be living; and has directed the assignment of a maintenance only to widows. "Among brothers, if any one die without issue, or enter a religious order, let the rest of the brethren divide his wealth, except the wife's separate property. Let them allow a maintenance to his women for life, provided these preserve unsullied the bed of their lord(*b*). But, if they behave otherwise, the brethren may resume that allowance."* Manu propounds the succession of the father, or of the brother, to the estate of one who has no male offspring: "Of him, who leaves no son, the father shall take the inheritance, or the brothers."† He likewise states the mother's right to the succession, as well as the paternal grandmother's: "Of a son dying childless, the mother shall take the estate: and, the mother also being dead, the father's mother shall take the heritage."‡ Çankha also declares the successive rights of brothers, and of both parents, and lastly of the eldest wife: "The wealth of a man, who departs for heaven, leaving no male issue, goes to his brothers. If there be none, his father and mother take it: or his eldest wife." Kátyáyana too says, "If a man die separate from his co-heirs, let his father take the property on failure of male issue; or successively the brother, or the mother, or the father's mother."

7. Other texts, of a contrary import, cited from Nárada,

Manu,

Çankha,

and Kátyáyana.

8. The application of these and other contradictory passages is thus explained by Dháreçvara: 'The rule, deduced from the texts [of Yájñavalkya, &c.§], that the wife shall take the estate, regards the widow of a separated brother: and that, provided she be solicitous of authority for raising up issue to her husband(*c*). Whence is

8. Dháreçvara's mode of reconciling the contradic-

ANNOTATIONS.

8. And other contradictory passages.] Alluding to the texts of Gautama and Devala subsequently quoted. Bálam-bhaṭṭa.

The rule deduced from the texts.] From those of Yájñavalkya (§ 2.), Vṛddha-Manu, Vishṇu, Kátyáyana and Vṛhaspati (§ 6.) Subodhiní, &c.

"If she seek.....offspring."] The particle (vá) is understood by the author, by whom the passage is here cited, in the conditional sense, as appears from the interpretation of the text in the next paragraph (§ 9.); according to the remark of the commentators on the Mitákshará. But the scholiast of Gautama takes it in its usual disjunctive sense: and the text is differently interpreted by the author of the Mitákshará himself (§ 18.)

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* Náreda, 13. 25—26. † Manu, 9. 185. Vide Sect. 4. § 1.

‡ Manu, 9. 217. Vide Sect. 4. § 2. and Sect. 5. § 2. § Subodhiní.

(*a*) See 1 Morl. Dig. 316, 3 Ib. 116.—*Ed.*

(*b*) See infra. §§ 20, 28: 2 Str. H. L. 297, 310.—*Ed.*

(*c*) In *Varaḍiperumál Udaiyan* v. *Ardanári Udaiyan* the Madras High Court held that on the death of an undivided Hindú without leaving male issue his property, unless previously disposed of, devolved on his surviving co-parceners, and that his widow was only entitled to maintenance (1 Mad. H. C. Rep. 412). But see the judgment of the P. C. in *Kattama Nauchear* v. *The Rajah of Shivagunga* 30th Nov. 1863.—

'The rule for the widow's succession concerns the widow of a separated brother seeking to raise up offspring to him.

This is confirmed by Gautama.

it inferred, that a widow succeeds to the estate, provided she seek permission for raising up issue, but not independently of this consideration? From the text above cited, "Of him, who leaves no son, the father shall take the inheritance;"* and other similar passages [as Nárada's, &c.†] For here a rule of adjustment and a reason for it must be sought; but there is none other. Besides it is confirmed by a passage of Gautama: "Let kinsmen allied by the funeral oblation, by family name, and by descent from the same patriarch, share the heritage; or the widow of a childless man, if she seek to raise up offspring to

9. 'The meaning of the text is this: person, connected by a common oblation, by race, or by descent from a patriarch, share the effects of one who leaves no issue: or his widow takes the estate, provided she seek progeny.'

9. Interpretation of the text.

10. 'Manu likewise shows by the following passage, that, when a brother dies possessed of separate property, the wife's claim to the effects is in right of progeny, and not in any other manner. "He, who keeps the estate of his brother and maintains the widow, must, if he raise up issue to his brother, deliver the estate to the son."§ So, in the case of undivided property likewise, the same author says, "Should a younger brother have begotten a son on the wife of his elder brother, the division must then be made equally: thus is the law settled."‖

10. Confirmed by passages of Manu, which shew that the property goes to the son borne by the widow.

11. 'Vasishṭha also, forbidding an appointment to raise up issue to the husband, if sought from a covetous motive ("An appointment shall not be through covetousness;"¶) thereby intimates, that the widow's succession to the estate is in right of such an appointment, and not otherwise.'

11. Vasishṭha also hints, that the widow's succession is in contemplation of her issue.

12. 'But, if authority for that purpose have not been received, the widow is entitled to a maintenance only; by the text of Nárada: "Let them allow a maintenance to his women for life."**

12. Else she has a maintenance only; according to Nárada.

ANNOTATIONS.

10. "Must ..... deliver the estate to the son."] It is thus shown, that a separated brother is meant; else, if there had been no partition, he could not have separate property. In the text subsequently cited, it appears from the direction for making the division equally, that the case of an unseparated co-heir is intended. Since there could be no partition, if he were already separated. Subodhiní.

11. The widow's succession is in right of such an appointment.] A widow, who has accepted authority for raising up issue to her husband, has the right of succession to his estate; but no other widow has so. Víramitrodaya.

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* Manu, 9. 185. Vide supra. § 7.
Gautama, 28. 19—20. Vide infra. § 18.
Vasishṭha, 17. 48.

† Bálam-bhaṭṭa.

§ Manu, 9. 146. ‖ Manu, 9. 120.

** Nárada, 13. 26. Vide supra. § 7.

13. 'The same (it is pretended) will be subsequently declared by the contemplative saint: "And their childless wives, conducting themselves aright, must be supported; but such, as are unchaste, should be expelled; and so, indeed, should those, who are perverse."*

13. A passage of Yájñavalkya, supposed to bear the same import.

14. 'Moreover, since the wealth of a regenerate man, is designed for religious uses, the succession of women to such property is unfit; because they are not competent to the performance of religious rites.(a) Accordingly, it has been declared by some author, "Wealth was produced for the sake of solemn sacrifices: and they, who are incompetent to the celebration of those rites, do not participate in the property, but are all entitled to food and raiment." "Riches were ordained for sacrifices. Therefore they should be allotted to persons who are concerned with religious duties; and not be assigned to women, to fools, and to people neglectful of holy obligations."

14. Women are inapt to inherit wealth, since it is designed for religious uses.

15. That is wrong: for authority to raise up issue to the husband is neither specified in the text, ("The wife and the daughters also, &c."†) nor is it suggested by the premises. Besides, it may be here asked; is the appointment to raise up issue a reason for the widow's succession to the property? or is the issue, borne by her, the cause of her succession? If the appointment alone be the reason, it follows, that she has a right to the estate, without having borne a son; and the right of the son subsequently produced [by means of the appointment‡] does not ensue. But, if the offspring be the sole cause [of her claim,§] the wife should not be recited as a successor: since, in that case, the son alone has a right to the goods.

15. Dhárevara's argument (§ 8.—14.) refuted.

16. But, it is said, women have a title to property, either through the husband, or through the son, and not otherwise. That is wrong: for it is inconsistent with the following text and other similar passages. "What was

16. His objections obviated.

ANNOTATIONS.

13. The same (it is pretended) will be declared.] Here the particle kila indicates disapprobation; as in the example 'Ah! wilt thou [presume to] fight.' For this passage of Yájñavalkya will be expounded in a different sense. So the expression 'by some author' (§ 14.) is intended as an indication of disrespect. Hence the insertion of the passage so cited, in this argument, does not imply an acknowledgment of it as original and genuine. Subodhiní.

14. It has been declared by some author.] The passage here cited is not considered as authentic; and no authority is shown for that and the following text. Bálam-bhaṭṭa.

15. And the right of the son subsequently produced does not ensue.] Which is inconsistent with the enunciation of his right of succession, as one of the twelve descriptions of sons, preferably to the widow and other heirs. Subodhiní and Bálam-bhaṭṭa.

16. That is wrong: for it is inconsistent with the following text.] Admitting the restriction, that women obtain property through their husbands or sons only, st

* Yájñavalkya, 2. 143. † § 2. ‡ Bálam-bhaṭṭa. § Bálam-bhaṭṭa.

(a) See 1 Strange, H. L. 135.—*Ed.*

given before the nuptial fire, what was presented in the bridal procession, what has been given in token of affection, what has been received by the woman from her brother, her mother, or her father, are denominated the sixfold property of a woman."*

17. An inconsistency in his interpretation shown.

17. Besides, the widow and the daughters are announced as successors (§ 2), on failure of sons of all descriptions. Now by here affirming the right of a widow, who has been appointed to raise up issue, the right of her son to succeed to the estate is virtually affirmed. But that had been already declared: and therefore the wife ought not to be mentioned under the head [of succession to the estate†] of one who leaves no male issue.

18. His explanation of Gautama's text (§ 8.) proved to be erroneous.

The right interpretation of it stated.

A chaste widow's succession is expressly affirmed: and an appointment to raise up issue is condemned.

18. But, it is alleged, the right of a widow, who is authorized to raise up issue to her husband, is deduced from the text of Gautama: "Let kinsmen allied by the funeral oblation, by family name, and by descent from the same patriarch, share the heritage; or the widow of a childless man: and she may either [remain chaste, or may] seek offspring."‡ This too is erroneous: for the sense, which is there expressed, is not 'if she seek to obtain offspring, she may take the goods of one who left no issue;' but 'persons allied by the funeral oblation, by family name, and by descent from the same patriarch, share the effects of one who leaves no issue; or his widow takes his estate: and she may either seek to obtain progeny, or may remain chaste.' This is an instruction to her, in regard to her duty. For the particle (vá) 'or,' denoting an alternative, does not convey the sense of 'if.' Besides it is fit, that a chaste woman should succeed to the estate, rather than one appointed to raise up issue, reprobated as this practice is in the law as well as in popular opinion. The succession of a chaste widow is expressly declared: "The widow of a childless man, keeping unsullied her husband's bed, and persevering in religious observances, shall pre-

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that restriction does not hold good universally, since women's right of property is declared in other instances. Subodhiní.

17. The wife ought not to be mentioned.] She ought not to be here mentioned lest it should be thought a vain repetition. Subodhiní.

18. She may either seek to obtain progeny.] The author proposes two modes of conduct for a woman whose husband is deceased. One is, that she should seek offspring, or endeavour to obtain male issue under an authority for that purpose. The term vá (either, or,) in this place does not signify 'if;' but indicates an alternative and that implies an opposite case; and the opposite case is the second mode of conduct, which, though not expressly stated in the text, must, by force of the particle vá, in its usual disjunctive acceptation, be opposite to the desire of obtaining progeny by means of an appointment to raise up issue: and this is consequently determined to be the duty of

* Menu, 9. 194.

† Vide § 8. The text is here translated according to the commentator's interpretation.

sent his funeral oblation and obtain his entire share."* And an authority to raise up issue is as expressly condemned by Manu: "By regenerate men no widow must be authorized to conceive by any other; for they, who authorize her to conceive by another, violate the
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19. But the text of Vasishṭha "An appointment shall not be through covetousness;"‡ must be thus interpreted: 'if the husband die either unseparated from his coparceners or reunited with them, she has not a right to the succession; and therefore an appointment to raise up issue must not be accepted for the sake of securing the succession to her offspring.'

19. Proper interpretation of the text of Vasishṭha (§ 11.)

20. As for the text of Nárada, "Let them allow a maintenance to his women for life;"§ Since re-union of parceners had been premised (in a former text, viz. "The shares of re-united brethren are considered to be exclusively theirs;"‖) it must be meant to assign only a maintenance to their childless widows. Nor is tautology to be objected to that passage, the intermediate text being relative to reunited parceners ("Among brothers, if any one die without issue, &c."¶) For women's separate property is exempted from partition by this explanation of what had been before said; and a mere maintenance for the widow is at the same time ordained.

20. And of the passage of Nárada (§ 12.)

21. The passage, which has been cited, "Their childless wives, conducting themselves aright, must be supported;"**will be subsequently shown to intend the wife of an impotent man and so forth.††

21. The text of Yájñavalkya (§ 13.) also will be explained in a different sense.

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chastity. The meaning therefore is this: two modes of conduct are here prescribed; either she must seek male issue by means of an appointment for that purpose, or she must remain chaste. Subodhiní.

19. Therefore an appointment.....must not be accepted.) Considering, that she has not herself a right to the estate, she ought not to seek an authority for raising up issue, from covetousness, with the view that the wealth may go to her progeny, as it cannot belong to herself. Subodhiní.

20. Nor is tautology to be objected.] On the ground, that both passages convey the same import. For, in explaining what had been before said, the two several passages convey two distinct meanings: namely, that the women's separate property is not to be divided; and that a maintenance only is to be granted to them. What had been before said, is not all which is afterwards declared; that it should be charged with tautology. The text "Among brothers, if any one die without issue," is an explanation of the preceding one ("The shares of reunited brethren are considered to be exclusively theirs.") The close of it, "except the wife's separate property," is a declaration of her property being indivisible; and the subsequent passage ("Let them allow a maintenance to his women for life") contains a separate injunction. Bálam-bhaṭṭa.

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* Vide § 6. † Manu, 9. 64. Vide C. 1. Sect. 10. § 8. ‡ Vide § 11.

§ Nárada, 13. 26. Vide § 12. ‖ Nárada, 13. 24.

¶ Nárada, 13. 25. See Jímúta-váhana, Ch. 11. Sect. 1. § 48.

** Vide supra. § 13. †† Vide Sect. 10. § 15.

22. As for the argument, that the wealth of a regenerate man is designed for religious uses; and that a woman's succession to such property is unfit, because she is not competent to the performance of religious rites; that is wrong: for, if every thing, which is wealth, be intended for sacrificial purposes, then charitable donations, burnt offerings, and similar matters, must remain unaccomplished. Or, if it be alleged, that the applicableness of wealth to those uses is uncontradicted, since sacrifice here signifies religious duty in general; and charitable donations, burnt offerings and the rest are acts of religious duty: still other purposes of opulence and gratification, which are to be effected by means of wealth, must remain unaccomplished; and, if that be the case, there is an inconsistency in the following passages of Yájñavalkya, Gautama and Manu. "Neglect not religious duty, wealth or pleasure, in their proper season."* "To the utmost of his power, a man should not let morning, noon or evening be fruitless, in respect of virtue, wealth and pleasure."† "The organs cannot so effectually be restrained by avoiding their gratification, as by constant knowledge [of the ills incident to sensual pleasure."‡]

22. Dháreçvara's argument of women's inaptness to inherit (§ 14), refuted. It is shown to be inconsistent with passages of Yájñavalkya, Gautama, and Manu.

23. Besides, if wealth be designed for sacrificial uses, the argument would be reversed, by which it is shown, that the careful preservation of gold [inculcated by a passage of the Veda§] "Let gold be preserved," is intended not for religious ends, but for human purposes.

23. And is incompatible with the reasoning of the Mímaṃsá.

24. Moreover, if the word sacrifice import religious duty in general, the succession of women to estates is most proper, since they are competent to the performance of auspicious and conservatory acts [as the making of a pool or a garden, &c.‖]

24. Women might inherit, though wealth were designed for religious uses.

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22. Sacrifice here signifies religious duty in general.] The relinquishment of a thing, with the view to its appertaining to a deity, is a sacrifice (yága) or consecration of the thing. The same design, terminated by casting the thing into the flames, is a burnt offering (homa) or holocaust. The conferring of property on another by annulling a previous right, is a gift (dána) or donation. Such is the difference between sacrifice, burnt-offering and donation. Subodhiní.

"In their proper season."] This part of the text was wanting in the quotation of it, as here exhibited: but the passage, as it is read in its proper place, by the Mitákshará, Aparárka and the Dípakalikà, contains the words swake kále 'in their proper season.'

23. The argument would be reversed.] The reasoning here alluded to occurs in the Mímánsá; and is the 12th topic of the 4th section of the 3d chapter. The passage of the Veda, which is there examined, and the initial words of which are quoted in the text, enjoins the careful preservation of gold, lest it lose its brightness and be tarnished. The question, raised on it, is whether the observance of the precept be essential to the efficacy of sacrifice or serve only a human purpose; and the result of the reasoning is, that the precept affects the person, and not the sacrifice. This reasoning is considered by the author to be incompatible with the notion, that wealth is intended solely for sacrificial uses.

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* Yájñavalkya, 1. 115. † Not found in Gautama's institutes.
Manu, 2. 96. partially quoted in this place. § Bálam-bhaṭṭa. ‖

25. Though held in thraldom, they are capable of property.

25. The text of Nárada, which declares the dependence of women, ("A woman has no right to independence,"*) is not incompatible with their acceptance of property; even admitting their thraldom(*a*).

26. Right interpretation of passages before cited (§ 14).

26. How then are the passages before cited ("Wealth was produced for the sake of solemn sacrifices, &c." †) to be understood? The answer is, wealth, which was obtained [in charity‡] for the express purpose of defraying sacrifices, must be appropriated exclusively to that use even by sons and other successors. The text intends that: for the following passage declares it to be an offence [to act otherwise,] without any distinction in respect of sons and successors. "He, who, having received articles for a sacrifice, disposes not of them for that purpose, shall become a kite or a crow.§

27. A passage of Kátyáyana assigns a subsistence to females, when an estate escheats to the king for want of heirs. Interpretation of the text.

27. It is said by Kátyáyana "Heirless property goes to the king,(*b*) deducting however a subsistence for the females as well as the funeral charges: but the goods belonging to a venerable priest, let him bestow on venerable priests." "Heirless property," or wealth which is without an heir to succeed to it, "goes to the king," becomes the property of the sovereign; "deducting however a subsistence for the females as well as the funeral charges:" that is, excluding or setting apart a sufficiency for the food and raiment of the women, and as much as may be requisite for the funeral repasts and other obsequies in honour of the late owner, the residue goes to the king. Such is the construction of the text. An exception is added: "but the goods belonging to a venerable priest," deducting however a subsistence for the females as well as the charges of obsequies, 'let him now bestow on a venerable priest.'

28. It relates to concubines; and so does a similar text of Nárada.

28. This relates to women kept in concubinage: for the term employed is "females" (yoshid.) The text of Nárada likewise relates to concubines; since the word there used is "woman" (strí.) Except the wealth of a Bráhmaṇa(*c*) [property goes to the king on failure of heir.]

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27. "Let him bestow on venerable priests" ..... 'let him bestow on a venerable priest.'] The commentator, Bálam-bhaṭṭa, considers as a variation in the reading of the text, the subsequent interpretation of it, 'let him bestow on a venerable priest:' çrotriyáyopapádayet in place of çrotriyebhyas tad arpayét. He remarks, however, that the singular number is used generically.

28. The text ..... relates to concubines.] Or to twice-married women and others not considered as wives espoused in lawful wedlock. Bálam-bhatta.

* Nárada, 13. 31. † Vide § 14. ‡ Bálam-bhaṭṭa.

§ This is a passage of Manu according to Bálam-bhaṭṭa; and a text of the same import, but expressed in other words, occurs in his institutes, 11. 25.

(*a*) See 1 Strange, H. L. 135.—*Ed.* (*b*) See 1 Morl. Dig. 311.—*Ed.*

(*c*) And even in the case of a Bráhmana his estate, when he dies without heirs escheats to the Crown as the Sovran power in British India. *The Collector of Masulipatam* v. *Narrainapah*, 8 Moo. I. A. Ca 500.—*Ed.*

But a king, who is attentive to the obligations of duty, should give a maintenance to the women of such persons. The law of inheritance has been thus declared."*

29. But here (§ 9) the wife's right of succession is declared.

29. But since the term "wife" (patní) is here employed, (§ 2.) the succession of a wedded wife, who is chaste, is not inconsistent with those passages.

30. Therefore the right interpretation is this: when a man, who was separated from his co-heirs and not re-united with them, dies leaving no male issue, his widow [if chaste†] takes the estate in the first instance(*a*). For partition had been premised; and re-union will be subsequently considered.

30. If her husband was separated from his co-heirs and not re-united.

31. It must be understood, that the explanation, proposed by Çríkara and others, restricting [the widow's succession] to the case of a small(*b*) property, is refuted by this [following argument.‡] If there be legitimate sons, it is provided, whether partition be made in the owner's life-time or after his decease, that the wife shall take a share equal to the son's. "If he make the allotments equal, his wives must be rendered partakers of like portions."§ And again: "Of heirs dividing after the death of the father, let the mother also take an equal share."‖ Such being the case, it is a mere error to say, that the wife takes nothing but a subsistence from the wealth of her husband, who died leaving no male issue.

21. Çríkara's opinion refuted. He supposes the widow's succession to be restricted to the case of a small property. But she takes a share, though there be sons.

32. But it is argued, that, under the terms of the texts above cited, ("his wives must be rendered partakers of like portions;" and, "let the mother also take an equal share;") a woman takes wealth sufficient only for her maintenance. That is wrong: for the words "share" or "portion," and "equal" or "like," might consequently be deemed unmeaning.

32. She does not take merely enough for her subsistence.

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31. It is a mere error to say, that the wife takes nothing but a subsistence.] If the wife share a portion equal to that of a son, not an allotment sufficient only for her support, both when the husband is living, and after his decease, though sons exist; more especially should it be affirmed, that she obtains the whole wealth of her husband, who leaves no male issue: and thus, since the widow's succession to the whole estate is established by reasoning a fortiori, the assertion, that she obtains no more than food and raiment, is erroneous. Besides, since the wife's participation with a son, who is entitled to take a share of the estate, or, if there be no other son, the whole of it, has been expressly ordained, it is fit that she should, on failure of male issue, take the wealth of her childless husband being separate from his co-heirs. Subodhiní.

32. For the words "share" and "equal" might consequently be deemed unmeaning.] These terms are commonly employed to signify 'portion' and 'parity.' By abandoning their own signification without sufficient cause, they would appear unmeaning. Subodhiní.

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* Nárada, 13. 51—52. † Bálam-bhaṭṭa. ‡ Ibid.

§ C. 1. Sect. 2. § 8. ‖ C. 1. Sect. 7. § 1.

(*a*) See 1 Strange, H. L. 270. 272.—*Ed.* (*b*) See 1 Strange, H. L.

33. Or suppose, that, if the wealth be great, she takes precisely enough for her subsistence ; but, if small, she receives a share equal to that of a son. This again is wrong : for variableness in the precept must be the consequence. Thus, if the estate be considerable, the texts above cited, (" his wives must be rendered partakers of like portions ;" and " let the mother also take an equal share ;") assisted by another passage [" Let them allow a maintenance to his women for life ;" § 12.*] suggest an allotment adapted for bare support. But, if the estate be considerable, the same passages indicate the assignment of a share equal to a son's.

33. Nor a subsistence if the estate be large, and a share if it be small.

34. Thus, in the instance of the Cháturmásya sacrifices, in the disquisition of the [Mímáṃsá] on the passage dvayoḥ praṇayanti ;† where it is maintained by the opponent, that the rules for the preparation of the sacrificial fire at the Soma-yága extend to these sacrifices ; in consequence of which the injunction not to construct a northern altar (uttaravedi) at the Vaiçvedeva and Çunásíríya sacrifices, must be understood as a prohibition of such altar ; [which should else be constructed at those sacrifices, as at a Soma-yága :] but it is answered by an advocate for the right opinion, that it is not a prohibition of that altar as suggested by extending to these sacrifices the rules for preparing the sacrificial fire at the Soma-yága, but an exception to the express rule " prepare an uttara-vedi at this sacrifice [viz. at the Cháturmásya :"] it is urged in reply by the opponent, that variableness in the precept must follow, since the same precept thus authorizes the occasional construction of the altar, with the reference to a prohibition of it, at the first and last of the [four] periods of sacrifice, and commands the

34. Argument illustrated by reasoning quoted from the Mímáṃsá.

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33. Variableness in the precept must be the consequence.] If the passage above cited (§ 31.), assisted by another passage (§ 12.), ordain the widow's receipt of a sufficiency for her support, at the time of making a partition with the sons, whether her husband, who was wealthy, be then alive or dead ; but ordain her taking of a share equal to that of a son, if her husband possess little property ; then a single sentence, once uttered, is in one case dependent [on a different passage, for its interpretation,] and not so in another instance. Consequently, since it does not retain an uniform import, there is variableness in the precept. Subodhiní.

34. In the instance of the Cháturmásya sacrifices.] These are four sacrifices performed on successive days, according to some authorities ; but in the months of Ashádha, Kártika and Phálguna, according to others. They are severally denominated Vaiçvedeva, Varuṇa-praghása, Çákamedha and Çunásíríya. The oblations consist of roasted cakes (purodása) ; and, at the second of them, two figures of sheep made of ground rice. The cakes are prepared in the usual manner, consisting of ground rice, kneaded with hot water, and formed into lumps of the shape of a tortoise : these are roasted on a specified number of potsherds (kapála) placed in a circular hole, which contains one of the three consecrated fires perpetually maintained by devout Bráhmaṇas.

In the disquisition on the passage dvayoḥ praṇayanti.] Part of a passage of the Veda, which is the subject of a disquisition in the Mímámsá, and which gives name to it. This is the ninth (or, according to one mode of counting, the seventh) topic in the third section of Jaimini's seventh chapter. See Jímuta-váhana. Ch. 11. Sect. 5.

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* Subodhiní and Bálam-bhatta.

† Mimánsá, 7. 3. 9.

construction of it at the two middle periods, independently of any other maxim : but it is finally shown as the right doctrine, for the very purpose of obviating the objection of variableness in the precept, that the prohibition of the altar at the first and last of the periods of sacrifice is a recital of a constant rule; and that the injunction, " prepare the uttara-vedi at this sacrifice," commands its construction at the two middle periods (namely the Varuṇa-praghásа and Çákamedha) with a due regard to that explanatory recital.

35. As for the doctrine, that, from the text of Manu (" Of him, who leaves no son, the father shall take the inheritance, or the brothers,"*) as well as from that of Çankha (" The wealth of a man, who departs for heaven, leaving no male issue, goes to his brothers. If there be none, his father and mother take it : or his eldest wife."†) the succession of brothers, to the estate of one who leaves no male issue, is deduced ; and that a wife obtains a sufficiency for her support, under the text " Let them allow a maintenance to his women for life :"‡ this being determined, if a rich man die, leaving no male issue, the wife takes as much as is adequate to her subsistence, and the brethren take the rest(*a*); but, if the estate be barely enough for the support of the widow, or less than enough, this text (" The wife and the daughters also ;"§) is propounded, on the controverted question whether the widow or the brothers inherit, to show, that the first claim prevails. This opinion the reverend teacher does not tolerate : for he interprets the text, " Of him who leaves no son, the father shall take the inheritance, or the brothers ;"‖ as not relating to the order of succession, since it declares an alternative ; but as intended merely to show the competency for inheriting, and as applicable when the preferable claimants, the widow and the rest, fail. The text of Çankha too relates to a re-united brother.

35. Another exposition of the texts of Manu, Çankha and Nárada proposed.

It is condemned by Viçvarupa, who interprets otherwise the text of Manu, (§ 7 ;) and that of Çankha (§ 7 ;)

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Since the same precept authorizes the occasional construction of the altar.] Since one precept commands it at a Cháturmásya sacrifice, and another forbids it at two of the periods of that sacrifice ; the injunction, contrasted with the prohibition, seems to imply an option in this case : but, not being contrasted with any other rule, it becomes a cogent precept in the instance of the two other periods : and thus the rule, being cogent in one case and not in the other, is variable in its import and effect.

35. On the controverted question whether the widow or the brothers inherit.] Whether the widow inherits, as provided by Nárada ; or the brothers succeed conformably with the texts of Manu and Çankha. *Bálam-bhaṭṭa.*

This opinion the reverend teacher does not tolerate.] Meaning Viçvarupa. Subodhiní and Bálam-bhaṭṭa.

The text of Çankha relates to a re-united brother.] It relates to the case of a brother, who, after separation, becomes associated with his co-heirs, from affection or any other motive. Subodhiní.

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* Vide § 7. † Ibid. ‡ Nárada. Vide § 7.

§ Yájñavalkya. Vide § 2. ‖ Manu. Vide § 7.

(*a*) See *Collector of Masulipatam* v. *Cavaly Vencata Narrainapah.* 8 Moo. I. A. Ca. 514.—*Ed.*

36. Besides it does not appear either from this passage [of Yájñavalkya*] or from the context, that it is relative to an inconsiderable estate. If the concluding sentence "On the failure of the first among these, the next in order is heir ;† be restricted to the case of a small property, reference to another passage, in two instances (of the widow and of the daughters,) but relates to wealth generally in the other instances (of the father and the rest,) the consequent defect of variableness in the precept (§ 33.) affects this interpretation.

36. The passage of Yájñavalkya cannot be taken as relating to a small estate in one instance; since it must relate to wealth generally in another case.

37. "If a woman, becoming a widow in her youth, be headstrong, a maintenance must in that case be given to her for the support of life."‡ This passage of Hárita is intended for a denial of the right of a widow suspected of incontinency, to take the whole estate. From this very passage [of Hárita§], it appears that a widow, not suspected of misconduct, has a right to take the whole property,

37. It appears from a passage of Hárita, that a widow, suspected of incontinency, has a maintenance only; but otherwise inherits the whole property.

38. With the same view, Çankha has said "Or his eldest wife." (§ 7.) Being eldest by good qualities, and not supposed likely to be guilty of incontinency, she takes the whole wealth; and, like a mother, maintains any other headstrong wife [of her husband.] Thus all is unexceptionable.

38. This serves to explain a passage of Çankha (§ 7.)

39. Therefore it is a settled rule, that a wedded wife, being chaste, takes the whole estate of a man, who being separated from his co-heirs and not subsequently reunited with them, dies leaving no male issue(*a*).

39. Conclusion.

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* Subodhiní. † Vide § 2.

‡ In the Vivádа-chintámaṇi this passage is read without the conditional particle: viz. "A woman.....is headstrong: but a maintenance must ever be given to her....."

§ Bálam-bhaṭṭa.

(*a*) See 1 Strange, H. L. 134: 1 Morl. Dig. 279, 316, 318: 8 Moo. I. A. Ca. 543 *Sibhoo Singh* v. *Pirthee Singh* 10 N. W. P. 420.—*Ed.*

5. It must not be supposed, that this relates to the appointed daughter: for, in treating of male issue, she and her son have been pronounced equal to the legitimate son ("Equal to him is the son of an appointed daughter,"* or the daughter appointed to be a son.†)

5. An appointed daughter is not meant.

6. By the import of the particle "also" (Sect. 1. § 2.) the daughter's son succeeds to the estate on failure of daughters. Thus Vishṇu says, "If a man leave neither son, nor son's son, nor [wife, nor female‡] issue, the daughter's son shall take his wealth. For, in regard to the obsequies of ancestors, daughter's sons are considered as son's sons."§ Manu likewise declares, "By that male child, whom a daughter, whether formally appointed or not, shall produce from a husband of an equal class, the maternal grandfather becomes the grandsire of a son's son: let that son give the funeral oblation and possess the inheritance."(*a*)‖

6. The daughter's son inherits on failure of daughters; as declared by Vishṇu, and by Manu.

SECTION III.

Right of the Parents.

1. On failure of those heirs, the two parents, meaning the mother and the father, are successors to the property.

1. Next both parents inherit.

2. Although the order, in which parents succeed to the estate, do not clearly appear [from the tenor of the text; Sect. 1. § 2.] since a conjunctive compound is declared to present the meaning of its several terms at once;¶ and the omission of one term and retention of the other constitute an

2. First the mother; and after her the father.

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5. For, in treating of male issue, she and her son have been pronounced, &c.] Since she has been noticed while treating of male issue, the introduction of her in this place would be improper. Subodhiní.

6. The daughter's son succeeds to the estate on failure of daughters.] According to the commentary of Bálam-bhaṭṭa, the daughter's daughter(*b*) inherits in default of daughter's sons. He grounds this opinion, for which however there is no authority in Vijñáneçvara's text, upon the analogy, which this author has admitted in another case, between the succession to a woman's separate property and the inheritance of the paternal estate. (Vide § 4.)

2. Although the order ..... do not clearly appear.] It is declared, that the two parents are successors to the property, if there be no daughter nor daughter's son. Since the term (pitarau) 'parents' is formed by omitting one and retaining the other

* C. 1. Sect. 11. § 1. † C. 1. Sect. 11. § 3.

§ Not found in Vishṇu's institutes: but cited under his name in the Smṛti-chandriká.

‖ Manu, 9. 136. ¶ Vártika, 1. on Páṇini, 2. 2. 30.

(*a*) See 1 Morl. Dig. 258, 319, 325.—*Ed.*

(*b*) See 1 Morl. Dig. 326: 1 Strange, H. L. 139.—

exception* to that [complex expression;] yet, as the word 'mother' stands first in the phrase into which that is resolvable, and is first in the regular compound (mátápitarau) 'mother and father,† when not reduced [to the simpler form pitarau 'parents'] by the omission of one term and retention of the other; it follows from the order of the terms and that of the sense which is thence deduced, and according to the series thus presented in answer to an inquiry concerning the order of succession, that the mother takes the estate in the first instance(*a*); and, on failure of her, the father.

3. The mother is nearest to her son; and should therefore inherit; conformably with

3. Besides the father is a common parent to other sons, but the mother is not so: and, since her propinquity is consequently greatest, it is fit, that she should take the estate in the first instance, conforma-

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member of a complex expression (mother and father;) shall they conjointly take the estate, or severally? and is the order of succession optional, or fixed and regulated? The author replies to these questions. Subodhiní.

A conjunctive compound is declared, &c.] A compound term is formed, as directed by Páṇini and his commentators,‡ when two or more nouns occur with the import of the conjunction 'and,' in two of its senses (viz. reciprocation and cumulation.§) This is limited by the emendatory rule of Kátyáyana to the case where the sense conveyed by each word is presented at once: while the same terms, connected in a phrase by the conjunction copulative, would present the sense of each successively.

The omission of one term and retention of the other constitute an exception.] When the word pitṛ 'father' occurs with mátṛ 'mother,' it may be retained and the other be rejected. This is an exception to the general rule of composition. It is optional; and the regular form may be retained in its stead. Ex. Pitarau 'two parents;' or Mátápitarau 'mother and father.' Pánini, 1. 2. 70. and 2. 2. 29.—34.

The word mother stands first in the phrase into which that is resolvable.] The compound term, whether reduced to the simpler expression or retaining its complex form, is resolvable into the phrase mátá cha pitá cha 'both the mother and the father.' This, however, is only the customary order of terms, not specially enjoined by any rule of syntax.

Is first in the regular compound.] Conformably with one of Kátyáyana's emendatory rules on Pánini's canon for the collocation of terms in composition. (2. 2. 34.) That rule requires the most revered object to have precedence: and the example of the rule, as given in Pátanjali's Mahábhashya and Vámana's Kásiká-vṛtti, is this very compound term mátápitarau 'mother and father.' The commentators, Kaiyaṭa and Haradatta, assign reasons why a mother is considered to be more venerable than a father.

It follows, from the order of the terms.] The compound term mátápitarau 'mother and father,' as well as the abridged and simpler expression pitarau 'parents,' is resolvable into the same phrase mátá cha pitá cha 'both the mother and the father.' Thus, in every form of expression, 'mother' stands first. Hence the author infers, that the mother's priority in regard to succession to wealth is intended by the text (Sect. 1. § 2.)

3. The father is a common parent to other sons.] The mother is, in respect of sons, not a common parent to several sets of them: and her propinquity is therefore more immediate, compared with the father's. But his paternity is common; since he may have sons by women of equal rank with himself, as well as children by wives of the

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* Páṇini, 1. 2. 70. † Vártika, 3. on Páṇini, 2. 2. 34.

‡ Vide infra. Sect. 11. § 20.

§ See Dictionary of Amara, Book 3. Chap. 4. Sect. 28. Verse 2.

a passage of bly with the text "To the nearest sapiṇḍa, the i tance next belongs."*

4. Nor is the claim in virtue of propinquity restricted

4. That text, though it speak of Sapiṇḍas, is not restricted to them.

ḍas) kinsmen allied by funeral oblations: but, contrary, it appears from this very text, (§ 3.) that the rule of propinquity is effectual, without any exception, in the case of (samánodakas) kindred connected by libations of water, as well as other relatives, when they appear to have a claim to the succession.

5. Therefore, since the mother is the nearest of the two parents, it

5. Conclusion.

is most fit, that she should take the estate. But, on failure of her, the father is successor to the property.

SECTION IV.

Right of the Brothers.

1. Next to the parents, the brothers inherit.

1. On failure of the father, brethren share the estate(*a*). Accordingly Manu says, "Of him, who leaves no son, the father shall take the inheritance of the brothers."†

ANNOTATIONS.

Kshatriya and other inferior tribes; and his nearness is therefore mediate, in comparison of the mother's. The mother consequently is nearest to her child; and she succeeds to the estate in the first instance, since it is ordained by a passage of Manu, that the person, who is nearest of kin, shall have the property. Subodhiní.

5. On failure of her, the father is successor to the property.] The commentator, Bálam-bhaṭṭa, is of opinion, that the father should inherit first and afterwards the mother; upon the analogy of more distant kindred, where the paternal line has invariably the preference before the maternal kindred; and upon the authority of several express passages of law. Nanda Pandita, author of commentaries on the Mitákshará and on the institutes of Vishnu, had before maintained the same opinion. But the elder commentator of the Mitákshará, Viçveçvara-bhaṭṭa has in this instance followed the text of his author in his own treatise entitled Madana-Párijáta, and has supported Vijñáneçvara's argument both there and in his commentary named Subodhiní. Much diversity of opinion does indeed prevail on this question. Çríkara maintains, that the father and mother inherit together: and the great majority of writers of eminence (as Aparárka and Kamalákara, and the authors of the Smṛti-chandriká, Madana-ratna, Vyavahára-mayúkha, &c.) gives the father the preference before the mother. Jímúta-vahana and Raghunandana have adopted this doctrine. But Váchespati-miçra, on the contrary, concurs with the Mitakshará in placing the mother before the father; being guided by an erroneous reading of the text of Vishnu (Sect. 1. § 6.), as is remarked in the Víramitrodaya. The author of the latter work proposes to reconcile these contradictions by a personal distinction. If the mother be individually more venerable than the father, she inherits; if she be less so, the father takes the inheritance.

1. Brethren.] The commentators, Nanda Pandita and Bálam-bhaṭṭa, consider this as intending 'brothers and sisters,' in the same manner in which "parents" have been explained 'mother and father,' (Sect. 3. § 2.) and conformably with an express

* Manu, 9, 187. † Manu, 9. 185. Vide Sect. 1. § 7.

(*a*) See 2 Strange II. L. 243: 1 Morl, 323, 444—.

It hàs been argued by Dhárеçvara, that, 'under the following text of Manu, "Of a son dying childless, the mother shall take the estate; and, the mother also being dead, the father's mother shall take the heritage;"* even while the father is living, if the mother be dead, the father's mother, or in other words the paternal grandmother, and not the father himself, shall take the succession: because wealth, devolving upon him, may go to sons dissimilar by class; but what is inherited by the paternal grandmother, goes to such only as appertain to the same tribe: and therefore the paternal grandmother takes the estate.'

2. Dhárеçvara affirms the prior right of the paternal grandmother; on the ground of a passage of Manu.

3. The holy teacher [Viçvarúpa†] does not assent to that doctrine: because the heritable right of sons even dissimilar by class has been expressly ordained by a passage above cited: "The sons of a Bráhmaṇa, in the several tribes, have four shares, or three, or two, or one."‡

3. But that is contradicted by Viçvarúpa; citing another passage of the same author.

4. But the passage of Manu, expressing that "The property of a Bráhmaṇa shall never be taken by the king,"§ intends the sovereign, not a son [of the owner by a woman of the royal or military tribe].

4. A text of Manu, excluding the king, intends the sovereign not the Kshatriya.

ANNOTATIONS.

rule of grammar (Pánini, 1. 2. 68.)(*a*) They observe, that the brother inherits first: and, in his default, the sister. This opinion is controverted by Kamalákara and by the author of the Vyavahára-mayúkha.

2. It has been argued by Dhárеçvara.] It had been shown (Sect. 3), that the father inherits on failure of the mother. But that is stated otherwise by different authors. To refute the opinion maintained by one of them, the author reverts to the subject by a retrospect analogous to the backward look of the lion. Subodhiní and Bálam-bhaṭṭa.

Because wealth, devolving on him, may go to sons dissimilar.] The meaning is this: if the succession be taken by the father, the property becomes a paternal estate, and may devolve on his sons whether belonging to the Múrddhávasikta [or another mixt‖] tribe or to his own class. But, if it be taken by the grandmother, it becomes a maternal estate and devolves on persons of the same tribe, namely her daughters; or successively, on failure of them, her daughter's sons, her own sons, and so forth. Subodhiní and Bálam-bhaṭṭa.

4. Intends the sovereign, not a son.] It does not prohibit the succession of a Bráhmaṇa's son by a Kshatriya wife, denominated king as being of his mother's tribe. which is the royal or military one. But it relates to an escheat to the sovereign. Therefore it is not an exception to the passage cited in the preceding paragraph; and Viçvarúpa's reasoning holds good, that 'Dhárеçvara's objection would be valid, if there were any harm in the ultimate succession of sons dissimilar by class. But that is not the case. On the contrary, they are expressly pronounced by the text here cited, to be partakers of inheritance.' Subodhiní.

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* Manu, 9. 217. Vide Sect. 1. § 7. † The name is supplied by the Subodhiní.

‡ Yájñavalkya, 2. 126. Vide supra. C. 1. Sect. 8. § 1.

§ Manu, 9. 189. Vide infra. Sect. 7. § 5. ‖ Bálam-bhaṭṭa.

(*a*) See 1 Morl. Dig. 325, 326.—

5. Among brothers, such, as are of the whole blood, take the inheritance in the first instance, under the text before cited: "To the nearest sapiṇḍa, the inheritance next belongs."* Since those of the half blood are remote through the difference of the mothers.

5. The whole blood inherits first; as nearest of kin.

6. If there be no uterine (or whole) brothers, those by different mothers inherit the estate.

6. Next the half blood.

7. On failure of brothers also, their sons share the heritage in the order of the respective fathers.

7. After brothers, nephews inherit in like manner.

8. In case of competition between brothers and nephews, the nephews have no title to the succession: for their right of inheritance is declared to be on failure of brothers ["both parents, brothers likewise, and their sons." Sect. 1. § 2.†]

8. They do not share with their uncles.

9. However, when a brother has died leaving no male issue [nor other nearer heir,‡] and the estate has consequently devolved on his brothers indifferently, if any one of them die before a partition of their brother's estate takes place, his sons do in that case acquire a title through their father: and it is fit, therefore, that a share should be allotted to them, in their father's right, at a subsequent distribution of the property between them and the surviving brothers.

9. But they take a share which had vested in their father.

ANNOTATIONS.

6. If there be no uterine (or whole) brothers, those by different mothers inherit.) The author of the Vyavahára-mayúkha censures the preference here given to the brothers of the half blood before the nephews, being sons of brothers of the whole blood.

7. Their sons share the heritage.] Including, say Nanda Paṇḍita and Bálam-bhaṭṭa, the daughters as well as the sons of brothers, and the sons and daughters of sisters. This consequently will comprehend all nephews and nieces.

In the order of the respective fathers.] In their order as brothers of the whole blood, and of the half blood. Bálam-bhaṭṭa.

By analogy to the case of grandsons by different fathers (Chap. 1. Sect. 8.), the distribution of shares shall be made, through allotments to their respective fathers, and not in their own right, whether there be one, two, or many sons of each brother. Subodhiní.

That is wrong: for the brethren had not a vested interest in their brother's wealth before their decease; and property was only vested in the nephews by the owner's demise. Bálam-bhaṭṭa.

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* Manu, 9. 187. Vide Sect. 3. § 3. † Subodhiní and Bálam-bhaṭṭa.

‡ Bálam-bhaṭṭa.

SECTION V.

Succession of kindred of the same family name: termed Gotraja, or gentiles.

1. If there be not even brother's sons, gentiles share the estate. Gentiles are the paternal grandmother and relations connected by funeral oblations of food and libations of water.

1. Next to the nephew, the kindred are heirs.

2. In the first place the paternal grandmother takes the inheritance. The paternal grandmother's succession immediately after the mother, was seemingly suggested by the text before cited, "And, the mother also being dead, the father's mother shall take the heritage:"* no place, however, is found for her in the compact series of heirs from the father to the nephew: and that text ("the father's mother shall take the heritage") is intended only to indicate her general competency for inheritance. She must, therefore, of course succeed immediately after the nephew; and thus there is no contradiction.

2. First the paternal grandmother.

3. On failure of the paternal grandmother, the (gotraja) kinsmen sprung from the same family with the deceased and (sapiṇḍa) connected by funeral oblations, namely the paternal grandfather and the rest, inherit the estate. For kinsmen sprung from a different family, but connected by funeral oblations, are indicated by the term cognate (bandhu Sect. 6.)

3. Next the paternal grandfather.

4. Here, on failure of the father's descendants, the heirs are successively the paternal grandmother, the paternal grandfather, the uncles and their sons(*a*).

4. After him, the uncles and their sons.

ANNOTATIONS.

1. Gentiles.] Gotraja or persons belonging to the same general family (gotra) distinguished by a common name: these answer nearly to the *Gentiles* of the Roman law.

2. She must, therefore, of course succeed.] Some copies of the Mitákshará read this passage differently. The variation is noticed in the commentary of Bálam-bhaṭṭa, viz. 'She succeeds, after the preceding claimants, if they be dead,' uparitana-mṛttánantaram instead of utkarshe tat sutánantaram. The commentary remarks, that the 'preceding (uparitana) claimants' are the father and the rest down to the brother's son.

3. On failure of the paternal grandmother... ..the paternal grandfather.] Bálambhaṭṭa insists, that the grandfather inherits before the grandmother, as the father before the mother. See Section 3.

5. Then the great-grandmother, great-grandfather, granduncles and so forth, to the seventh degree.

5. On failure of the paternal grandfather's line, the paternal great-grandmother, the great-grandfather, his sons and their issue, inherit. In this manner must be understood the succession of kindred belonging to the same general family and connected by funeral oblations.

ANNOTATIONS.

5. In this manner must be understood the succession of kindred.] The Subodhiní, commenting on the first words of the following section, carries the enumeration a little further: viz. 'the paternal great-grandfather's mother, great-grandfather's father, great-grandfather's brothers and their sons. The paternal great-grandfather's grandmother, great-grandfather's grandfather, great-grandfather's uncles and their sons. The same analogy holds in the succession of kindred connected by a common libation of water.'

The scholiast of Vishṇu, who is also one of the commentators of the Mitákshará, states otherwise the succession of the near and distant kindred, in expounding the passage of Vishṇu "If no brother's son exist, it passes to kinsmen (bandhu;) in their default it devolves on relations (sakulya):"* where Bálam-bhaṭṭa, on the authority of a reading found in the Madana-ratna, proposes to transpose the terms bandhu and sakulya; for the purpose of reconciling Vishṇu with Yájñavalkya, by interpreting sakulya in the sense of gotraja or kinsmen sprung from the same family. Nanda Paṇdita, preserving the common reading, says 'kinsmen (bandhu) are sapiṇdas; and these may belong to the same general family or not. First those of the same general family (sagotra) are heirs. They are three, the father, paternal grandfather, and great-grandfather; as also three descendants of each. The order is this: In the father's line, on failure of the brother's son, the brother's son's son is heir. In default of him, the paternal grandfather, his son and grandson. Failing these, the paternal great grandfather, his son and grandson. In this manner the succession passes to the fourth degree inclusive; and not to the fifth: for the text expresses "The fifth has no concern with the funeral oblations."† The daughters of the father and other ancestors must be admitted, like the daughter of the man himself, and for the same reason. On failure of the father's kindred connected by funeral oblations, the mother's kindred are heirs: namely the maternal grandfather, the maternal uncle and his son; and so forth. In default of these, the successors are the mother's sister, her son and the rest."

The commentator takes occasion to censure an interpretation, which corresponds with that of the Mitákshará as delivered in the following section (S. 6. § 1.); and according to which the cognate kindred of the man himself, of his father and of his mother are the sons of his father's sister and so forth: because it would follow, that the father's sister's son and the rest would inherit, although the man's own sister and sister's sons were living. Bálam-bhaṭṭa, however, repels this objection by the remark, that the sister and sister's sons have been already noticed as next in succession to the brother and brother's sons: which is indeed Nanda Paṇdita's own doctrine.

He adds, 'after the heirs abovementioned, the sakulya or distant kinsman is entitled to the succession: meaning a relation in the fifth or other remoter degree.'

This whole order of succession, it may be observed, differs materially from that which is taught in the text of the Mitákshará. On the other hand, the author of the Víramitrodaya has exactly followed the Mitákshará; and so has Kamalákara: and it is also confirmed by Mádhava áchárya, in the Vyavahára-Mádhava, as well as by the Smṛti-chandriká.

But the author of the Vyavahára-mayúkha contends for a different series of heirs after the brother's son: '1st the paternal grandmother; 2d the sister; 3d the paternal grandfather and the brother of the half blood, as equally near of kin; 4th the paternal great-grandfather, the paternal uncle and the son of a brother of the half blood, sharing together as in the same degree of affinity.' He has not pursued the enumeration further; and the principle stated by him, nearness of kin, does not clearly indicate the rule of continuation of this series.

* Vishṇu, 17. 10, 11.

† Manu, 9. 186.

6. If there be none such, the succession devolves on kindred connected by libations of water(*a*) : and they must be understood to reach to seven degrees beyond the kindred connected by funeral oblations of food : or else, as far as the limits of knowledge as to birth and name extend. Accordingly Vṛhat-Manu says " The relation of the sapiṇḍas, or kindred connected by the funeral oblation, ceases with the seventh person : and that of samánodakas, or those connected by a common libation of water, extends to the fourteenth degree ; or as some affirm, it reaches as far as the memory of birth and name extends. This is signified by gotra or the relation of family name."*

6. Afterwards more distant kindred : either to the 14th degree ; or as far as consanguinity is ascertainable : so Manu describes them.

SECTION VI.

On the succession of cognate kindred, bandhu.

1. On failure of gentiles, the cognates are heirs. Cognates are of three kinds ; related to the person himself, to his father, or to his mother : as is declared by the following text. " The sons of his own father's sister, the sons of his own mother's sister, and the sons of his own aunt, and the sons of his mother's maternal uncle, must be considered as his own cognate kindred. The sons of his father's paternal aunt, the sons of his father's maternal aunt, and the sons of his father's maternal uncle, must be deemed his father's cognate kindred. The sons of his mother's paternal aunt, the sons of his mother's maternal uncles, must be reckoned his mother's cognate kindred."†

1. After gentiles, cognates are heirs.

They are of three sorts, as dis-

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ANNOTATIONS.

1. The cognates are heirs] Bandhu, cognate or distant kin, corresponding nearly to the *Cognati* of the Roman law.

Cognates are of three kinds.] Bálam-bhaṭṭa notices a variation in the reading, bándhaváḥ for bandhavaḥ. It produces no essential difference in the interpretation.

Related to the person himself, to his father or to his mother.] Aparárka, as remarked by Kamalákara, disallows the two last classes of cognate kindred, as having no concern with inheritance ; and restricts the term bandhu, in the text, to the kindred of the owner himself. The author of the Vyavahára-mayúkha confutes that restriction.

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* The first part of this passage occurs in Manu's institutes. 5. 60. The remainder of the text differs.

† The text is seemingly ascribed by the commentator Bálam-bhaṭṭa to Vṛddha Sátátapa. But it is quoted in the Vyavahára-Mádhava as a text of Baudháyana.

(*a*) See 1 Morl. Dig. 328.—*Ed.*

2. First the kindred of the late owner; then those of his father; and lastly those of his mother.

2. Here, by reason of near affinity, the cognate kindred of the deceased himself, are his successors in the first instance: on failure of them, his father's cognate kindred: or, if there be none, his mother's cognate kindred. This must be understood to be the order of succession here intended.

SECTION VII.

On the succession of strangers upon failure of the kindred.

1. After kindred, the preceptor is heir; by the text of Ápastamba; and, next to him, the pupil.

1. If there be no relations of the deceased, the preceptor, or, on failure of him, the pupil, inherits, by the text of Ápastamba. "If there be no male issue, the nearest kinsman inherits: or, in default of kindred, the preceptor; or, failing him, the disciple."

2. And, failing these, the fellow-student.

2. If there be no pupil, the fellow-student is the successor. He, who received his investiture, or instruction in reading or in the knowledge of the sense of scripture, from the same preceptor, is a fellow-student.

3. If there be none, a learned priest is heir; according to Gautama.

3. If there be no fellow-students, some learned and venerable priest should take the property of a Bráhmaṇa, under the text of Gautama: "Venerable priests should share the wealth of a Bráhmaṇa, who leaves no issue."*

4. Or any Bráhmaṇa, as Manu has provided.

4. For want of such successors, any Bráhmaṇa may be the heir. So Manu declares: "On failure of all those, the lawful heirs are such Bráhmaṇas, as have read the three Vedas, as are pure in body and mind, as have subdued their passions. Thus virtue is not lost."†

5. But not the king: so Manu and Nárada declare.

5. Never shall a king take the wealth of a priest; for the text of Manu forbids it: "The property of a Bráhmaṇa shall never be taken by the king: this is a fixed law."‡ It is also declared by Nárada: "If there be no heir of a Bráhmaṇa's wealth, on his demise, it must be given to a Bráhmaṇa. Otherwise the king is tainted with sin."§(*a*)

ANNOTATIONS.

2. This must be understood to be the order of succession.] See a note at the close of the last section.

* Gautama, 28. 39.

† Manu, 9

‡ Manu, 9. 189.

§ Not found in the institutes of Nárada.

(*a*) But now see *Collector of Masulipatam* v. *Cavaly Venkata Narrainapah*, 8 Moo. I. A. Ca. 500, 523, where the Lord Justice Knight Bruce referred to this and the two preceding clauses and observed "from these it would appear that the beneficial enjoyment of a Brâhman's property ought not on his death without heirs to pass to the king; that it ought, in some way or another, to pass to other Brâhmans. But the texts also show that it is not to pass to Brâhmans generally, or even to any definite or well

6. In other cases the sovereign takes the escheat : as is ordained by Manu.

6. But the king, and not a priest, may take the estate of a Kshatriya or other person of an inferior tribe, on failure of heirs down to the fellow-student. So Manu ordains : " But the wealth of the other classes, on failure of all [heirs,] the king may take."*

SECTION VIII.

On succession to the property of a hermit or of an ascetic.

1. The heirs of persons devoted to religion are specified by Yájñavalkya.

1. It has been declared, that sons and grandsons [or great-grandsons †] take the heritage ; or, on failure of them, the widow or other successors. The author now propounds an exception to both those laws : " The heirs of a hermit, of an ascetic, and of a professed student, are, in their order, the preceptor, the virtuous pupil, and the spiritual brother and associate in holiness."‡

ANNOTATIONS.

1. "A virtuous pupil."] The condition, that he be virtuous is intended generally. Hence the preceptor and the fellow hermit are successors in their respective cases, provided their conduct be unexceptionable. With a view to this, Yájñavalkya has placed the words " virtuous pupil" in the middle of the text, to indicate the connection of the epithet with the preceding and following terms. Subodhiní, &c.

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ascertained class of them. The persons to take the beneficial interest are to be Bráhmaṇs having certain spiritual qualification ; they are to be pure in body and mind, and are to have read the three Vedas. If this be the law, it seems to imply a power of selection ; and a right of possession, at least intermediate, of the property in somebody. It cannot be supposed that the first Bráhmaṇ who could lay hands upon the property of a member of his caste dying without heirs was to hold it, subject, perhaps, to the condition of showing that he possessed the personal qualifications which the law requires.

It appears to their Lordships, that the passage quoted by the Mitákshará from Nárada, in the very section which cites the prohibition of Manu, shows what the law in its utmost strictness was. That passage is—" If there be no heir of a Bráhmaṇa's wealth, on his demise it must be given to a Bráhmana. Otherwise the king is tainted with sin." In other words, the king is to take the property, but to take it subject to the duty, which he cannot neglect without sin, of disposing of it at his discretion amongst Bráhmaṇs of the kind contemplated by the preceding texts.

If this be so, it appears to their Lordships that, according to Hindú law, the title of the king by escheat to the property of a Bráhmaṇ dying without heirs ought, as in any other case, to prevail against any claimant who cannot show a better title ; and that the only question that arises upon the authorities is, whether Bráhmanical property so taken is, in the hands of the king, subject to a trust in favour of Bráhmaṇs. In this suit, where the issue is between the Government claiming the property (whether subject to a trust or not), by escheat, and a party claiming by an adverse title, it is unnecessary to decide whether the duty imposed upon the King is one of imperfect obligation, or a positive trust affecting the property in his hands, or whether, if a trust, it is or is not one incapable of enforcement by reason of the uncertainty of its objects. It is also unnecessary to decide on the arguments addressed to us concerning a distinction, or supposed distinction, between the Bráhmans who have been called "Sacerdotal Bráhmaṇs" and the ordinary members of the caste." See too 2 Str. H. L. 47 ; 1 Morl. Dig. 311.—*Ed.*

* Manu, 9. 189. † Bálam-bhaṭṭa. ‡ Yájñavalkya, 2. 138.

2. The heirs to the property of a hermit, of an ascetic, and of a student in theology, are, in order (that is, in the inverse order,) the preceptor, a virtuous pupil, and a spiritual brother belonging to the same hermitage.

2. Exposition of the text.

3. The student (brahmáchárí) must be a professed or perpetual one: for the mother and the rest of the natural heirs take the property of a temporary student; and the preceptor is declared to be heir to a professed student as an exception [to the claim of the mother and the rest.*]

3. The natural relations do not succeed. But the preceptor is heir of a professed student.

4. A virtuous pupil takes the property of a yati or ascetic. The virtuous pupil, again, is one who is assiduous in the study of theology, in retaining the holy science, and in practising its ordinances. For a person, whose conduct is bad, is unworthy of the inheritance, were he even the preceptor or [standing in] any other [venerable relation.]

4. And the pupil is the successor of an ascetic.

5. A spiritual brother and associate in holiness takes the goods of a hermit (vánaprastha.) A spiritual brother is one who is engaged as a brotherly companion [having consented to become so.†] An associate in holiness is one appertaining to the same hermitage. Being a spiritual companion, and belonging to the same hermitage, he is a spiritual brother associate in holiness.

5. But the companion of a hermit is his heir.

6. But, on failure of these, (namely the preceptor and the rest,) any one associated in holiness takes the goods; even though sons and other natural heirs exist.

6. In default of those heirs respectively, an associate in holiness is the successor.

7. Are not those, who have entered into a religious profession, unconcerned with hereditable property? since Vasishṭha declares, "They, who have entered into another order, are debarred from shares."‡ How then can there be a partition of their property? Nor has a professed student a right to his own acquired wealth: for the acceptance of presents, and other means of acquisition, [as officiating at sacrifices and so forth,§] are forbidden to him. And, since Gautama ordains, that "A mendicant shall have no hoard;"‖ the mendicant also can have no effects by himself acquired.

7. Objection, They can have no property by inheritance, being pronounced disqualified by Vasishṭha: nor any property acquired by themselves; being incapable of acquisitions, as shown by Gautama, &c.

ANNOTATIONS.

4. A yati or ascetic.] The term 'ascetic' is in this translation used for the yati or sannyásí; and 'hermit' or 'anchoret' for the vánaprastha. In former translations, as in the version of Manu by Sir William Jones, the two last terms were applied severally to the two orders of devotion.

* Subodhiní. † Subodhiní. ‡ Vasishṭha, 17. 43. Vide infra. Sect. 10. § 3.
§ Bálam-bhaṭṭa. ‖ Gautama, 3. 6.

8. The answer is, a hermit may have property: for the text [of Yájñavalkya] expresses "The hermit may make a hoard of things sufficient for a day, a month, six months, or a year; and, in the month of Áçvina, he should abandon [the residue of] what has been collected."* The ascetic too has clothes, books and other requisite articles: for a passage [of the Veda†] directs, that "he should wear clothes to cover his privy parts;" and a text [of law‡] prescribes, that "he should take the requisites for his austerities and his sandals." The professed student likewise has clothes to cover his body; and he possesses also other effects.

8. Answer. A hermit may have a hoard of necessaries for a day or a year: as intimated by Yájñavalkya.

And an ascetic and a professed student have clothes and other necessaries.

9. It was therefore proper to explain the partition or inheritance of such property.

9. Succession to such property is regulated.

SECTION IX.

On the re-union of kinsmen after partition.

1. Yájñavalkya declares the preferable right of the re-united parcener, before the widow, &c.

1. The author next propounds an exception to the maxim, that the wife and certain other heirs succeed to the estate of one who dies leaving no male issue. "A re-united [brother] shall keep the share of is re-united [co-heir,] who is deceased; or shall deliver to [a son subsequently] born."§

2. Explanation of re-united parcener.

2. Effects, which had been divided and which are again mixed together, are termed re-united. He, to whom such appertain, is a re-united parcener.

3. That cannot take place with any person indifferently; but only with a father, a brother, or a paternal uncle: as Vṛhaspati declares. "He, who, being once separated, dwells again through affection with his father, brother, or paternal uncle, is termed re-united."

3. Re-union is between certain relations only: so Vṛhaspati.

4. The share or allotment of such a re-united parcener deceased, must be delivered by the surviving re-united parcener, to a son subsequently born, in the case where the widow's pregnancy was unknown at the time of the distribution. Or, on failure of male issue, he, and not the widow, nor any other heirs, shall take the inheritance.

4 The share of a re-united's share must be given to his posthumous son; or, if there be none, may be retained by the re-united parcener.

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4. Or, on failure of male issue, he, and not the widow, &c. shall take the inheritance.] The singular number is here indeterminate. Therefore, if there be two or more re-united parceners, they shall divide the estate. A maintenance must be allowed to the widow. Bálam-bhaṭṭa.

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* Yájñavalkya, 3. 47. See Manu, 6. 15.

‡

Bálam-bhaṭṭa.

§ Yájñavalkya, 2.

5. A limitation of the preceding rule is contained in the sequel of the text.

5. The author states an exception to the rule, that a re-united brother shall keep the share of his re-united co-heir: "But an uterine [or whole] brother shall thus retain or deliver the allotment of his uterine relation."*

6. Exposition of it. The whole blood has the preference before the half blood.

6. The words "re-united brother" and "re-united co-heir" are understood. Hence the construction, as in the preceding part of the text, is this: The allotment of a re-united brother of the whole blood, who is deceased, shall be delivered, by the surviving re-united brother of the whole blood, to a son born subsequently. But, on failure of such issue, he shall retain it. Thus, if there be brothers of the whole blood and half blood, an uterine [or whole] brother, being a re-united parcener, not a half brother who is so, takes the estate of the re-united uterine brother. This is an exception to what had been before said (§ 1.)

7. Yájñavalkya delivers a rule concerning the participation of brethren of the half blood.

7. Next, in answer to the inquiry, who shall take the succession when a re-united parcener dies leaving no male issue, and there exists a whole brother not re-united, as well as a half brother who was associated with the deceased? the author delivers a reason why both shall take and divide the estate. "A half brother, being again associated, may take the succession, not a half brother though not re-united: but one, united [by blood, though not by co-parcenery,] may obtain the property; and not [exclusively] the son of a different mother."†

8. Interpretation of the text. The half brother may share if again associated in family partnership.

8. A half brother, (meaning one born of a rival wife,) being a re-united parcener, takes the estate; but a half brother, who was not re-united, does not obtain the goods. Thus, by the direct provisions of the text, and by the exception, re-union is shown to be a reason for a half brother's succession.

9. And the whole brother, though not so associated.

9. The term "not re-united" is connected also with what follows: and hence, even one who was not again associated, may take the effects of a deceased re-united parcener. Who is he? The author replies: "one united;" that is, one united by the identity of the womb [in which

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6. A son born subsequently.] The widow's pregnancy not having been apparent at the time of the partition.

7. "A half brother, being again associated, &c."] The text admits of different interpretations besides variations in the reading. See Jímúta-váhana, C. 11. Sect. 5. § 13.—14.

9. The term "not re-united" is connected also with what follows.] It is connected with both phrases, like a crow looking two ways at once. Hence it constitutes, with what follows, another sentence. Subodhiní.

* Yájñavalkya, 2, 139.

† Yájñavalkya, 2. 140.

he was conceived ;] in other words, an uterine or whole brother. It is thus declared, that relation by the whole blood is a reason for the succession of the brother, though not re-united in co-parcenery.

10. The term "united" likewise is connected with what follows: and here it signifies re-united [as a co-parcener.] The words "not the son of a different mother" must be interpreted by supplying the affirmative particle (*eva*) understood. Though he be a re-united parcener, yet, being issue of a different mother, he shall not exclusively take the estate of his associated co-heir.

10. For the half brother, though associated, is not sole heir.

11. Thus, by the occurrence of the word "though" (*api*) in one sentence ("though not re-united," &c. § 7.) and by the denial implied in the restrictive affirmation (*eva* "exclusively,") understood in the other, ("one united may take the property, and not exclusively the son of a different mother;") it is shown, that a whole brother not re-united, and a half brother being re-united, shall take and share the estate: for the reasons of both rights may subsist at the same instant.

11. Thus both may share, for the rights of both may subsist together.

12. This is made clear by Manu, who, after premising partition among re-united parceners ("If brethren, once divided and living again together as parceners, make a second partition;"*) declares "should the eldest or youngest of several brothers be deprived of his allotment at the distribution, or should any one of them die, his share shall not be lost: but his uterine brothers and sisters, and such brothers as were re-united after a separation, shall assemble together and divide his share equally."†

12. This is confirmed by passage of Manu.

13. Among re-united brothers, if the eldest, the youngest or the middlemost, at the delivery of shares, (for the indeclinable termination of the word denotes any case:) that is, at the time of making a partition, lose or forfeit his share by his entrance into another order [that of a hermit or ascetic,‡] or by the guilt of sacrilege, or by any other disqualification; or if he be dead; his allotment does not lapse, but shall be set apart. The meaning is, that the re-united parceners shall not exclusively take it. The author states the appropriation of the share so reserved: "His

13. Interpretation of the text.

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One united by the identity of the womb.] In like manner, a father, though not re-united with the family, shall take a share of the property of his son; and a son, though not re-united, shall receive a share of the estate of his father, from a re-united parcener. This, according to the author of the Subodhiní, is implied: the Veda describing the wife as becoming a mother to her husband, who is identified with his offspring. But Bálam-bhaṭṭa does not allow the inference.

11. The reasons of both rights may subsist at the same instant.] The re-union of the half brother in family partnership, and the whole brother's relation by blood.

13. They inherit the estate and divide it in equal shares.] This supposes the brothers of the half blood to belong to the same tribe. But, if they are of different

* Manu, 9. 210. † Manu, 9. 211—212. ‡

uterine brothers and sisters, &c." (§ 12.) Brothers of the whole blood, or by the same mother, though not re-united, share that allotment so set apart. Even though they had gone to a different country, still, returning thence and assembling together, they share it: and that "equally;" not by a distribution of greater and less shares. Brothers of the half blood, who were re-united after separation, and sisters by the same mother, likewise participate. They inherit the estate and divide it in equal shares.

SECTION X.

On exclusion from inheritance(a).

1. The author states an exception to what has been said by him respecting the succession of the son, the widow and other heirs, as well as the re-united parcener. "An impotent person, an outcaste, and his issue, one lame, a madman, an idiot(*b*), a blind man, and a person afflicted with an incurable disease, as well as others [similarly disqualified,] must be maintained; excluding them, however, from participation."*

1. An exception to the succession of heirs is propounded by Yájñavalkya.

2. "An impotent person," one of the third gender (or neuter sex.) "An outcaste;" one guilty of sacrilege or other heinous crime. "His issue;" the offspring of an outcaste. "Lame;" deprived of the use of his feet. "A madman;" affected by any of the various sorts of insanity proceeding from air, bile, or phlegm, from deliriuin, or from planetary influence. "An idiot;" a person deprived of the internal faculty: meaning one incapable of discriminating right from wrong. "Blind;" destitute of the visual organ. "Afflicted with an incurable disease;" affected by an irremediable distemper, such as marasmus or the like.

2. Exposition of the text. Impotent persons, outcastes, madmen, idiots and persons incurably diseased, are excluded from inheritance.

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tribes, the shares are four, three, two or one, in the order of the classes; since there is no reason for restricting that rule of distribution. Bálam-bhaṭṭa.

1. "An impotent person, an outcaste and his issue."] The initial words are transposed by Jímúta-váhana. C. 5. § 10.

"An impotent person."] Whether naturally so, or by castration. Bálam-bhaṭṭa.

The offspring of an outcaste.] Of one who has not performed the requisite penance and expiation. Bálam-bhaṭṭa.

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* Yájñavalkya, 2. 141.

(*a*) See 2 Strange, H. L. 126: 1 Morl. Dig. 339, 438.—*Ed.*

(*b*) As to the incapacity of an idiot to inherit. See *R. A.* 28 *of* 1862, 1 Mad. H. C. Rep. 214.—.

3. Under the term "others" are comprehended one who has entered into an order of devotion, an enemy to his father, a sinner in an inferior degree, and a person deaf, dumb, or wanting any organ. Thus Vasishṭha says, "They, who have entered into another order, are debarred from shares."* Nárada also declares, "An enemy to his father, an outcaste, an impotent person, and one who is addicted to vice, take no shares of the inheritance even though they be legitimate: much less, if they be sons of the wife by an appointed kinsmen."† Manu likewise ordains, "Impotent persons and outcastes are excluded from a share of the heritage; and so are persons born blind and deaf, as well as madmen, idiots, the dumb, and those who have lost a sense [or a limb."‡]

3. So are persons entering into an order of devotion, an unnatural son, a sinner, and one who has lost a sense or a limb: according to Vasishṭha, Nárada, and Manu.

4. Those who have lost a sense or a limb.] Any person, who is deprived of an organ [of sense or action] by disease or other cause, is said not to have lost that sense or limb.

4. Explanation of the text.

5. These persons (the impotent man and the rest) are excluded from participation. They do not share the estate. They must be supported by an allowance of food and raiment only: and the penalty of degradation is incurred, if they be not maintained. For Manu says, "But is it fit, that a wise man should give all of them food and raiment without stint to the best of his power: for he, who gives it not, shall be deemed an outcaste."§ "Without stint" signifies 'for life.'

5. The persons above described are excluded from participation; but are entitled to a maintenance, as declared by Manu.

6. They are debarred of their shares, if their disqualification arose before the division of the property. But one already separated from his co-heirs, is not deprived of his allotment.

6. The defect must have preceded the partition.

ANNOTATIONS.

3. "They, who have entered into another order."] Into one of devotion. The orders of devotion are, 1st, that of the professed or perpetual student; 2d, that of the hermit; 3d, the last order or that of the ascetic. Bálam-bhaṭṭa.

5. "A wise man should give all of them food and raiment."] Other authorities (as Devala and Baudháyana) except the outcaste and his offspring. That exception not being here made, it is to be inferred, that one whose offence may be expiated and who is disposed to perform the enjoined penance, should be maintained; not one whose crime is inexpiable. Bálam-bhaṭṭa.

6. If their disqualification arose before the division of the property.] The disqualification of the outcaste and the rest who are not excluded for natural defects. Bálam-bhaṭṭa.

* Vasishṭha, 17. 43.

† Nárada, 13. 21.

‡ Manu, 9. 201.

§ Manu, 9. 20.

7. If it be removed afterwards, a share must be given, in like manner as a son born after partition takes an allotment.

7. If the defect be removed by medicaments or other means [as penance and atonement*] at a period subsequent to partition, the right of participation takes effect, by analogy [to the case of a son born after separation.] "When the sons have been separated, one, who is afterwards born of a woman equal in class, shares the distribution."†

8. A woman is excluded for like defects.

8. The masculine gender is not here used restrictively in speaking of an outcaste and the rest. It must be therefore understood, that the wife, the daughter, the mother, or any other female, being disqualified for any of the defects which have been specified, is likewise excluded from participation.

9. Sons shall share, if free from similar disqualifications. So Yájñavalkya.

9. The disinherison of the persons above described seeming to imply disinherison of their sons, the author adds: "But their sons, whether legitimate, or the offspring of the wife by a kinsman, are entitled to allotments, if free from similar defects."‡

10. Interpretation of the text.

10. The sons of these persons, whether they be legitimate offspring or issue of the wife, are entitled to allotments, or are rightful partakers of shares; provided they be faultless or free from defects which should bar their participation, such as impotency and the like.

11. Disqualified persons are not to adopt sons.

11. Of these [two descriptions of offspring§] the impotent man may have that termed issue of the wife; the rest may have legitimate progeny likewise. The specific mention of "legitimate" issue and "offspring of the wife" is intended to forbid the adoption of other sons.

12. Their daughters must be supported, until married; as Yáj-

12. The author delivers a special rule concerning the daughters of disqualified persons: "Their daughters must be maintained likewise, until they are provided with

13. Explanation of the text.

13. Their daughters, or the female children of such persons, must be supported, until they be disposed of in marriage. Under the suggestion of the word "likewise," the expenses of their nuptials must be also defrayed.

14. Their wives must be maintained, unless unchaste: so Yájñavalkya directs.

14. The author adds a distinct maxim respecting the wives of disqualified persons: "Their childless wives, conducting themselves aright, must be supported; but such, as are unchaste, should be expelled; and so indeed should those, who are perverse."¶

* Bálam-bhaṭṭa.

† Yájñavalkya, 2. 123. Vide supra. C. 1. Sect. 6. § 1.

‡ Yájñavalkya, 2. 142.

§ Bálam-bhaṭṭa.

Yájñavalkya, 2. 142.

¶ Yájñavalkya, 2.

15. The wives of these persons, being destitute of male i and being correct in their conduct, or behaving virtuously, must be supported or maintained. But, if unchaste, they must be expelled; and so may those, who are perverse. These last may indeed be expelled: but they must be supported, provided they be not unchaste. For a maintenance must not be refused solely on account of perverseness.

15. Exposition of the passage.

SECTION XI.

On the separate property of a woman.

1. After briefly propounding the division of wealth left by the husband and wife, ("Let sons divide equally both the effects and the debts, after the demise of their two parents."*) the partition of a man's goods has been described at large. The author, now intending to explain fully the distribution of a woman's property, begins by setting forth the nature of it: "What was given to a woman by the father, the mother, the husband or a brother, or received by her at the nuptial fire, or presented to her on her husband's marriage to another wife, as also any other [separate acquisition,] is denominated a woman's property."†

1. Woman's property described by Yájñavalkya.

2. That, which was given by the father, by the mother, by the husband, or by a brother; and that, which was presented [to the bride] by the maternal uncles and the rest [as paternal uncles, maternal aunts, &c.‡] at the time of the wedding, before the nuptial fire; and a gift on a second marriage, or gratuity on account of supersession, as will be subsequently explained, ("To a woman whose husband marries a second wife, let him give an equal sum as a compensation for the supersession."(*a*) § 34.) and also property(*b*) which she may have acquired by inheritance, pur-

2. Interpretation of the text.

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1. As also any other separate acquisition.] In Jímúta-váhana's quotation of the text, (C. 4. Sect. 1. § 13.) the conjunctive and pleonastic particles chaiva (cha-eva) are here substituted for the suppletory term ádya. That reading is censured by Bálambhaṭṭa.

2. Before the nuptial fire.] Near it. Subodhiní.

On account of supersession.] Supersession is the contracting of a second marriage through the influence of passion, while a first wife lives, who was married to fulfil religious obligations. Subodhiní.

Property which she may have acquired by inheritance.] The commentator, Bálambhaṭṭa, defends his author against the writers of the eastern school (Jímúta-váhana, &c.) on this point. Wealth, devolving on a woman by inheritance, is not classed by the authorities of that school with 'woman's property.' See Jímúta-váhana, C. 4. and C. 11. Sect. 1. § 8.

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* Yájñavalkya, 2. 118. Vide supra. C. 1. Sect. 3. § 1. † Yájñavalkya, 2. 144.

‡ Bálam-Bhaṭṭá. (*a*) See 1 Strange, H. L. 52, 53.—*Ed*

(*b*) Quaere *moveable* property: 3 Morl. Dig. 180: Dáya-bhága xi. 1.—*Ed.*

chase, partition, seizure or finding,* are denominated by Manu and the rest 'woman's property.'(*a*)

3. Woman's property is not a technical expression.

3. The term 'woman's property' conforms, in its import, with its etymology, and is not technical: for, if the literal sense be admissible, a technical acceptation is improper.

4. Manu's enumeration of six sorts denies a less number, and a greater.

4. The enumeration of six sorts of woman's property by Manu ("What was given before the nuptial fire, what was presented in the bridal procession, what has been bestowed in token of affection or respect, and what has been received by her from her brother, her mother, or her father, are denominated the sixfold property of a woman;"†) is intended, not as a restriction of a greater number, but as a denial of a less.

5. Kátyáyana defines those several sorts.

5. Definitions of presents given before the nuptial fire and so forth have been delivered by Kátyáyana: "What is given to women at the time of their marriage, near the nuptial fire, is celebrated by the wise as women's property bestowed before the nuptial fire. That, again, which a woman receives while she is conducted from her father's house [to her husband's dwelling,] is instanced as the property of a woman, under the name of gift presented in the bridal procession. Whatever has been given to her through affection by her mother-in-law or by her father-in-law, or has been offered to her as a token of respect, is denominated an affectionate present. That, which is received by a married woman or by a maiden, in the house of her husband or of her father, from her brother or from her parents, is termed a kind gift."

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3. The term 'woman's property' is not technical.] This is contrary to the doctrine of Jímúta-váhana, C. 4.

4. "Bestowed in token of affection or respect."] This passage is read differently in the Ratnákara and by Jímúta-váhana (C. 4. Sect. 1. § 4.) It is here translated conformably with Bálam-bhaṭṭa's interpretation grounded on the subsequent text of Kátyáyana (§ 5.); where two reasons of an affectionate gift are stated: one, simple affection; the other, respect shown by an obeisance at the woman's feet.

5. "From her father's house."] The Ratnákara and Chintámaṇi read "from the parental abode." See Jímúta-váhana, C. 4. Sect. 1. § 6.

"Offered to her as a token of respect."] Given to her at the time of making an obeisance at her feet. Smṛti-chandriká.

"Denominated an affectionate present."] This reading is followed in the Smṛti-chandriká, Víramitrodaya, &c. But the Ratnákara, Chintámani, and Vivádа-chandra read 'denominated an acquisition through loveliness;' lávanyárjitam instead of príti-dattam.

"From her brother or from her parents."] The Kalpataru reads "from her husband." See Jímúta-váhana, C. 4. Sect. 2. § 21.

"Termed a kind gift."] So the commentary of Bálam-bhaṭṭa explains saudáyika, as bearing the same sense with its etymon sudáya. He censures the interpretation which Jímúta-váhana has given. (C. 4. Sect. 1. §

* Vide C. 1 Sect. 1 § 8. † Manu, 9. 194.

(*a*) See 1 Morl. Dig. 311, 335. 3 Ibid. 180.—*Ed.*

6. Besides [the author says,] "That which has been given to by her kindred; as well as her fee or gratuity, or any thing bestowed after marriage."* What is given to a damsel by her kindred; by the relations of her mother, or those of her father. The gratuity, for the receipt of which a girl is given in marriage. What is bestowed or given after marriage, or subsequently to the nuptials.

6. Other sorts noticed by Yájñavalkya. Explanation of his text.

7. It is said by Kátyáyana, "What has been received by a woman from the family of her husband at a time posterior to her marriage, is called a gift subsequent; and so is that, which is similarly received from the family of her father." It is celebrated as woman's property: for this passage is connected with that which had gone before. (§ 5.)

7. Kátyáyana's definition of a gift subsequent. Exposition of the passage.

8. A woman's property has been thus described. The author next propounds the distribution of it: "Her kinsmen take it, if she die without issue."†

8. A woman's property goes to her kindred.

9. If a woman die "without issue;" that is, leaving no progeny; in other words, having no daughter, nor daughter's daughter, nor daughter's son, nor son, nor son's son; the woman's property, as above described, shall be taken by her kinsmen; namely her husband and the rest, as will be [forthwith‡] explained.

9. Her husband or other heirs inherit on failure of issue.

10. The kinsmen have been declared generally to be competent to succeed to a woman's property. The author now distinguishes different heirs according to the diversity of the marriage ceremonies. "The property of a childless woman, married in the form denominated Bráhma, or in any of the four [unblamed modes of marriage,] goes to her husband: but, if she leave progeny, it will go to her [daughter's] daughters: and, in other forms of marriage [as the Ásura, &c.] it goes to her father [and mother, on failure of her own issue."§]

10. The heirs are different, according to the form of the marriage ceremony: as shown by Yájñavalkya.

11. Of a woman dying without issue as before stated, and who had become a wife by any of the four modes of marriage denominated Bráhma, Daiva, Ársha and Prájápatya, the [whole‖] property, as before described, be-

11. Explanation of the text. In four unblamed

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6. The gratuity, for the receipt of which a girl is given in marriage.] This relates to a marriage in the form termed A'sura or the like. Bálam-bhaṭṭa.

7. Similarly received from the family of her father."] The Ratnákara reads 'from her own family;' Jímúta-váhana, 'from the family of her kindred.' See Jímúta-váhana, C. 4. Sect. 1. § 2.

11. Dying without issue as before stated.] Without any of the five descendants above mentioned (§ 9.)

* Yájñavalkya, 2. 145. † Yájñavalkya, 2. 145.

forms of marriage, the husband is first entitled to the succession: after him, his nearest of kin.

longs in the first place to her husband. On failure of him, it goes to his nearest kinsmen(*a*) (sapiṇḍas) allied by funeral oblations. But, in the other forms of marriage called Ásura, Gándharba, Rákshasa and Paiçácha; the property of a childless woman goes to her parents, that is, to her father and mother. The succession devolves first (and the reason has been before explained,*) on the mother, who is virtually exhibited [first] in the elliptical phrase pitṛgámi implying 'goes (gachhati) to both parents (pitarau;) that is, to the mother and to the father.' On failure of them, their next of kin take the succession.

In the four other forms of marriage, the parents inherit; and first the mother; after her, the father: failing them, their next of kin.

12. In every form of marriage, if there be issue, daughters inherit; or granddaughters.

12. In all forms of marriage, if the woman "leave progeny;" that is, if she have issue; her property devolves on her daughters. In this place, by the term "daughters," grand-daughters are signified; for the immediate female descendants are expressly mentioned in a preceding passage: "the daughters share the residue of their mother's property, after payment of her debts."†

13. First the unmarried daughter: next the married one, who is unprovided; lastly, one who has a provision.

13. Hence, if the mother be dead, daughters take her property in the first instance: and here, in the case of competition between married and maiden daughters, the unmarried take the succession; but, on failure of them, the married daughters: and here again, in the case of competition between such as are provided and those who are unendowed, the unendowed take the succession first; but, on failure of them, those who are endowed. Thus Gautama says "A woman's property goes to her daughters unmarried, or unprovided;"‡ 'or provided,' as is implied by the conjunctive particle in the text. "Unprovided" are such as are destitute of wealth or without issue.

14. But brothers inherit the fee or gratuity; as ordained by Gautama.

14. But this [rule, for the daughter's succession to the mother's goods,§] is exclusive of the fee or gratuity. For that goes to brothers of the whole blood, conformably with the text of Gautama: "The sister's fee belongs to the uterine brothers: after [the death of] the mother."‖

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12. In all forms of marriage.] Several variations in the reading of this passage are noticed by Bálam-bhaṭṭa: as sarvéshv api, or sarvéshv éva, or sarvéshu. There is only a shade of difference in the interpretation.

14. "After the death of the mother."] This version is according to the interpretation given in the Subodhiní; which agrees with that of the scholiast of Gautama, the Kalpataru and other authorities. But the text is read and explained differently by Jímúta váhana. (C. 4. Sect. 3. § 27.)

Bálam-bhaṭṭa understands by the term 'mother,' in this place, the woman herself, or in short the sister, after whose death her fee or nuptial gratuity goes to her brothers.

* Sect. 3. † Yájñavalkya, 2. 118. Vide supra. C. 1. Sect. 3. § 8.
Gautama, 28, 22. Vide supra. C. 1. Sect. 3 § 11. § Bálam-bhaṭṭa, ‖ Gautama, 28.
(*a*) See 2 Strange, H. L. 412.—

15. After daughters, grand-daughters in the female line inherit.

15. On failure of all daughters, the grand-daughters in the female line take the succession under this text: "if she leave progeny, it goes to her [daughter's] daughters."*

16. They share allotments of respective mothers. So Gautama directs.

16. If there be a multitude of these [grand-daughters,†] children of different mothers, and unequal in number, shares should be allotted to them through their mothers, as directed by Gautama: "Or the partition may be according to the mothers: and a particular distribution may be made in the respective ...

17. But, if there be daughters, a trifle only is to be given to the grand-daughters. So Manu.

17. But if there be daughters as well as daughter's daughters, a trifle only is to be given to the grand-daughters. So Manu declares: "Even to the daughters of those daughters, something should be given, as may be fit, from the assets of their maternal grandmother, on the score of natural affection."§

18. In default of those grand-daughters; the sons of daughters inherit: as hinted by Nárada.

18. On failure also of daughter's daughters, the daughter's sons are entitled to the succession. Thus Nárada says, "Let daughters divide their mother's wealth; or, on failure of daughters, their male issue."‖ For the pronoun refers to the contiguous term "daughters."

19. After them, the male issue succeeds. This is confirmed by Manu.

19. If there be no grandsons in the female line, sons take the property: for it has been already declared, "the [male] issue succeeds in their default."¶ Manu likewise shows the right of sons, as well as of daughters, to their mother's effects: "When the mother is dead, let all the uterine brothers and the uterine sisters equally divide the maternal estate."**

ANNOTATIONS.

16. Children of different mothers, and unequal in number.] Where the daughters were numerous, but are not living; and their female children are unequal in number, one having left a single daughter; another, two; and a third, three; how shall the maternal grandmother's property be distributed among her grand-daughters? Having put this question, the author reminds the readers of the mode of distribution of a paternal grandfather's estate among his grandsons. (C. 1. Sect. 5.) Subodhiní.

18. "Their male issue."] Several variations in the reading of the last term are noticed in the commentary of Bálam-bhaṭṭa: making the term either singular or plural, and putting it in the first or in the seventh case. He deduces, however, the same meaning from these different readings.

The pronoun refers to the contiguous term.] Jímúta-váhana, citing this passage for the succession of sons rather than of grandsons, seem to have understood the pronoun as referring to the remoter word 'mother.' See Jímúta-váhana. C. 4. Sect. 2 § 13.

19. "Let all the uterine brothers.....equally divide."] In the Kalpataru the text is read "let all the sons by the same mother divide:" sarve putráḥ sahodaráḥ instead of saman sarve sahodaraḥ.

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* Vide § 10 & 12. † Bálam-bhaṭṭa. Gautama, 28. 15.
Manu, 9. 193. ‖ Nárada, 13. 1.
Yájñavalkya, 2. 118. Vide supra. C. 1. Sect. 3. § 12. ** Manu, 9. 192.

20. 'All the uterine brothers should divide the maternal estate equally; and so should sisters by the same mothers.' Such is the construction: and the meaning is, not that 'brothers and sisters share together;' for reciprocation is not indicated, since the abridged form of the conjunctive compound has not been employed: but the conjunctive particle (cha) is here very properly used with reference to the person making the partition; as in the example, Devadatta practises agriculture, and so does Yajñadatta.

20. Exposition of the text. The brothers & sisters do not share together; but successively.

21. "Equally" is specified (§ 19) to forbid the allotment of deductions [to the eldest and so forth.] The whole blood is mentioned to exclude the half blood.

21. No deduction for the eldest brother.

The whole blood excludes the half blood.

22. But, though springing from a different mother, the daughter of a rival wife, being superior by class, shall take the property of a childless woman who belongs to an inferior tribe. Or, on failure of the step-daughter, her issue shall succeed. So Manu declares: "The wealth of a woman, which has been in any manner given to her by her father, let the Bráhmaṇí damsel take; or let it belong to her offspring."*

22. The step-daughter may inherit, if she be of a superior tribe.

So Manu declares.

ANNOTATIONS.

20. Since the abridged form of the conjunctive compound has not been employed.] Nouns coalesce and form a single word denominated dvandva or conjunctive compound, when the sense of the conjunctive particle (cha 'and') is denoted. Páṇini, 2. 2. 29. Vide supra Sect. 3. § 2.

The import of the particle, here intended, is either reciprocation (itaretara) explained to be the union, in regard to a single matter, of things specifically different, but mutually related, and mixed or associated, though contrasted;' or it is cumulation (samáhára) explained as 'the union of such things, by an association, in which contrast is not marked.' The other senses of the conjunctive particle are assemblage (samuchchaya) or 'the gathering together of two or more things independent of each other, but assembled in idea with reference to some common action or circumstance;' and superaddition (anváchaya) or 'the connexion of a secondary and unessential with a primary and principal one, through a separate action or circumstance consequent to it.' In the two last senses of the conjunctive particle, there is not such a connexion of the terms as authorizes their coaliation to form a compound term. Kaiyaṭa, Padamanjarí, &c.

If reciprocation, as above explained, were meant to be indicated in the text of Manu (§ 19.), the word bhrátṛ "brother" would have been used, inflected, however, in the dual number to denote 'brother and sister' (Páṇini, 1. 2. 68.); or else 'children,' or some generic term, would have been employed in the plural (Páṇini, 1. 2. 64). But the text is not so expressed. Consequently reciprocation is not indicated. Subodhiní and Bálam-bhaṭṭa.

The conjunctive particle is here very properly used.] 'It is employed in one of the acceptations, which do not admit of nouns coalescing in a compound term: namely in that of superaddition, as in the example which follows. 'D. practises agriculture; and so does Y.' 'Brothers share equally; so do sisters.'

With reference to the person making the partition.] 'Another reading of this passage is noticed in the commentary of Bálam-bhaṭṭa: "with the import of superaddition relatively to the person who makes the partition;" vibhága-kartṛtven'ánváchayen 'api, instead of vibhága-kartṛv'anvayen'ápi.

* Manu, 9. 198.

23. The mention of a Bráhmaṇí includes any superior class. Hence the daughter of a Kshatriyá wife takes the goods of a childless Vaiçyá : [and the daughter of a Bráhmaṇí, Kshatriyá or Vaiçyá inherits the property of a Çúdrá.*]

23. This intends any superior tribe.

24. On failure of sons, grandsons inherit their paternal grandmother's wealth. For Gautama says, "They who share the inheritance, must pay the debts :"† and the grandsons are bound to discharge the debts of their paternal grandmother ; for the text expresses "Debts must be paid by sons and son's sons."‡

24. After sons, grandsons inherit.

25. On failure of grandsons also, the husband and other relatives abovementioned‖ are successors to the wealth.

25. Next the husband and other heirs, as abovementioned.

26 On occasion of treating of woman's property, the author adds something concerning a betrothed ; "For detaining a damsel, after affiancing her, the offender should be fined, and should also make good the expenditure together with interest."§

26. A passage of Yájñavalkya concerning an affianced damsel.

27. One, who has verbally given a damsel [in marriage] but retracts the gift, must be fined by the king, in proportion to [the amount of] the property or [the magnitude of] the offence; and according to [the rank of the parties, their qualities,¶ and] other circumstances. This is applicable, if there be no sufficient motive for retracting the engagement. But, if there be good cause, he shall not be fined, since retraction is authorized in such a case. "The damsel, though betrothed, may be withheld, if a preferable suitor present himself."**

27. Interpretation of the text. One, who betroths a damsel and afterwards retracts the engagement without cause, shall be fined.

28. Whatever has been expended, on account of the espousals, by the [intended] bridegroom, [or by his father, or guardian,††] for the gratification of his own or of the damsel's relations, must be repaid in full, with interest, by the affiancer to the bridegroom.

28. The expenses incurred must be made good.

ANNOTATIONS.

23. Hence the daughter of a Kshatriyá wife takes the goods of a childless Vaiçyá.] This inference is contested by Çríkṛshṇa in his commentary on the Dáyabhága of Jímúta-váhana.

24. The grandsons are bound to discharge the debts] 'Since one text declares them liable for the debts; and the other provides, that the debts shall be paid by those who share the inheritance; it follows, that they share the heritage. Subodhiní, &c.

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* Subodhiní and Bálam-bhaṭṭa. † Gautama, 12. 32 ‡ Yájñavalkya, 2. 50.

‖ § 9—11. § Yájñavalkya, 2. 147. ¶ Bálam-bhaṭṭa.

** Yájñavalkya, 1. 65. †† Bálam-bhaṭṭa.

29. If the betrothed damsel die, the bridegroom's presents are returned to him; as directed by Yájñavalkya.

29. Should a damsel, any how affianced, die before the completion of the marriage, what is to be done in that case? The author replies, "If she die [after troth plighted,] let the bridegroom take back the gifts which he had presented; paying however the charges on both sides(*a*)."*

30. If a betrothed damsel die, the bridegroom shall take the rings and other presents, or the nuptial gratuity, which had been previously given by him [to the bride,] "paying however the charges on both sides:" that is, clearing or discharging the expense which has been incurred both by the person who gave the damsel and by himself, he may take the residue. But her uterine brothers shall have the ornaments for the head, and other gifts, which may have been presented to the maiden by her maternal grandfather, [or her paternal uncle,†] or other relations; as well as the property, which may have been regularly inherited by her. For Baudháyana says: "The wealth of a deceased damsel, let the uterine brethren themselves take. On failure of them, it shall belong to the mother; or, if she be dead, to the father."‡

30. Exposition of the text.

31. It has been declared, that the property of a woman leaving no issue, goes to her husband. The author now shows, that, in certain circumstances, a husband is allowed to take his wife's goods in her life-time, and although she have issue: "A husband is not liable to make good the property of his wife taken by him in a famine, or for the performance of a duty, or during illness, or while under restraint."

31. A husband, in distress, using his wife's property, is not liable to make it good. So Yájñavalkya declares.

32. In a famine, for the preservation of the family, or at a time when a religious duty must indispensably be performed, or in illness, or "during restraint" or confinement in prison or under corporal penalties, the husband, being destitute of other funds and therefore taking his wife's property, is not liable to restore it(*b*). But, if he seize it in any other manner [or under other circumstances,] he must make it good.

32. Explanation of the passage.

ANNOTATIONS.

29. Any how affianced.] By a religious rite, or by taking of hands, or in any other manner. Bálam-bhaṭṭa.

30. Clearing or discharging.] The common reading of the passage is viganya "accounting;" but Bálam-bhaṭṭa rejects that reading, and substitutes vigamya "removing" or 'discharging.'

He may take the residue.] The meaning is this: after deducting from the damsel's property, the amount which has been expended by the giver or acceptor of the maid, or by their fathers or other relations on both sides, in contemplation of the marriage, let the residue be delivered to the bridegroom. Subodhiní.

32. Is not liable to restore it.] He is not positively required to make it good. Bálam-bhaṭṭa.

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* Yájñavalkya, 2. 147. † Bálam-bhaṭṭa. ‡ Yájñavalkya, 2. 148.

(*a*) See 1 Strange, H. L. 38.—*Ed.* (*b*) See 2 Strange, H. L. 22, 23.—

33. The property of a woman must not be taken in her life-time by any other kinsman or heir but her husband : since punishment is denounced against such conduct : ("Their kinsmen, who take their goods in their life-time, a virtuous king should chastise by inflicting the punishment of theft:"*) and it is pronounced an offence ; "Such ornaments, as are worn by women during the life of their husband, the heirs of the husband shall not divide among themselves : they, who do so, are degraded from their tribe."†

33. No other person, but her husband, may take her property. Nárada and Manu denounce punishment against the offender.

34. A present made on her husband's marriage to another wife has been mentioned as a woman's property (§ 1.) The author describes such a present : " To a woman, whose husband marries a second wife, let him give an equal sum, [as a compensation] for the supersession, provided no separate property have been bestowed on her : but, if any have been assigned, let him allot half(*a*)."‡

34. A present on occasion of a second marriage described by Yájñavalkya.

35. She is said to be superseded, over whom a marriage is contracted. To a wife so superseded, as much should be given on account of the supersession, as is expended [in jewels and ornaments, or the like,§] for the second marriage : provided separate property had not been previously given to her by her husband ; or by her father-in-law. But, if such property had been already bestowed on her, half the sum expended on the second marriage should be given(*b*). Here the word 'half' (arddha) does not intend an exact moiety. So much therefore should be paid, as will make the wealth, already conferred on her, equal to the prescribed amount of compensation. Such is the meaning.

25. Interpretation of the text.

SECTION XII.

On the Evidence of a Partition(c).

1. Having thus plained partition next proved in is denied, the fact

35. Here the word half in the original text, is not but it is masculine and si

Bálam-bhaṭṭa, citing a passage of the masculine signifies half ; interprets the quo masculine and r

equal part ra. 1. 1. 2. 17) Subodhiní.

to prove that arddha in the n the Amara-Kosha (1. 1. 2. 17.) sense of moiety. He therefore ' half' as employed in the

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* Narada, as cited by Bálam-bhaṭṭa ; but not found in his institutes.

† Manu, 9. 200. Vide supra. C. 1. Sect. 4. § 19. ‡ Yájñavalkya, 2. 149.

álam-bhaṭṭa. (*a*) See 1 Morl. Dig. 259.—*Ed.*

See 1 Strange, H. L. 53.—*Ed.* (*c*) See 2 Strange, H. L. 394, 396.—*Ed.*

dence of partition if doubted.

of it may be ascertained by the evidence of kinsmen, relatives and witnesses, and by written proof, or by separate possession of house or field."*

2. If partition be denied or disputed, the fact may be known and certainty be obtained by the testimony of kinsmen, relatives of the father or of the mother, such as maternal uncles and the rest, being competent witnesses as before described;† or by the evidence of a writing, or record of the partition. It may also be ascertained by separate or unmixed house and field.

2. Explanation of the text.

3. The practice of agriculture or other business pursued apart from the rest, and the observance of the five great sacraments‡ and other religious duties performed separately from them, are pronounced by Nárada to be tokens of a partition. "If a question arise among co-heirs in regard to the fact of partition, it must be ascertained by the evidence of kinsmen, by the record of the distribution, or by separate transaction of affairs. The religious duty of unseparated brethren is single. When partition indeed has been made, religious duties become separate for each of them."§

3. Other proofs of separation are stated by Nárada.

4. Other signs of previous separation are specified by the same author: "Separated not unseparated brethren may reciprocally bear testimony, become sureties, bestow gifts, and accept presents."‖

4. And again in a subsequent passage.

ANNOTATIONS.

2. "By the testimony of kinsmen."] Or rather strangers belonging to the same tribe with the parties. Bálambhatta

3. "By the record of the distribution."] Another reading is noticed by Bálambhatta: "by occupancy or by a writing;" bhoga-lechhyena instead of bhága-lechhyena. See Jímúta-váhana, C. 11. § 1.

* Yájñavalkya, 2. 150. † In the preceding book on Evidence. ‡ Manu, 3. 69.
§ Nárada, 13.—36. 37. ‖ Nárada, 13. 39

THE

DÁYA-KRAMA-SANGRAHA.

AN

ORIGINAL TREATISE

ON THE

HINDÚ LAW OF INHERITANCE.

TRANSLATED BY

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Calcutta.

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PREFACE.

THE translation of the following Treatise on the Hindú Law of Inheritance was commenced, during a study of the Sanskrita language and Hindú Law; and although sometime ago completed, the publication has been unavoidably retarded, by circumstances connected with the performance of official duty.

Of the Treatise itself, Mr. H. Colebrooke in the preface to his translation of the Dáya-Bhága and Mitákshará, has observed: "An original Treatise by Çrí Krishna Tarkálankára, entitled Dáya-Krama-Sangraha, contains a good compendium of the law of inheritance, according to Jímúta-Váhana's text, as expounded in his commentary of the Dáya-Bhága."

The publication of the original, will be sufficiently justified by this high authority, and under the sanction of it, the Translation was undertaken.

Of the necessity of a careful and diligent study of the law of inheritance, the learned gentleman above mentioned, has justly remarked: "In proportion as the law of succession is arbitrary and irreducible to fixed and general principles, it is complex, and intricate in its provisions, and requires on the part of those entrusted with the administration of justice, a previous preparation by study; for its maxims cannot be rightly understood, when only hastily consulted as occasions arise."

Under an impression, thorefore, that advantage may be derived from the publication of a Compendium on this subject, unembarrassed by argumentative discussion, and unencumbered by lengthened disquisition, this Work is offered, for the purpose of affording assistance to those entrusted with the due administration of justice in the Province of Bengal, who by want of leisure, or other causes, are debarred from an attentive perusal of the admirable translation of the elaborate work of Jímúta-Váhana, or from a recourse to the original.

Should it however, serve but as a guide to the study of either:—should the English judicial officer through its aid, be better enabled to determine the accuracy, and in consequence, more readily to detect the fallacy of an opinion delivered by the Paṇḍit of his Court, the time devoted to this publication, will not have been spent in vain.

The mere labour of translation has been comparatively insignificant, the Treatise being short, and the style of the original, simple and easy.

A Tabular Sketch, exhibiting the successors to the property of one deceased, and the order in which they are respectively entitled to inherit, has been added to the first Chapter. The numbers affixed in the Table, correspond with those of the marginal notes, in that Chapter:—an arrangement, by which it was intended to facilitate reference.

The versions of the texts of the divine Legislator, and of the Sages of Antiquity, cited in this Treatise, have been adopted from the works of Sir William Jones and Mr. Henry Colebrooke.

DÁYA-KRAMA-SANGRAHA.

AN ORIGINAL TREATISE

ON THE HINDÚ LAW OF INHERITANCE.

CHAPTER I.

ON THE ORDER OF SUCCESSION TO THE ESTATE OF A DECEASED MAN.

SECTION I.

Right of Succession by the Son, Grandson, and Great-grandson.

Order of succession.

1. The order of succession to be observed by heirs in regard to the property of a deceased man,is as follows :

2. First, his legitimate son succeeds in conformity with this text.

1. Son.

" After the death of the father and mother, the brethren being assembled, must divide equally the paternal estate : For they have not power over it, while their parents live,"* and other texts of a like import which declare the right of the son to succeed on the decease of the father.

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* Manu, 9, 104.

3. In default of the son, the grandson takes the inheritance ; and failing him the great grandson. But a grandson(D) whose father(B) is dead, and a great-grandson(F) whose father(E) and grandfather(C) are dead, participate equally in the inheritance with the son(A)* for they without distinction confer equal benefits on the deceased owner of the property, by the presentation to him of funeral offerings at solemn obsequies.

2. Grandson.
3. Great-grandson.

4. But during the life-time of their parents, neither the grandson, nor the great-grandson, are entitled to the inheritance, since they do not confer any benefits on the deceased by the presentation of the funeral offering at solemn obsequies.

SECTION 2.

Widow's right of Succession.

1. In default of the grandson and great-grandson, the widow succeeds to the estate, in conformity with the text of Yájñavalkya. "The wife and the daughters, also both parents, brothers likewise and their sons, gentiles, cognates, a pupil and a fellow-student : On failure of the first among these, the next in order is indeed heir to the estate of one who departed for heaven, leaving no male issue. This rule extends to all classes."

4. Widow.

Rule to be observed by the widow in regard to the estate of her deceased husband.

2. Here however, a particular rule is to be observed.

3. The wife is only to enjoy the estate of her deceased husband —she must not make a gift, mortgage, or sale of it.—So, Kátyáyana declares, "Let the childless widow preserving unsullied the bed of her lord, and abiding with her venerable protector, enjoy with moderation the property until her death. "After her, let the heirs take it."

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* Owner died, leaving 3 Sons.

Son. (living.)	B Son. (dead.) D Grandson. (living.)	C Son. (dead.) & E Grandson. (dead.) F Great-grandson. (living.)

4. "Abiding with her venerable protector," that is, having settled with her father-in-law, in her husband's family, let her so long as she lives, enjoy her husband's estate, and not (as she is entitled to do with her peculiar property,) make at will a gift, mortgage, or sale of it.

5. On her decease, those daughters who would be entitled to the succession in default of the wife, take the estate; and not the kinsmen, who by reason of their inferiority to the daughters, and the rest of the heirs, cannot obstruct their claim. Thus it is written in the "Dâna Dhârma:" "For women, the heritage of their husbands is pronounced applicable to use.—Let not women on any account make waste of their husband's wealth."—This use even should not be made by wearing delicate attire, or indulging in other luxuries: but since a widow benefits her husband by the preservation of her body, the use of property for the attainment of this object is permitted.—In like manner, she may make a gift or other disposal for the sake of completing the funeral rites of her husband. Accordingly the expression "waste," is particularly made use of in the text above cited, and in other texts likewise. "Let not women make waste." By "waste," is meant expense unproductive of benefit to the owner of the property.

6. But, if the widow be unable to subsist otherwise, she may mortgage the property; and, if even then unable, she may sell it.

7. She should give to the paternal uncles, and to the other relations of her husband, presents in proportion to the wealth, for the sake of his funeral rites; Vrihaspati has ordered it by the following text. With presents offered to his manes, and by pious liberality, let her honour the paternal uncles of her husband; his spiritual pastor, and daughter's sons, the children of his sisters, and his maternal uncles; also ancient and unprotected persons, and females of the family." By the term "paternal uncle," is meant any relation of her husband included within the degree of relationship termed "Sapiṇḍa." The term "daughter's sons," relates to the progeny of her husband's daughter. By "sister's sons," the descendants of her husband's sister's son are indicated. "Maternal uncles," that is the maternal uncles of her husband. On these and on the others should she bestow presents, and not on the members of the family of her own father, while these persons are living, for then the specification of "paternal uncles," and the rest would be superfluous.—With their consent, however, she may make gifts to the kindred of her own father and mother, as declared by Nârada. "When the husband is deceased, his kin are the guardians of his childless widow.—In the disposal of the property and care of herself, as well as in her maintenance, they have full power. But if her husband's family be extinct, or contain no male, or be helpless, the kin of her own father are the guardians of the widow, if there be no relations of her husband within the degree of a Sapiṇḍa."—"In the disposal of property," that is by gift, &c., the wife is liable to the control of the family of her husband, after the death of her husband and on failure of sons;—So it is declared in the Dâya-Bhâga. In the present time a widow is exclusively of the same class with her late husband, since marriage with a woman of unequal class is prohibited during the Kali, or iron age.

SECTION 3.

On the right of the Daughter.

1. In default of the wife, the daughter next succeeds in conformity with the following text of Devala, (and other texts likewise.) "His own maiden daughter, born in holy wedlock, shall like a son take the inheritance of him who dies without male issue." "His own," that is of the same tribe; "Born in holy wedlock," legitimate.

5. Daughter.

2. The unmarried daughter is first entitled to the succession. Parásará declares, "Let a maiden daughter take the heritage of one who dies leaving no male issue; or, if there be no such daughter, a married one shall inherit.

First the unmarried daughter.

3. The following special rule must be here observed, namely, that, if a maiden daughter in whom the succession had once vested, and who was subsequently married, should die without having borne issue, the married sister who has, and the sister who is likely to have male issue, inherit together the estate which had so vested in her. It does not become the property of her husband or others, for their right is exclusively to a woman's separate property (Strí-dhana.)

4. But, if there be no maiden daughter, then the daughter who has, and the daughter who is likely to have male issue, are together entitled to the succession, and on failure of either one of them, the other takes the heritage in conformity with the text of Parásará above cited:—also the text which says "Being of equal class, and married to a man of a like tribe, and being virtuous and devoted to obedience, she [namely, the daughter] whether appointed or not appointed to continue the male line, shall take the property of her father who leaves no son, [nor wife;]" and because both descriptions of daughters [appointed, or not appointed] confer without distinction benefits on the deceased owner, by presenting to him through their sons funeral oblations at solemn obsequies.

And in her default, the married daughter who has, and the married daughter who is likely to have male issue: failing one, the other succeeds.

5. The doctrine maintained by Dikshita, and respected by the author of the Dáya-bhága, namely, That in default of daughters having, and daughters likely to have male issue, daughters who are barren, or widows, destitute of male issue, are incompetent to take the inheritance, because they cannot benefit the deceased owner by offering [through the medium of sons] the funeral oblation at solemn obsequies, should be understood.

But daughters who are barren, and widows without male issue, do not succeed to the estate.

SECTION 4.

On the right of the Daughter's Son.

1. In default of all daughters [who are entitled to succeed,] the daughter's son takes the inheritance according to the

6. Daughter's son.

text, "Let the daughter's son take the whole estate of his own father who leaves no [other] son; and let him offer two funeral oblations; one to his own father, the other to his maternal grandfather,"* and other texts of a like import. "Of his own father," here means his mother's father.† Leaving "no [other] sons," is here used indefinitely to signify a failure of heirs, including the daughter, otherwise it would contradict the text of Yájñavalkya, "The wife and daughters, &c." [Sec. ii. § i.]

2. The opinion maintained by Govinda Rája, namely, That on failure of a son, [grandson and great-grandson] the daughter's son is entitled to the inheritance notwithstanding the existence of the daughter, is consequently refuted by the text above quoted.

3. The followers of the Maithila school assert, that the daughter's

Opinion refuted.

son is entitled to the heritage after the whole of the heirs enumerated in the text of Yájñavalkya just alluded to, and in other various texts. This is wrong; for since a series of heirs is recounted, ending with the king, whose demise never occurs, it must necessarily result that the daughter's son could not obtain the inheritance at all, and the texts declaratory of his right would then be irrelevant.

SECTION 5.

On the Father's right of Succession.

1. If there be no daughter's son, the father is next entitled to the succession in conformity with the text of Kátyáyana,

7. Father.

who says: "In the case of disjoined parceners, on failure of a son, the father obtains the wealth," and also, because he (the father) confers benefits on the deceased owner by the presentation of two funeral oblations (namely, to his own father and grandfather)

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* Manu, 9. 132.

† Deceased owner.

|

Daughter's husband.

|

Son.

in which the deceased owner participates. Váchespati Miçra, (and others) by adopting a different reading in this text of Vishṇu, "The wealth of him who leaves no male issue, goes to his wife: on failure of her, it devolves on daughters: if there be none, it belongs to the father: if he be dead, it appertains to the mother," namely, "If there be none, it belongs to the mother, and if she be dead, it appertains to the father," have declared the mother's right of succession to precede that of the father.

2. This is not correct; for the reading established by the original text of Vishṇu, is the reverse [of that which they have adopted] namely, "If there be none, it belongs to the father, if he be dead, it appertains to the mother." It has also been thus transcribed by all authors;—Besides the other reading is at variance with the text of Kátyáyana above cited; and further, since the superiority of the male is deduced from the following part of a text of Manu, "In a comparison between the male and female sex, the male is pronounced the superior,*" it is most conformable to the intention of the law that the father's right of succession should precede that of the mother.

SECTION 6.

On the Mother's right of Succession.

1. In default of the father, the succession devolves on the mother, in conformity with the text of Vishṇu above quoted
8. Mother. "If he be dead, it appertains to the mother," &c. [Sec. v.§ i.]

2. Vṛhaspati also says, "Of a deceased son, who leaves neither wife nor male issue, the mother must be considered as heiress, or by her consent the brother may inherit:" for the mother confers benefits on the deceased owner by the birth of his brother, who offers three funeral oblations to the father, grandfather, and great-grandfather of the deceased owner in which he participates.

SECTION 7.

On the Brother's right of Succession.

1. On failure of the mother, the succession goes to the uterine or
9. Brother 1st uterine. whole brother, who offers three funeral oblations to the father, grandfather, and great-grandfather of the deceased owner, in which he participates.

2. If there be no uterine or whole brother, the half brothers of the
Failing him the half brother. same class with the deceased are entitled to the succession, since they also offer three funeral oblations to the fa-

* Manu, 9. 35.

ther and the other ancestors abovenamed of the deceased owner in which he participates, and because the text of Yáj ñavalkya specifies, "Both parents, *brothers* likewise," [Sec. ii. § i.] the succession devolves on sons born of a different mother, for they are begotten by the same father.

3. Hence if there are two brothers, the one uterine, and the other a half brother, and both were unassociated with the deceased owner, the uterine brother exclusively takes the wealth of his uterine brother in conformity with the text. "An uterine brother shall thus retain or deliver the share of his uterine relation."

4. Where an associated half brother, and an unassociated whole brother are the competitors for the succession, it devolves equally on both of them in conformity with the text. "A half brother being again associated may, take the succession."

5. Where uterine and half brothers compete, and both were associated with the deceased, the associated whole brother exclusively takes the inheritance, for in this case he possesses a double title [namely, his being uterine, and also associated,] in conformity with the text. "A re-united [brother] shall keep the share of his re-united [co-heir] who is deceased."

6. The same order of succession must likewise be observed in the case of nephews of the whole and nephews of the half blood.

SECTION 8.

On the Nephew's right of Succession.

1. In default of brothers, the brother's son of the whole blood is the successor, and not a nephew of the half blood who confers less benefits compared with the brother's son of the whole blood, since the mother and grandmother of the deceased owner do not participate in the oblations presented by the nephew of the half blood to the father and grandfather [of such deceased owner.*]

10. Brother's son.

* F Grandfather. B (Grandmother.)
E Father A (Mother.) (Contemporary wife.)
C Deceased owner + whole brother + half brother's D
Son. Son.

Here the mother, (A) and grandmother (B) of the deceased owner (C) do not participate in the oblation, which the nephew (D) of the half blood is bound to offer to his grandfather (E) and great-grandfather (F), since his (the nephew's) (D's) *descent in the* line is derived from a different family,

2. The participation of a mother, a grandmother, and great-grandmother, in the funeral oblations presented by the oblator to the father, grandfather, and great-grandfather respectively, is recounted in the following passage of scripture. "The mother participates in the funeral oblation made to the manes of her husband: So also do the grandmother, and great-grandmother" [participate in oblations made to the grandfather and great-grandfather.]

3. Among brother's sons associated and unassociated, all of the whole blood, the succession devolves exclusively on the associated brother's son.

4. In like manner, in the case of associated and unassociated brother's sons, all of the half blood, the succession devolves on the associated brother's son of the half blood.

5. But if the son of the whole brother were unassociated, and the son of the half brother associated, then they both inherit together.

6. Where however two nephews were either associated, or unassociated with the deceased, one of the whole, the other of the half blood, then in both instances the succession devolves on the nephew of the whole blood.

SECTION 9.

On the right of the Brother's Grandson.

11. Brother's grandson.

1. If there be no brother's son, the brother's grandson is heir, both, because he presents one funeral oblation, [namely, to the deceased owner's father, i. e., his own great-grandfather] in which the deceased owner participates,* and because he is within the degree of relationship, termed "Sapiṇḍa."

2. But brother's great-grandsons do not inherit, since they confer no benefits, because they stand in the fifth degree of relationship to the father of the deceased owner.

3. Here likewise the distinction of the whole blood, and of the half blood, as in the instance of brother's sons must be observed.

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* Father.

Deceased Owner. + Brother.

Son.

Grandson.

SECTION 10.

On the right of the Father's Daughter's Son, and of other Heirs.

1. On failure of the brother's grandson, the succession goes to the father's daughter's son, for he presents three funeral oblations, namely, to the father, paternal grandfather, and paternal great-grandfather of the deceased owner, i. e., to his own maternal grandfather, maternal great-grandfather, and maternal great great-grandfather. (According to Áchárya Chúḍámaṇi, the son of the proprietor's own sister, and the son of his half sister, have an equal right of inheritance).

12. Father's Daughter's son.

2. In default of the father's daughter's son, the brother's daughter's son succeeds, for he presents two funeral cakes in which the deceased owner participates, namely, to his (the owner's) father and paternal grandfather.

13. Brother's daughter's son.

3. Failing him, the paternal grandfather is the successor, for as the father is entitled to succeed on a failure of the heirs of the deceased owner ending with the daughter's son, so by the rule of analogy the succession devolves on the grandfather in default of heirs down to the father's daughter's son ; and because he presents one oblation (namely, to the owner's paternal great-grandfather, i. e., his own father) in which the deceased owner participates.

14. Paternal grandfather.

4. In default of the paternal grandfather, the paternal grandmother is heir, according to the text of Manu,* "Of a son dying childless, [and leaving no widow,] the [father, and] mother shall take the estate, and the mother being also dead, the paternal [grandfather, and] grandmother shall take the heritage, [on failure of brothers and nephews."] As the mother succeeds on the death of the father, so by the rule of analogy the succession devolves on the paternal grandmother in default of the paternal grandfather.

15. Paternal grandmother.

5. Failing the paternal grandmother, the uncle succeeds, for he presents two oblations to the paternal grandfather, and great-grandfather of the deceased owner, (i. e., his own father and grandfather,) in which the said owner participates.

16. Uncle.

6. In his default, the succession devolves on the uncle's son, for he [also like his father] presents two oblations in which the deceased owner participates, namely, to the owner's paternal grandfather, and paternal great-grandfather, [i. e., his own paternal grandfather, and great-grandfather.]

17. Uncle's son.

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* Manu, Chap. 9. v. 217.

7. Failing him, the uncle's grandson succeeds, for he presents one oblation, namely, to the paternal grandfather of the deceased owner, [i. e., his own paternal great-grandfather] in which the said owner participates.

18. Uncle's grandson.

8. Failing the uncle's grandson, the succession devolves on the grandfather's daughter's son, because he presents two oblations in which the deceased owner participates, namely, to the owner's paternal grandfather, and paternal great-grandfather, [i. e., his own maternal grandfather, and maternal great-grandfather.] Notwithstanding the grandfather's daughter's son, (19) who presents two oblations in which the deceased owner participtes, confers greater benefits than the uncle's grandson, (18) who presents but one oblation in which the deceased owner participates, yet nevertheless the right of succession devolves in the first instance on the uncle's grandson by virtue of his relationship to the deceased owner in the degree termed Sapiṇḍa.

19. Grandfather's daughter's son.

9. In default of the paternal grandfather's daughter's son, the uncle's daughter's son succeeds, because he presents two oblations, in which the deceased owner participates, namely, to the owner's paternal grandfather, and great-grandfather, [i. e., his own maternal great-grandfather, and great-great-grandfather.]

20. Uncle's daughter's son.

21. Paternal great-grandfather.
22. Paternal great-grandmother.

10. Then succeed in order the paternal great-grandfather, and the paternal great-grandmother, because of the deceased owner participating in the oblations offered to the paternal great-grandfather, and also by reason of the rule of analogy abovementioned.

23. Paternal grandfather's brother.
24. His son and
25. His grandson.

11. Next succeed in order the paternal grandfather's brother, his son, and grandson, for they present one oblation, in which the deceased owner participates, namely, to the owner's paternal great-grandfather.

12. Afterwards the paternal great-grandfather's daughter's son takes the succession, since he presents an oblation, in which the deceased owner participates, namely, to the owner's paternal great-grandfather, [i. e., his own maternal grandfather.]

26. Paternal great-grandfather's daughter's son.

13. Next the succession devolves on the paternal grandfather's brother's daughter's son, who presents an oblation, in which the deceased owner participates, namely, to the owner's paternal great-grandfather, [i. e., his maternal great-grandfather.]

27. Paternal grandfather's brother's daughter's son.

28. Maternal grandfather.

14. In his default, the maternal grandfather of the deceased owner succeeds.

15. Failing him, the maternal uncle, his son and grandson, for these texts of Manu, "To three [ancestors] must water be given at their obsequies; for three is the funeral

29. Maternal uncle.

30. His son, & 31. His grandson.

cake ordained,* and "To the nearest Sapiṇḍa the inheritance next belongs,†" which declare the right of succession to the wealth to take place according to the order of proximity of benefits conferred on the deceased owner, propound the right of the abovenamed to succeed; and the sole object of the introduction of the two texts above cited in a treatise on inheritance is to shew that the right of succession to the estate occurs according to the order of benefits conferred on the deceased proprietor: otherwise the insertion of these texts in a treatise on inheritance would have been useless.

32. Maternal grandfather's daughter's son.

16. In default of the maternal uncle's grandson, the maternal grandfather's daughter's son succeeds.

33. Maternal great-grandfather.
34. Son.
35. Grandson.
36. Great-grandson.

17. Failing him, the maternal great-grandfather, his son, grandson, and great-grandson.

37. Maternal great-grandfather's daughter's son.

18. In their default, the maternal great-grandfather's daughter's son succeeds.

38. Maternal great great-grandfather.
39. Son.
40. Grandson.
41. Great-grandson.

19. Failing him, the maternal great-great-grandfather, his son, grandson, great-grandson.

42. Maternal great great-grandfather's daughter's son.

20. In default of these, the maternal great-great-grandfather's daughter's son succeeds.

21. On failure of the heirs who present oblations in which the deceased owner participates, the "Sakulya," (or remote kinsman) takes the inheritance according to the text of Manu, "Then the distant kinsman shall be the heir, or the spiritual preceptor or the pupil, [or the fellow-student of the deceased."‡]

Failing all these the succession devolves on the Sakulyas of distant kinsmen.

Who are of two descriptions, descending and ascending.

22. The Sakulya, or remote kindred, is of two descriptions, 1st descending, and 2d ascending.

* Manu, 9. 186. † Manu, 9. 187.

‡ Manu, 9. 187.

Descending, viz. great-grandson's son, &c.
Ascending, viz. great-grandfather's father, &c.

23. The first includes the great-grandson's son, and the rest down to the 3d degree in the descending line. The second intends the great-grandfather's father, and other ancestors up to the 3d degree in the ascending line.

43. Distant kinsmen in the descending line.

24. Here the distant kinsmen in the descending line, first obtain the inheritance, according to their respective order, since the deceased owner partakes of the remainder of the oblations which they present.

44. Distant kinsmen in the ascending line.

25. In their default, the distant kindred, as far as the third degree in the ascending line, inherit in due order: since the deceased proprietor participates in the remainder of funeral oblations made to his great-great-grandfather, and the other ancestors, three in all: and their offspring present oblations to those three who are partakers of the remainder of oblations which it belonged to the deceased owner to make. The text of Vṛihaspati declares, "That where there are many relatives, (Jñatayaḥ) or remote kindred, (Sakulyáḥ) or cognate kindred, (Bándhuváḥ) whoever is nearest of kin, shall take the wealth of him who dies withot male issue." Propinquity of kin must be considered with reference to the greater or less benefits conferred on the deceased proprietor, as is confirmed by (both) the texts already cited above (§ 15.)

54. Samánodakas or Kinsmen allied by libations of water.

26. If there be no distant kindred of this description, the Samánodakas, or kinsmen allied by common libations of water inherit, since they must be considered as comprehended in the term "Sakulya."

46. Spiritual preceptor.

27. On failure of these, the spiritual preceptor is the successor.

47. Pupil.

28. In default of him, the pupil is heir, for the text of Manu, "or the spiritual preceptor, or the pupil," propounds the order in which these persons shall respectively succeed. The spiritual preceptor here intended is he who affords religious instruction [to his pupil after investing him with the Bráhmaṇical thread, whence he is so denominated.

48. Fellow-student of the Veda.

29. On failure of him, the fellow-student of the Vedas, as named in the text of Yájñavalkya, "a pupil and a fellow-student."

49. Persons bearing the same family name.

30. In his default, persons bearing the same family name, being inhabitants of the same village, succeed.

Failing them.
50. Those descended from the same patriarch.

31. On failure of them, persons inhabitants of the same village, and descended from the same patriarch, are the successors, according to the text of Gautama. "Persons allied by funeral oblations, family name, and by patriarchal descent, shall take the heritage."

32. On failure of all heirs as here specified, Bráhmaṇas, inhabi-

51. Bráhmaṇas.

tants of the same village, endowed with learning in the three Vedas, and other qualities, are the successors. Thus Manu says, "On failure of all those, the lawful heirs are such Bráhmaṇas as have read the three Vedas, as are pure in body and mind as have subdued their passions. Thus virtue is not lost."

33. In default of them, the wealth goes to the king, excepting,

52. The king.

however, the property of a Bráhmaṇa. Thus Manu:* "The wealth of a Bráhmaṇa shall never be taken [as an escheat] by the king, this is a fixed law: but the wealth of the other classes, on failure of all heirs, the king may take."

Special rule to be observed with regard to the wealth of a Bráhmaṇa, and

34. Failing the duly qualified Bráhmaṇa in respect to the wealth of a Bráhmaṇa, a Bráhmaṇa residing in another village, is the successor, but not the king. This must be understood.

The goods of a hermit, ascetic, and professed student.

35. The goods of an anchorite, an ascetic, and of a professed student, are taken by the spiritual brother, the virtuous pupil, and the holy preceptor.

36. In failure of these, the associate in holiness, or person belong-

Associate in holiness.

ing to the same order, inherits. Thus Yájñavalkya. "The heirs of an hermit, of an ascetic, and of a professed student are in their order the preceptor, the virtuous pupil, and the spiritual brother, and associate in holiness." "Order," that is the inverse order; Therefore the preceptor takes the goods of the professed student: the virtuous pupil those of the ascetic, and the spiritual brother and associate in holiness, that is he who is engaged in the same pilgrimage, or sojourns in the same hermitage, those of the anchorite.

37. The professed student is of two descriptions, perpetual and temporary. The preceptor inherits the goods possessed by a perpetual student, for he abandons his father, and the rest making a vow of residing for life in his preceptor's family. But the property of a temporary student would be inherited by his father, and other relations, since he does not enter on any such vow, and merely attends his preceptor for the purpose of instruction.

* Manu, Chap. 9. v. 189.

CHAPTER II.

ON THE ORDER OF SUCCESSION TO THE PECULIAR PROPERTY OF A WOMAN.

SECTION 1.

Succession to the peculiar property of a Maiden.

1. In regard to the property of a maiden, first the uterine brother is the successor; in his default, the mother, and failing her, the father. Nárada says, "The wealth of a deceased damsel let the uterine brethren themselves take; on failure of them, it shall belong to the mother, or if she be dead, to the father."

1. Uterine brother.
2. Mother.
3. Father.

2. This relates to wealth other than that which has been given to the damsel by a bridegroom, for a bridegroom has a right to wealth given by himself. The text of Paithinasi recites, "The bridegroom shall take the gratuity given by himself, and Nárada says, "Let the first bridegroom on his return take back the presents he gave to the damsel, who has since been married: and in case of her death likewise, let him receive back what he gave, after defraying the expences which they have mutually incurred."

Excepting the gifts bestowed by a bridegroom which he is entitled to receive back.

SECTION 2.

Definition of the peculiar property of a Married Woman.

1. The peculiar property of a woman is in the first place defined, for the purpose of afterwards describing the order of succession to such property when belonging to a married woman. On this subject Nárada says, "What was given before the nuptial fire, what was presented in the bridal procession, her husband's donation, and what has been given by her brother, or by either of her parents, is termed the sixfold property of a woman."

2. Here the number six must not be considered as restrictively used; since it will be hereafter declared that woman's peculiar property is of many descriptions, Kátyáyana describes a gift before the

nuptial fire. "What is given to women at the time of their marriage, near the nuptial fire, is celebrated by the wise as the woman's peculiar property bestowed before the nuptial fire."

3. "The time of their marriage," that is the time occupied by the ceremony, commencing with the performance of funeral obsequies for departed ancestors, and concluding with the .(Abhivad, or) prostration of the husband at the feet of his wife.

Property received by the woman during this time is denominated, "Yautaka," or property given at a marriage, conformably to the meaning of the root, "Yu," which signifies to mix, and the mixture here alluded to, is that which results from the union by marriage of the man and woman, who become as it were one and the same body. The following passage of scripture declares. "Her bones become identified with his bones, flesh with flesh, skin with skin."

5. Vyása also says, "Whatever is presented at the time of the nuptials to the bridegroom, intending [the benefit of the bride,] belongs entirely to the bride; and shall not be shared by the kinsmen."

6. "Intending;" That which is given to the bridegroom, delivered into his hand, accompanied by an expression of the intention, such as "Let this belong to the bride," and not any thing given without this intention; Such is the meaning.

7. Therefore the expression of "Before the nuptial fire," occurring in the text before cited, and that of "The time of their marriage," in the text since quoted, are both illustrative. Since whatever is delivered into the hand of the bridegroom, intending the benefit of the bride, becomes her's, such intention must therefore be considered as the foundation of her property therein. The mention therefore of the "bridegroom" must be taken figuratively, for wealth delivered into the hand of any other with that intention, would equally become the exclusive property of the bride.

8. Kátyáyana describes a gift presented in the bridal procession. "That again which a woman receives while she is conducted from the parental [abode, to her husband's dwelling] is instanced as the separate property of a woman under the name of gift presented to the bridal procession."

9. The term "parental," being derived from a compound expression, of which only one part is retained, the presents which she receives from the family of either her father, or mother, while proceeding to the house of her husband, are gifts presented in the bridal procession.

10. "Her husband's donation," is wealth given to her by her husband, as indeed appears from the use of the expression in another text of Kátyáyana. "Let the woman place *her husband's donation* as she pleases, when he is deceased; but while he lives, she should carefully preserve it, or else commit it to the family."

11. It must not be argued that the word dáya (donation) relates to the wealth of her husband; for the latter part of the

text above cited, "but while he lives, she should carefully preserve it," would then be irrelevant, and it is moreover impossible that during the life-time of the husband his wealth should go to his wife.

12. Nor does the term "husband's donation" apply to the heritage devolving to the wife on the decease of her husband; for the mention of it occurs in a chapter treating of the peculiar property of a woman, and heritable wealth does not form her peculiar property;—Supposing such to be the case, the sense of the verb "dá," to give, would then become metaphorical.

13. "Commit it," deposit it; "The family."—Her husband's family, his younger brother and the rest.

14. "Or else," that is if unable to preserve it herself. Thus Yájñavalkya. "What has been given to woman [before or after her nuptials] by the father, the mother, the husband, or a brother, or received by her at the nuptial fire, or presented to her on her husband's marriage to another wife, as also any other separate acquisition] is denominated woman's property."

15. Wealth given by a man for the sake of gratifying his first wife when desirous of espousing a second, is called a gift on a second marriage, since the intention of it is to obtain another wife.

16. So Devala says, "Her subsistence, her ornaments, her perquisite, and her gains, are the separate property of a woman. She herself exclusively enjoys it; and her husband has no right to use unless in distress." "Subsistence," food, and raiment.

17. Kátyáyana describes the fee or perquisite. "Whatever has been received as a price of workmen on houses, furniture, beasts of burden, milk, animals, and ornaments, is denominated a fee." That is termed a fee, which a woman receives from others as a douceur for influencing her husband, an architect or other description of artist, to expedite the completion of their business, such as the construction of a house, or other kind of work. It is the price in fact which she receives for sending her husband [to the employment.]

18. "Furniture," brooms, &c. "Beasts of burden," bulls, &c. "Milch animals," milch cows, &c. "Gains," a treasure discovered,

19. Thus Vishṇu says, "What has been given to a woman by her father, her mother, her son, or her brother, what has been received by her before the nuptial fire, what has been presented to her, on her husband's espousal of another wife, what has been given to her by kindred, as well as her perquisite, and a gift subsequent are a woman's separate property." By "kindred," maternal uncles are indicated.

20. Devala describes "a gift subsequent," "What has been received by a woman from the family of her husband at a time posterior to her marriage, is called a gift subsequent, and so is that which is similarly received from the family of her kindred; Whatever is received by a woman after her nuptials from her husband, or from her parents, through the affection of the giver, Bhṛigu pronounces to be a gift subsequent."

21. "From the family of her kindred." Here by the word "kindred," her father and mother are [also] intended.

22. Therefore any thing received after the marriage from persons related through her husband, such as her father-in-law and others, or from persons related through the father and mother, namely, maternal and paternal grandfathers, is termed a gift subsequent. Such is the meaning of the first text, and the meaning of the second text is that any thing received posterior to the marriage, either from her husband, or from her parents, is also termed a "gift subsequent."

23. Since various sages have recounted woman's peculiar property as comprizing sundry descriptions, the number six specified in the text of "Nárada," (§ 1) is not to be respected, and the different texts must therefore be considered as generally descriptive of woman's peculiar property.

24. A woman's property may then be briefly defined to be that wealth which independent of her husband's control she has a right to dispose of at pleasure, recognized as this right is by law which Kátyáyana has declared.

25. "The wealth which is earned by mechanical arts, or which is received through affection from any other [but the kindred] is always subject to the husband's dominion. The rest is pronounced to be the woman's property."

26. "That which is received by a married woman, or a maiden in the house of her husband or of her father, from her parents, is termed the "gift of affectionate kindred." The independance of women who have received such gifts is recognized in regard to that property, for it was given by their kindred to soothe them, and for their maintenance. The power of woman over the gifts of their affectionate kindred is ever celebrated, both in respect of donation and of sale according to their pleasure, even in the case of immoveables."

27. He explains the meaning of the word "rest," (§ 25) by the text which follows (§ 26.) "That which is received by a married woman," &c.

28. "From any other." The husband has authority over that which the woman has obtained from any other excepting the family of her father, mother, or husband, or in that which she has gained by the exercise of an art, such as painting, or spinning. He is entitled to take it even without the occurrence of any distress.

29. Therefore notwithstanding the woman has ownership in both descriptions of property, she has not independent power in regard to it; On the contrary, it appearing from the text that her husband has authority over such property, his permission authorizing the disposal of it must be awaited by the woman.

30. "Pronounced to be the woman's property," that is declared alienable by the woman at her own pleasure. "By a married woman,"

&c. That which is received by a married woman from the family of her husband, or from the family of her parents, and by a damsel from the family of her parents, is the "gift of affectionate kindred;" Such is the meaning. "To soothe them," that is through a motive of tenderness.

31. "Even in the case of immoveables," relates to immoveable property other than that which has been bestowed upon her by her husband, for a prohibition exists against the gift or sale by a woman in regard to immoveable property given to her by her husband; So Nárada, "What has been given by an affectionate husband to his wife, she may consume as she pleases when he is dead, or may give it away, excepting immoveable property."

32. Since "given by her husband," is here particularly specified, the general text of Kátyáyana above quoted, must be considered applicable to immoveable property, other than bestowed by a husband, in conformity with the principle which admits of a special provision limiting the operation of a general rule.

33. But the husband is at liberty during a period of famine and the like when unable to subsist without the use of the woman's separate property, to take such property even though it be the gift of affectionate kindred. Thus Yájñavalkya, "A husband is not liable to make good the property of his wife taken by him in a famine, or for the performance of a duty, or during illness, or while under restraint."

34. "While under restraint," which a creditor or other person imposes on himself for the purpose of recovering his right, being debarred at the same time from ablution, from food, &c. Kátyáyana has declared the husband to have no right to the use of the woman's separate property [as before described] during the non-existence of any such calamity as a famine or the like.

35. "Neither the husband, nor the son, nor the father, nor the brothers, can assume the power over a woman's property to take it or to bestow it. If any one of these persons by force consume the woman's property, he shall be compelled to make it good with interest, and shall also incur a fine. If such person having obtained her consent, use the property amicably, he shall be required to pay merely the principal when he becomes rich. But if the husband have a second wife, and do not shew honor to his first wife, he shall be compelled by force to restore her property, though amicably lent to him. If food, raiment and dwelling be withheld from the woman, she may exact her due supply, and take a share [of the estate] with the co-heirs."

36. "Make it good with interest," that is the woman's separate property taken by force in the form of a loan must be rendered with interest; The word "with interest," [Savṛiddhim] must not be supposed a discriminative of (Strídhana) "the woman's separate property," for supposing this to be the case, Savṛiddhi would be the proper form in which the word would appear.

37. "Merely the principal;" Here the insertion of the word "merely," is intended to preclude [the payment of] interest.

38. "But if," &c. the meaning of which is, that if the husband after making use of the separate property of one wife, reside with another wife, and neglect the former, he shall be compelled by the ruling power to restore such property, even though it had been amicably lent.

39. "Food and raiment;" Should the husband not allow his wife the necessaries of life, food and clothing, then she may, if immaculate, require the supply of food and raiment, which is her due.

40. "Dwelling," place of residence.

41. "A share," that is, on the death of her husband, she is to receive from his co-heirs, his younger brother, and the rest, the share to which he was entitled. Let this suffice. Further detail being superfluous, the subject in question is therefore propounded.

SECTION 3.

On the Succession to the Separate Property of a Woman when received by her at her Nuptials.

1. The separate property of a woman having been thus defined, the right of succession to such property on the decease of the woman is next described.

Maiden daughter.

2. In respect to property received at her marriage, "Yautaka," her maiden daughter succeeds first; A text of Manu declares. "The wealth obtained by the mother at her marriage, let her maiden daughter exclusively take."

Betrothed daughter.

Married daughters.

3. In default of such daughter, it appertains to the damsel affianced, and failing her, the married daughters who have, and those who are likely to have male issue, inherit together.

4. A text of Gautama expresses, that a woman's property goes to her "daughters unaffianced and to those not actually married."

Barren and widowed daughters.

5. Here as by the word "daughters," the right of succession by all the daughters is generally declared, the mention of "unaffianced," &c. becomes significant, as denoting the order in which they shall respectively inherit, and therefore first the maiden succeeds; then the affianced daughter, that is, one whose troth is plighted; in her default, the married daughter described as above, and failing her, the succession devolves equally on the barren and the widowed daughters. This is the meaning of the text.

6. Here however on the death of a maiden daughter, or of one affianced, in whom the succession had vested, and who having been subsequently married, is ascertained to have been barren, or on the death of a widow who has not given birth to a son, the succession to the property which had passed from the mother to her daughters, would devolve next on the sisters, having, and likely to have male issue, and in their default, on the barren and widowed daughters ;—not on the husband of such daughter abovementioned in whom the succession had vested : for the right of the husband is relative to the "Woman's separate property," and wealth which has in this way passed from one to another, can no longer be considered as the "Woman's separate property ;"—This must be understood.

7. The right of the barren, and widowed daughters to succeed, notwithstanding they confer no direct benefits through the medium of sons, is gathered from the text of Gautama above quoted, which declares the right of succession by the daughters generally, whether married, or unmarried.

8. In default of all daughters, the son has a right to succeed : for the text of Yájnavalkya declares the right of the son to succeed on failure of daughters by the terms "male issue," expressed in this text, "Daughters share the residue of their mother's property after payment of her debts ;—the male issue succeeds in their default," and because the son compared with all the rest, confers the greatest benefits ; The text of Baudháyana also declares, that "Male issue of the body being left, the property must go to them."

The son.

9. In default of the son, the daughter's son inherits, for it is reasonable, that since the daughter's claim is preferred to that of the son, the son of the debarred son should be excluded by the son of the person who bars his claim.

The daughter's son.

10. Failing the daughter's son, the son's son succeeds, in his default, the great-grandson in the male line, according to the degree in which benefits are conferred by them.

The son's son.
The great-grandson.

11. In default of the great-grandson in the male line, the son of a rival wife succeeds, for the text of Vrihaspati recites that, "The mother's sister, the maternal uncle's wife, the paternal uncle's wife, the father's sister, the mother-in-law, and the wife of an elder brother are declared similar to mothers." "If they leave no issue of their bodies, nor son, [of a rival wife] nor daughter's son, nor son of those persons, the sister's son and the rest, shall take their property."

Son of a rival wife.

12. The term "son," which occurs as above, "nor son," is intended to propound the right of succession by the son of a rival wife ; otherwise, it is useless to consider it as a discriminative of "Aurasa," meaning of itself "legitimate issue ;" and it would also follow that the younger brother of the woman's husband and the rest would have a right to succeed notwithstanding the existence of the son of a rival wife.

13. In default of the son of the rival wife, her grandson succeeds; and failing him, her great grandson, since they both present oblations to her husband in which she also participates.

Her grandson.
Her great grandson.

14. In default of all the above heirs, if the property were obtained by the woman at the time of nuptials, celebrated according to one of the forms denominated Bráhma, Daiva, Árṣha, Gándharva, or Prájápatya, her husband is the next successor, for the text of Manu declares, "It is ordained that the property of a woman married by the ceremonies called Bráhma, Daiva, Árṣha, Gándharva, or Prájápatya, shall go to her husband, if she die without issue"*

If the property were received at nuptials.
Celebrated in the form.
Bráhma, &c. then the
Husband.
And failing him

15. On failure of her husband, her brother is the next successor according to the text of Yájñavalkya, "That which has been given to her by her kindred, as well as her fee or gratuity, and any thing bestowed after marriage, her kinsmen take, if she die without issue."

The brother.

16. The term "kindred," means her mother and father, and consequently by the term "kinsmen," her brothers are signified. The same is declared by Kátyáyana, who says, "Immoveable property, which has been given by parents to their daughter, goes always to her brother, if she die without issue."—Here since the terms "immoveable property," are used, other property is of course intended by the argument drawn from the loaf and staff.† Thus it is stated in the Dáya-Bhagá. By the use of the term "always," it appears, that the eight forms of marriage, namely, Bráhma and the rest are included.

17. "Fee or gratuity" has been before explained, as also the "gift subsequent." Failing the brother, the succession devolves on the mother, and in her default, the father inherits. A text of Kátyáyana says: "The fee of a damsel goes to her uterine brothers; failing them, the mother succeeds; and after her, the father.—Some hold that the father succeeds first."

Afterwards the mother, and in her default the father.

18. The "fee of a damsel," that is, her wealth, belongs first to her uterine brothers; in their default, it goes to the mother; and after her to her father.—"Some hold," &c. meaning in the opinion of others; but according to our interpretation, the father first inherits, and afterwards the mother. Such is the meaning.

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* Manu, Chap. 9. v. 196.

19. But if the wealth were received by the woman at the time of her marriage, celebrated according to any one of the three forms denominated Paiçácha, Rákshasa, or Ásura, then in default of the great-grandson of the rival wife, the succession devolves first on the mother, then on the father. For the text of Manu declares : " But her wealth given on the marriage called Ásura, or on either of the two others, is ordained on her death without issue, to become the property of her mother and father."*

But if the wealth were received at nuptials, celebrated in the form Páiçácha, &c. then the mother succeeds next the father.

After him.

20. Here the use of the compound in this form [" Mátápitroḥ"] is with the view of exhibiting the order of succession, for if it had been intended that the mother and father should inherit together, the form " Pitroḥ" would have been observed.

21. In default of the father, the brother succeeds, and failing the brother, the succession devolves on the husband according to the text of Kátyáyana, " That which has been given to her by her kindred, on failure of kinsmen, goes to her husband."

The brother, and in his default the husband.

22. " Kindred," mother and father :—On failure of " kinsmen," by which the failure of the brother must be understood ; because [in the instance of wealth received by the woman at the time of nuptials, celebrated in one of the five forms called Bráhma, &c.] the parents succeed only in the case of a failure of the brothers.

SECTION 4.

On the order of Succession to the Separate Property of a Woman, when not received by her at her Nuptials.

1. The order of succession requisite to be observed in regard to woman's pecular property, generally, whether " Yautuka" or " Ayautuka" on a failure of heirs including all as yet enumerated, will be hereafter declared. But first we treat of the order of succession in regard to wealth not received by the woman at the time of nuptials termed " Ayautuka."

2. In the case of the peculiar property of a woman [not obtained by her at the time of nuptials, and] not given to her by her father at the time of the wedding, or at any other time, the son and the unmarried daughter inherit together.

* Manu, Chap. 9. v. 197.

The son and unmarried daughter inherit together.

3. This is declared by the first half of the following passage of Devala, "A woman's property is common to her sons and unmarried daughters when she is dead; but if she leave no male issue, her husband shall take it, her mother, her brother or her father."

And in default of one, the other.

4. Since the words "sons and unmarried daughters" are exhibited in the conjunctive compound (called "Dvandva,") and because the words "common to" are here expressed, it results that the son and the unmarried daughter possess the right of inheritance together, and in default of either of them, the wealth goes to the other.

Failing them, The married daughters.

5. On failure of both these two, the succession devolves equally on the married daughter, who has, and the married daughter, who is likely to have male issue—for a text of Nárada recites, "In default of a son, let a daughter take the succession, for they are both offspring alike:"—and because oblations at solemn obsequies are presented by the daughter through the medium of her son, to the husband of a woman, in which she participates, [that is, oblations are presented by the daughter's son to his own maternal grandfather.]

And failing one the other; then, The son's son,

6. In default of either of these two, the other succeeds, and on failure of both of them the son's son inherits, for he presents an oblation at solemn obsequies to the husband of the woman, of which she partakes.

The daughter's son:

7. In default of the son's son, the daughter's son succeeds; for it is reasonable since the claim of the married daughter is barred by the son, that the son of the debarred daughter, should be debarred by the son of the person who obstructs her claim: and a text of Manu reciting that, "A daughter's son delivers him in the next world like the son of a son,"* declares the right of the daughter's son to succeed.

8. "Like the son of a son." From this expression it results, that when there is no longer an adverse claim, the daughter's son has a right to succeed after the son's son.

The great-grandson in the male line. The son of a rival wife, her grandson, and great-grandsons, afterwards,

9. In his default the great-grandson in the male line succeeds. Failing him the son of a contemporary wife, her grandson and great-grandson in the male line: since all these present funeral oblations to the husband of the woman, in which she participates.

The barren and widowed daughters. Failing either,

10. After these, the barren and widowed daughters both inherit together, for they too rank among the progeny of the woman, and the right of the husband to succeed is only in the case of a failure of progeny generally: Manu declares, that, the wealth of a childless woman, married according to the form denominated Bráhma or the remaining four forms, goes to her husband.

, Chap. 9.

11. Failing either of these, the other succeeds, and in default of successors including the barren and widowed daughters, the succession devolves in due order, by the rule of analogy, as in the case of wealth received at nuptials, viz: on the woman's husband, brother, mother, and father, if she were married according to any one of the five forms, denominated "Bráhma," and the rest; or if she were married according to any of the three forms, styled Ásura, &c. on her mother, father, brother and husband.

The other succeeds.

Then the woman's husband, brother, mother and father.

Or her mother, father, brother and husband.

12. The order to be observed on a failure of all these successors, will be hereafter declared.

SECTION 5.

On the Succession to the Separate Property of a Woman, when given to her by her Father.

1. In regard to the wealth given by a father to a woman at the time of the wedding, or antecedent or subsequent to it, a maiden daughter inherits in the first place.

The maiden daughter.

2. After her, a married daughter who has, and one who is likely to have male issue, inherit together.

Next the married daughters.

3. Next, the succession devolves on the barren and widowed daughters, and in default of all daughters, the son and the rest succeed, as in the case of property received at nuptials; for a text of Manu declares, "The wealth of a woman which has been "in any manner given to her by her father, let the Bráhmaṇí damsel take, or let it belong to her offspring."*

And in their default, the barren and widowed daughters, then the son and the rest, as in the case of property received at nuptials.

4. Here by the specification of "given by the father," it is intended, that whatever has been given by the father even at any other time than that of the wedding, belongs first to the damsel, and after her, it goes to her offspring,—her son.

5. The expression Bráhmaṇí damsel, is merely an illustrative recitation ("Anuváda.") Thus it is stated in the Dáya-Bhága.

* Manu, 9. 198.

SECTION 6.

On the Succession to the Separate Property of a Woman, generally, on a failure of all the Heirs as yet enumerated.

On a failure of heirs as yet enumerated.

1. In default of successors down to the father, in respect to wealth received at nuptials solemnized according to any one of the five forms of marriage, denominated Bráhma and the rest, and on failure of successors down to the husband, in respect to wealth received at nuptials, celebrated according to any one of the three forms styled Ásura, &c., as well as in the case of all other peculiar property of a woman, the succession devolves on the husband's younger brother: for the right of the husband's younger brother and the rest to succeed at that time, has been propounded by Vṛihaspati in the following text: "the mother's sister, the maternal uncle's wife, the paternal uncle's wife, the father's sister, the mother-in-law, and the elder brother's wife are pronounced similar to mothers:—If they leave no issue of their bodies, nor son, [of a rival wife], nor daughter's son, nor son of those persons, the sister's son, and the rest shall take the property."

The husband's younger brother succeeds.

2. The word ("*aurasa*") "issue," in this text implies both son and daughter. "Nor son" must be considered as intending the "son of a rival wife." It must not be supposed discriminative of the word "issue," since it would be unmeaning, and it would follow that the succession devolved on the husband's younger brother and the rest, even while the son of rival wife were existent. "Nor son of those persons," Hereby "these persons," the son, and the son of the contemporary (or rival) wife are intended:—the expression does not refer to the damsel and daughter's son, for the damsel's son is included in the term daughter's son, and the daughter's son's son confers no benefits, being incompetent to present the funeral offering: [to the woman's husband]. By the term ["*va*"] "nor," the sons of the son, and of the son of the rival wife are to be understood. But the *order* of succession prescribed by the above text is not to be respected; for if this were the case, it would follow, that the husband's younger brother succeeded last, and this would be improper, since he confers greater benefits than all the others who are specified in that text; and the following texts of Manu, "To three ancestors must water be given at their obsequies; for three, (the father, his father, and the paternal grandfather) is the funeral cake ordained:"* "To the nearest Sapiṇḍa the inheritance next belongs,"† are recited in a treatise of inheritance, for the purpose of exhibiting that the order of succession takes place according to the greater or less benefits conferred; otherwise, the introduction of them in such a treatise would be useless; consequently the order of succession must be understood as

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* Manu, 9. 186. † Manu, 9. 187.

taking place according to the proximity of benefits conferred, and this being the case, the order inferrible from the spirit of the text, rather than that drived from the letter of it, must be respected.

3. Therefore the husband's younger brother is first entitled to the succession, because he presents oblations to the woman, to her husband, and to three persons to whom her husband was bound to offer oblations, and he is moreover a "Sapiṇḍa."

Failing him, the sons of the husband's younger and elder brother.

4. In his default, the succession devolves at once upon the sons of the husband's younger and elder brother, because they present oblations to the woman, to her husband, and to two persons to whom her husband was bound to offer oblations, (namely to his father and grandfather,) and they are moreover within the degree of relationship, termed "Sapiṇḍa."

In their default, the sister's son:

5. In their default, the sister's son, though not a Sapiṇḍa, is entitled to the succession: for he presents oblations to the woman and to three persons, namely, her father and the rest to whom her son was bound to offer oblations.

Then the husband's sister's son.

6. Failing him, the husband's sister's son: for he presents oblations to her, to her husband, and to three persons to whom her husband ought to have offered oblations.

Next the woman's brother's son, and failing him,

7. In his default, the [woman's] brother's son, who presents oblations to the woman, and to her father and grandfather.

The son-in-law.

8. Failing him, the son-in-law, who presents oblations to his father-in-law and mother-in-law.

9. Vṛhaspati's text above quoted, propounds therefore merely the right of succession by the persons abovementioned, and is by no means intended to exhibit the order in which they succeed.

Afterwards the father-in-law, then the husband's elder brother.

10. Failing all these heirs including the son-in-law, the father-in-law, and the husband's elder brother, who are Sapiṇḍas, succeed according to their nearness of kin.

After these, the "Sakulyas."

11. In default of all Sapiṇḍas, the "Sakulyas," those allied by common oblations of water, and those descended from the same partriarch in the male line, succeed.

And in their default, Brahma-

12. Failling all these, in the case of the property of a Bráhmaṇí woman, Bráhmaṇas, inhabitants of the same village, exceedingly learned in the Vedas, are entitled to the succession.

Or the king.

13. But in the case of the property of a woman of the Kshatriya and other tribes, the king is exclusively entitled to the inheritance.

CHAPTER III.

ON EXCLUSION FROM INHERITANCE.

1. Those who are excluded from inheritance are now specified, from which exception, those who are competent to inherit, will appear: Thus Manu, "Impotent persons and outcastes, persons born blind, and deaf; madmen, idiots, the dumb, and those who have lost a sense or a limb,"* are excluded from a share of the heritage.—A text of Kátyáyana has more particularly defined the impotent person.

2. "Born blind and deaf." That is by nature, not those who have become so, from some adventitious cause: the meaning therefore is, those who are blind and deaf from the period of their birth. Nárada says—"An enemy to his father, an outcaste and one who is addicted to vice [or has been expelled from society,] take no shares of the inheritance, even though they be legitimate: much less if they be sons by an appointed kinsmen."

3. "An enemy to his father:" One, who ill-treats his father during his life-time, or one, who is averse to performing his obsequies when dead.

4. "One who is addicted to vice:" One, who by reason of his crimes and vices, is excluded by his relations from drinking water in company with them.

5. Thus Yájñavalkya: "All those brothers who are addicted to vice, lose their title to the inheritance."

6. "Addicted to vice:" That is, adhering to a contrary or an improper course, such as drinking, gaming, &c.

7. So the text, "An outcaste, his offspring, an impotent person, one lame, insane, or an idiot, a blind man, one afflicted with an incurable disease, should be supported, since they are excluded from the inheritance."

8. "Lame:" That is, one who cannot walk with both his feet.

9. "An idiot:" One who is incapable of receiving [instruction in] the "Vedas."

10. So Nárada: "Those of the family, who are afflicted with a long and painful disease, idiots, those who are insane, blind, or lame, should be maintained; but their sons are partakers of the inheritance."

11. "Long:" That is, from the period of birth.

12. "Painful:" Such as the leprosy, &c.

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* Manu, 9, 201.

13. Their sons however if devoid of these faults, are partakers of shares.

14. The maintenance is directed for all, except the out-caste, for a text of Nárada declares, that "Food and raiment is ordained for all, excepting the out-caste."

15. By the term out-caste, his son must also be considered as understood, for he becomes so, in consequence of having been begotten by an out-caste.

16. Baudhayana has declared this explicitly, "Let the co-heirs support with food and apparel those who are incapable of business, as well as the blind, idiots, impotent persons, those afflicted with disease, and calamity, and others, who are incompetent to the performance of duties: excepting however the out-caste and his issue."

17. The incompetency of the wives of such persons to inherit has also been declared by the following text.*—"Their childless wives conducting themselves aright, must be supported, but such as are unchaste, should be expelled, and so indeed should those who are perverse."—Their daughters also should be maintained until provided with husbands."

CHAPTER IV.

ON DIVISIBLE AND INDIVISIBLE PROPERTY.

SECTION I.

On Property liable to Partition.

1. Kátyáyana has declared the property which is liable to partition: What belonged to the paternal grandfather, or to the father, and any thing else [appertaining to the co-heirs having been] acquired by themselves; must all be divided at a partition among heirs."

2. "And any thing else:" The particle "and" is here connected with "themselves;" Therefore from the use of this particle which occurs in the expression "and acquired by themselves," the acquisition of another is also to be understood: provided however such acquisition have been made through the joint-stock, or by [joint] personal labour.

3. Consequently the acquirer has two shares of wealth which has been acquired by the expenditure of the joint-stock, and the rest have only one share each. So Vyása says: "Whatever wealth a man gains with the aid of the patrimony, by valour and the like, the brothers are sharers therein. To him must be allotted two shares, and the remainder should be made equal sharers."

4. "To him:" That is, the acquirer, and this is reasonable; for the acquisition is made on the part of the acquirer both by the use of the common property, and by personal labour; but on the part of the rest, simply by means of the joint-stock.

5. In like manner, when an acquisition is made by two persons: by the personal labour of the one, and by means of the wealth, and of the personal labour of the other, then the acquirer by means of personal labour alone, has one share, and the acquirer by wealth and labour has two shares, by parity of reasoning.

6. Therefore these three descriptions of property, viz: ancestral property, wealth acquired by a father, and that which has been acquired by the expenditure of joint-stock, are partible among all; but wealth acquired by individuals through their own exertions, [such as partnership in trade, &c.] must be shared exclusively by the acquirers. This is settled.

7. Wealth however acquired by science, and such other means, without the use even of joint-funds, must be shared with parceners equally or more learned, not with less learned, or unlearned parceners. The text of Kátyáyana declares: "No part of the wealth which is gained by science, need be given by a learned man to his unlearned co-heirs; but such property must be yielded by him to those, who are equal or superior in learning."

8. The term "learning," above, refers alike to the words equal and superior, like the eye of the crow* [looking two ways.] Therefore the meaning is, "parceners, equally, or more learned."

9. But if during the period of acquisition of science by one brother, another brother should through his own personal exertions, and by means of his individual wealth, support the family of such brother, then, even though utterly ignorant, he is entitled to a share of the wealth which his [acquiring] brother had gained by means of science. Thus Nárada declares: He who supports the family of a brother employed in the acquisition of science, shall even though ignorant, receive a share from the wealth obtained by means of such science."

10. "Ignorant." That is, though a fool.

11. But all the parceners, whether learned or ignorant, are entitled to share in wealth which has been acquired by science, imparted to them by their own family, their father and the rest. Vṛhaspati says: "Whatever wealth has been earned through valour by brothers, who have derived science from their family, or even from their father, is partible *(a)*."

* The crow is supposed monoculous.

(*a*) See *Chalakoṇḍa Alasáni* v. *Chalakoṇḍa Ratnáchalam* 2 Mad. H. C. Rep. 56, where all the authorities on the subject were considered, and the High Court held that at all events the *ordinary* gains of science were divisible when such science had been imparted at the family expense and acquired while receiving a family maintenance, but that it was otherwise when the science had been imparted at the expense of persons not members of the learner's family.—E.

12. By the words " or even," the grandfather, the uncle and the rest are intended. " Earned through valour ;"—the gains of valour acquired by means of the expenditure of the joint-stock, for, it will be hereafter declared, that wealth acquired without the expenditure of the joint-stock is indivisible.

13. Kátyáyana has particularly described the gains of science, as follows: " What has been gained by the solution [of a difficulty] after a prize has been offered, must be considered as the gain of science, and is not included in partition, [among co-heirs.]—What has been obtained from a pupil, or by officiating as a priest, or for [answering] a question, determining a doubtful point, or through display of knowledge, or by [success in] disputation, or for superior [skill in] reading, the sages have declared to be the gains of science, and not subject to distribution. The same rule likewise prevails in the arts ; for the excess above the price ; [of the common goods,] and that which is gained through skill by winning from another a stake at play, must be considered as acquired by science, and not liable to partition. So Vṛhaspati has ordained."

14. " Gained by the solution of a difficulty :" As where one agrees with another, " If you resolve this well, then will I give you so much wealth." What is obtained after this stipulation in consequence of a good solution of the difficulty, is indivisible.

15. " Obtained from a pupil :" That is, from one to whom instruction has been afforded.

16. " Officiating as a priest :" That is, what has been received as a fee, for having performed for a person, the duties of family priest, (" Purohita.")

17. Also on the occasion of one having " propounded a question," relative to any particular science, what he bestows on a person, through satisfaction, at having received from him a complete answer.

18. " So likewise for determining a doubtful point :" That is, for a determination on a question, proposed with a view to the removal of a doubt, and in this form : " I will give this gold or other consideration to him, who dispels my doubts on this point of law ;"—What in fact is gained (after such a proposition being made,) for having dispelled the doubts of the proposer.

19. Or what is gained by a third person deciding justly between two disputant parties, who mutually appeal to him for his judgment, in the determination of a doubt in a matter of dispute.

20. " Or for the display of knowledge :" The meaning of which is, what has been received as a present or so forth, for having luminously exhibited one's own knowledge in the sacred ordinances, &c.

21. " So by [success in] disputation :" That is, what has been obtained by getting the better of another in an argumentative discussion.

22. So likewise, where any particular thing is to be given to one of several Brâhmans, who reads the "Vedas in a superior manner." So also, what is gained by painters, goldsmiths, [or other artificers,] by the exercise of an art or science.

23. Also what is "obtained by winning from another at play;"—All of these are gains of science and indivisible with the rest.*

24. Kâtyâyana has stated a special rule: "Wealth gained through science, which was acquired from a stranger, while receiving a foreign maintenance, is termed acquisition through learning."

25. Therefore, an acquisition made through science imparted by others, than a father or an uncle and the rest, [of the acquirer's own family,] and without the expenditure of the joint-stock, must be shared with parceners more or equally learned, but not with those who are less so, or who are wholly ignorant

SECTION 2.

On Property not liable to Partition.

1. On this subject Nârada says: "Excepting wealth gained by valour, property received with a wife, and the gains of science, these three are indivisible; as also a paternal gift made through affection."

2. The meaning of this text is, that since the gains of valour, what has been obtained from the parents in law, &c on account of having espoused a wife, the gains of science, and what has been received through affection from a father and others, are indivisible; therefore, setting these four aside, the rest [of wealth] is divisible. This is connected with the subject of partition of inheritance. Manu says: "Wealth acquired by learning, belongs exclusively to him who acquired it. So does any thing given by a friend, received on account of marriage, or presented as a mark of respect to a guest."†

3. "Given by a friend:" Obtained from a friend.

4. "Received on account of marriage:" That is, obtained from the parents in-law, by reason of having become their son-in-law.

5. "Presented as a mark of respect:" Obtained for officiating as a priest. Manu declares: "What a brother has acquired by labour and skill, without using the patrimony, he shall not give up without his assent, for it was gained by his own exertion."‡

6. So Yâjñavalkya: "Ancestral property, which had been before usurped by any one, and afterwards recovered by an heir, is not to be divided among the other heirs—nor are the gains of science."

* Vide (7 and 8) Supra.

† Manu, 9. 206. ‡ Manu, 9. 206,

7. "Ancestral property before usurped:" Supposing any one heir without the expenditure of the joint-funds, or unaided by the exertions of the other heirs, to recover such property, it is not divisible among them.

8. He has stated a special rule regarding land: "Land inherited in regular succession, but which had been uniformly lost, and which a single heir shall recover, solely by his own labour, the rest may divide, according to their due allotments, having first given him a fourth part."

9. Having given a fourth part of the land recovered, to him who recovered it, let all the rest divide the remaining three shares with him, according to the due proportions to which they are entitled, and take their respective allotments.

10. This is ascertained from these texts [above cited.]

11. What has been acquired by a separated or an unseparated parcener without the expenditure of the joint-property, and without the assistance of another, belongs exclusively to the acquirer, and is indivisible with the rest.

12. The distinction however to be observed in regard to the gains of science, has already been declared.*

13. Manu and Vishṇu have both declared other descriptions of property to be indivisible: "Clothes, vehicles, ornaments, prepared food, water, women, and furnitures for repose or for meals, are declared not liable to distribution."†

14. "Clothes:" Apparel for the body.

15. "Vehicles:" Such as carriages, horses, &c.

16. "Ornaments:" Rings, &c.

17. "Prepared food:" Sweatmeats, &c.

18. "Water:" In wells or tanks—The water contained in wells and tanks, which have all along belonged to the father and the rest, is not divisible like other property: but must be taken by each co-heir according to his exigency. A text declares: "The water of wells and tanks, must be drawn up and used by turns."

19. "Furniture for repose and meals:" Such as the couches and seats adapted to the use of each co-heir, and the vessels used by each for the purposes of eating and drinking.

20. Thus Vyásа: "A seat, a couch, a place of sacrifice, a field, a vehicle, dressed food, water and women, are not divisible among kinsmen."

* See (7 and 8) Sect. I. Supra.

† Manu, 9. 219.

21. " A place of sacrifice :" That is, where sacrifices are made, or the image of a god is placed ; but not wealth obtained by sacrificing, since that has already been included in the gains of science. Thus **Kátyáyana** : " The path for cows, the carriage-road, clothes, and anything which is worn on the body, should not be divided, nor what is requisite for use, nor intended for arts." So Vṛhaspati declares.

22. " What is requisite for use :" What is serviceable, such as books, for the use of the learned, should not be divided with fools.

23. Therefore books must not be taken by the ignorant parceners ; they belong to those of them, who are learned.

But the ignorant brother must receive from the learned parcener some other article, equivalent to the share of the books, to which he is [otherwise] entitled, or else the value itself thereof ; for if it be assumed that the ignorant parcener has no right whatever in the books, then, supposing books alone to constitute the common property, when a partition took place, the ignorant parcener would be entirely deprived of his share.

25. This is however inadmissible, since it would be at variance with the text, which declares : " They who are born, and they who are yet unbegotten, and they who are actually in the womb, all require the means of support : and the dissipation of their hereditary maintenance is censured."

26. Nor must it be supposed, that the application of this text is limited to other cases than the one in question ; for if a true conclusion is obtainable without [such] limitation, an erroneous one is arrived at by the supposition [of it.]

27. In like manner, whatever is adapted to the exercise of the arts, should belong to those of the heirs who are artists, and not to the unskilled. The rule above stated holds equally good in this instance.

28. Sankha and Likhita declare : " No division of a dwelling takes place ; nor of water-pots, ornaments, and things not of general use ; nor of women, clothes, and channels for draining water." **Prájápati** has so ordained.

29. An habitation, a garden, or the like, which has been constructed by one of the heirs, within the premises, belonging to the dwelling house, during the life-time of the father, is also indivisible : for it is fair to presume, that as the father did not prohibit, he permitted it.

30. This is likewise to be understood, supposing another of the heirs, to have constructed a similar habitation or the like, within the premises of another dwelling house [belonging to the father].

31. " Things not of general use :" Utensils for purposes of food ; culinary, &c.

32. " Women :" Other than female slaves.

CHAPTER V.

ON A SECOND PARTITION OF PROPERTY AFTER THE RE-UNION OF CO-PARCENERS.

1. Re-union is in the first place described for the purpose of explaining a partition made by re-united co-parceners.

2. On this subject Vṛhaspati says : " He who being once separated, dwells again, through affection, with his father, brother, or paternal uncle, is termed re-united."

3. Therefore where a person has been once disunited from his father and the rest ;—afterwards the former partition is annulled by mutual consent of the separated parties, and in consequence of an agreement being concluded to the following effect, " the wealth which is thine, is mine,"—" that which is mine is thine," they resolve on dwelling in the same abode.—This is considered re-union.

4. Here, since the father and the others are particularly specified, re-union takes place with those who are alone described, and not with nephews and the rest, who are not named ; otherwise, the specific mention of father and the others would be unmeaning. Such is the opinion according to the Dáya-Bhága.

5. The followers of the Maithila school are of opinion, that the use of the term father, and the rest, is figurative, and that re-union takes place, when those, whose right to a share of the common property is established by their birth, re-associate, after having once separated : consequently, that re-union can occur with nephews and the rest.

6. With regard then to a partition made by re-united parceners :—

7. In a second partition, made by re-united brothers, the eldest son has no right of primogeniture, but all the brethren of the same class must have equal shares. Vṛhaspati says : " Among brethren, who being once separated, again live together, through mutual affection, there is no right of primogeniture, when partition is again made."

8. Here among brothers or others, connected by parity of relationship, re-associated, and unassociated, the re-united parceners are first exclusively entitled to the wealth of the deceased re-united parcener. For a text which will be hereafter recited, declares, that " A re-united [brother] shall take the share of his re-united [co-heir]."

9. In default of such re-united parcener, the disjointed parceners as above, are entitled to the succession.

10. In like manner, supposing a father, who has made a partition among his sons, and taken for himself the share allowed him by a law, while unassociated with his sons, to beget another son, and afterwards to die, then this son born subsequent to the partition, is entitled to his father's share of the wealth : and not a son who was formerly separated.

11. In like manner the son, who is born after a partition, is not entitled to share in the partition of [the wealth of] the brothers, who were formerly separated [from the father.]

12. Thus Vṛhaspati says : " The younger brothers of those, who have made a partition with their father, whether children of the same mother, or of other wives, shall take their father's share. A son born before partition, has no claim on the paternal wealth ; nor one, begotten after it, on that of his brother. They have no claims on each other, except for acts of mourning and libations of water."

13. " The younger brothers :" That is, those born subsequent to a partition.

14. If a father should die after having re-united himself with any one of his sons whomsoever, then his wealth is equally shared by the re-united sons and those born subsequent to the partition, according to the text, [of Manu and Nárada] that " A son, born after a division, shall alone take the paternal wealth ; or he shall participate with such [of the brethren] as are re-united with the father."*

15. A special rule is however to be regarded : where an acquisition has been made by a re-united father, by means of his individual wealth, and through his own personal labour and exertions, such acquisition shall belong exclusively to the son born after a partition, and not to another son who was re-united.

16. Vṛhaspati says : " All the wealth which is acquired by the father himself, who has made a partition with his sons, goes to the son begotten by him after the partition. Those born before it, are declared to have no right."

17. Here by the use of the word " himself," the author shews the acquisition to have been made with individual wealth, and by means of personal exertion.

18. In like manner a debt incurred by a disunited father on his own account alone, shall be discharged by the son born after partition exclusively. " As in the wealth, so in the debts likewise, and in gifts, pledges, purchases," being the remainder of the text above quoted. (16)

19. Where, however, a debt has been incurred by a re-united father, for the sake of the community, it shall be discharged both by the re-united parceners, and the sons born subsequent to a partition.

20. One born after partition, is one who has been born of a conception which took place subsequent to partition, for without conception, there can be no act of procreation.

* Manu, 9. 216.

21. Hence, if a partition be made among sons, while the conception of the woman be yet unknown, then the property which had been divided must be re-collected and a second partition take place, at which the son born of such conception, will be entitled to his share with those brothers who had formerly separated; but the paternal wealth must not be shared with him.

22. What has been declared with regard to the right of a son born after partition to succeed to the wealth of his father, relates to a father's own acquisition, since it is impossible that any partition of the ancestral property should take place until the mother's and the step-mother's courses have ceased, and supposing even such a partition to have been made by mistake, it would have no effect, as being contrary to law.

23. All sons, whether born subsequent to partition or otherwise, are entitled to participation in such property; consequently if a father should accidentally have made a partition of ancestral property consisting of land, &c. and live separate after having taken the share, to which he is by law entitled, still the son born after partition, would be entitled to obtain from his brother and the rest, a share in the wealth derived from the grandfather, and the former partition having been illegally made, must be considered null and void.

24. The text of Vishnu on this point declares, that "Sons, with whom the father has made a partition should give a share to the son born after the distribution."

CHAPTER VI.

ON PARTITION MADE BY A FATHER OF ANCESTRAL, AND OF HIS OWN ACQUIRED PROPERTY.

1. A partition made by a father of his own acquired wealth, is regulated by his will alone; but in regard to a division of the ancestral property, the circumstance of the cessation of the mother's courses must be associated with the father's will. This is the difference.

2. Thus Vishnu declares: "When a father separates his sons from himself, his will regulates the division of his own acquired wealth."

3. But in regard to ancestral property, Gautama says: "After the [demise of the] father, let sons share his estate, or while he lives, if the mother be past child-bearing, and he desire partition."

4. It should not be argued that this text of Gautama is also applicable to a father's own acquired property; for if it be alleged that partition of the father's acquired wealth takes place indeed on the cessation of the mother's courses, it would follow that the text [of Gautama] which declares: "A son begotten after partition takes exclusively the wealth of his father," would be wholly irrelevant: since no son can be born on the extinction of the mother's courses,

5. It must not be asserted, that this last cited text of Gautama relates to ancestral property, and is consequently not irrelevant, for supposing such to be the case, a son born after partition, would be debarred from participation in the ancestral property, and consequently deprived of subsistence : which is forbidden by the text, declaring " They who are born, and they who are yet unbegotten, and they who are actually in the womb, all require the means of support and the dissipation of their hereditary maintenance is censured."

6. Nor should it be said that the son begotten after partition would not be deprived of subsistence, since he would be entitled after his father's death to that share of the ancestral property, which had been taken by him, for supposing the father to have dissipated the whole of such property, the son would inevitably be deprived of subsistence.

7. The fact then is, that this text of Vishṇu : " When a father separates his sons from himself, his will regulates the division of his own acquired wealth," is useful, as shewing, that the father's will is absolute in regard to the division of this wealth, and accordingly, that the text of Gautama which exhibits the concomitancy of the cessation of the mother's courses with the will of the father, is strictly applicable to ancestral property. This is correct.

8. Hence in a partition made by a father of his own acquired wealth, he may take as much of it as he pleases, and divide the remainder among his sons according to the text of Vishṇu already quoted, and the following text of Hárita : " A father, during his life, distributing his property, may retire to the forest, or enter into the order suitable to an aged man ; or he may remain at home having distributed small allotments, and keeping a greater portion. Should he become indigent, he may take back from them."

9. " The order suitable to an aged man: That is, retirement.

10. " Should he become indigent :" Meaning, should he have spent the whole of his wealth.

11. If a father should give to any one of his sons a greater share, by reason of his good qualities, or of his piety, or of his having a numerous family, or of his incapacity, such a distribution is authorized by law.

12. Nárada says : " For such as have been separated by their father with equal, greater or less allotments of wealth, that is a lawful distribution : for the father is lord of all."

13. " Lord :" That is, possessed of the power to alienate at pleasure : consequently, this text relates to property acquired by a [illegible] himself, by reason of the impossibility of the existence of such a [illegible] as above described, in regard to ancestral wealth.

A father must not however, while afflicted by sickness or disorder, or labouring under distraction of mind, or inflamed with anger, or influenced by partiality for the son of a favourite wife, distribute a less or greater share to one of his sons, without the existence of any of the causes abovementioned: for the text of Nárada declares, "A father who is afflicted with disease, or influenced by wrath, or whose mind is engrossed by a beloved object, or who acts otherwise than the law permits, has no power in the distribution of the estate.

15. "Engrossed by a beloved object:" Such as excessive partiality, for the son of a favourite wife.

16. But when a father makes a partition of the ancestral property, he may take two shares for himself, and allot to each of his sons a single share: for the text of Vṛhaspati which declares, "The father may himself take two shares at a partition made in his life-time," relates to ancestral wealth.

17. It must not be supposed that this text refers to the father's own wealth, since it would contradict the texts of Vishṇu and the rest, which declare, that what a father may in such case take, depends entirely upon his own will; and as he may take a greater or less share, at his pleasure, the restriction of two shares only, would be useless.

18. A father has not the power to make an unequal distribution of ancestral property, consisting either of land or a corrody, or slaves, even though any of the causes beforementioned namely, the superior qualifications of one particular son, &c. should exist, and the text of Yájñavalkya, which declares: "The ownership of father and son is the same in land, which was acquired by his father, or in a corrody, or in chattels," is intended to restrain the exercise of the father's will; for (although contrary to the received opinion) [of equal ownership between father and son] it is impossible that, as long as the father, the owner of the ancestral property, continues to survive, his sons should have ownership therein.

19. But the father possesses a power in regard to ancestral property, other than land (and the descriptions abovementioned,) such as pearls, gems, similar to that which he has in the disposal of his own acquired wealth. Yájñavalkya declares: "The father is master of the gems, pearls and corals, and of all [other moveable property:] but neither the father, nor the grandfather, is so, of the whole immoveable estate."

20. Here, by the specification in the first instance, of *gems, pearls and corals,* and afterwards by the use of the word *all,* gold and other effects, exclusive of the three descriptions of property, consisting of land, &c. are intended. The word *whole,* again, which occurs in the second portion of the above text, is made use of for the purpose of showing, that a prohibition does not exist against a gift of immoveable property, not incompatible with the due support of the family. Thus it is stated in the Dáya-Bhága.

21. In like manner, a father may at his pleasure, allot to his son, the deduction of a twentieth from his own acquired wealth, or the ancestral property. Yájñavalkya says: "If a father make a partition, let him separate his sons at pleasure, and either dismiss the eldest with the best share, or if he choose, all may be equal sharers."—Here the first half of this text relates to a father's own acquired wealth, and the last refers to ancestral property. This is the opinion stated in the

22. When a father makes a partition of his own acquired property, he should give a share equal to the share of a son to such of his wives, as are destitute of male issue. A text of Vyása declares: "Even childless wives of the father, are pronounced equal sharers."

23. The expression "of the father" in the sixth case serves to denote, that this distribution is made by him: for it will be hereafter stated, that step-mothers are not entitled to shares, at a partition made by sons.

24. This donation of equal shares occurs, where no peculiar property has been bestowed on a wife, by her husband and the rest. So Yájñavalkya says: "If he make the allotments equal, his wives, to whom no separate property has been given by their husbands or their father-in-law, must be rendered partakers of like portions."

25. Where peculiar property has been bestowed on some of the wives, the other wives destitute of male issue, must be rendered by the father partakers of wealth, to the same amount.

26. But where such peculiar property has not been given, then they must be rendered equal sharers with the sons. This is the law in the case, where the sons are made equal sharers.

27. According to the opinion of the Miçras, where a father has allotted lesser shares to his sons, and reserved the greater portion for himself, equal shares must be made up to his wives from his own portion.

28. In the case however of peculiar property having been given, [to all the wives,] then they will only receive half a share by the rule of analogy, observed in the case of a superseded wife, who has received peculiar property, and who is entitled to receive only half the gratuity [otherwise] given to a wife on her supersession.

29. So the text of Yájñavalkya: "To a woman, whose husband marries a second wife, let him give an equal sum, as a compensation for the supersession, provided no separate property have been bestowed on her: but if any have been assigned, let him allot half.

30. The wealth which is bestowed on a first wife, by a man desirous of marrying a second, is termed a gift of supersession, for the object of it is to contract a second marriage.

31. As much as has been given to a second wife, so much should be bestowed on the first wife. This is the meaning, and conformable to the opinion of the Dáya-Bhága. The Miçras however assert, that when peculiar property has been bestowed, then there is no gift of a half share, since it is unathorized by any text.

32. The son of a Çúdra, by a female slave, may at the will of his father, be rendered an equal sharer with the son, born of his wedded wife. On the decease of his father, he is entitled to half a share;—in default of such a brother, and of a daughter's son, he is entitled to the whole of his father's wealth: but if there be a daughter's son, he must be an equal sharer with him.

33. Thus Yájñavalkya declares: "Even a son begotten by a Çúdra on a female slave, may take a share by the father's choice: but if the father be dead, the brethren should make him partake of the moiety of a share: and one who has no brothers, may inherit the whole property in default of daughter's sons."

34. "By the father's choice:" That is, at his pleasure.

35. "In default of daughter's sons:" But if there be a daughter's son, then the son of the Çúdrá will be entitled to participate equally with him. The participation is in this case equal, according to the rule by which it is thus settled, when no specification exists to the contrary. It is so stated in the Dáya-Bhága.

CHAPTER VII.

PARTITION BY BROTHERS, AFTER THE FATHER'S DECEASE

1. Partition by brothers is not lawful during the life-time of the mother, notwithstanding ownership of wealth is vested in them on the decease of the father. The text of Manu, "After the [death of the] father and the mother, the brethren, being assembled, must divide equally the paternal estate: for they have not power over it, while their parents live,"* indicates, that partition should take place after the death of the mother.

2. If however a partition be made during the life-time of the mother, then she must be made an equal sharer with her own sons, according to the text [of Vṛhaspati] which declares, that the mother should on the decease of her husband be made an equal sharer with her sons."

3. Here since the term mother relates to the natural parent, the step-mother does not participate, but she must be maintained with food and raiment.

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* Manu 9. 104.

4. In like manner, in a partition about to be made of the grandfather's wealth by grandsons, the grandmother must be made an equal sharer. By the expression "similar to mothers," in the text, "All grandmothers are pronounced similar to mothers," it is shewn, that as the mother is entitled to an equal share in a partition of her husband's wealth, made by her own sons, so in a partition about to be made of the grandfather's wealth by grandsons, the grandmother has an equal share with them.

5. In this instance likewise the contemporary wives of the grandmother are not entitled to participate; they need only be maintained.

6. For the reason above stated, (§ 3) the term grandmother refers exclusively to the natural parent of the father. This is the received opinion: although in fact, considering the use of the words "all" and "grandmothers," (in the plural number) in the text above quoted, it is reasonable, that the contemporary wives of the grandmother should be allowed to participate.

7. But the followers of the Maithila school assert, that the word *mother* in this text of Vṛhaspati: "The mother should on the decease of the husband, be made an equal sharer with her sons," (§ 2) intends also the step-mother, in support of which opinion, they adduce the following text of that author of the same import: In his default, the mother is an equal sharer with her sons; mothers are equal sharers with them, and daughters are entitled to a fourth part."

8. "In his default:" In default of the father, when a partition is about to be made by grandsons.—"The mother:" she who has male offspring.—"Mothers:" Step-mothers, destitute of male offspring; all these are sharers in equal proportions with their sons.

9. The sisters also of these sharers must be rendered participators to the amount of a fourth share receivable by their brothers respectively, for the purpose of marriage.

10. The followers, however, of the Maithila school assert, that the sisters should be made partakers inasmuch as will suffice for the object of their marriage, and according to their opinion also, the contemporary wives of the grandmother are entitled to participate in the wealth of their husband. This should be understood.

11. A partition made by brothers of the same class, is of two descriptions; either with specific deductions, or equal. A text [of Vṛhaspati] declares: "Partition of two sorts is ordained for co-heirs: one in the order of seniority, the other by allotment of equal shares.

12. "Order of seniority:" indicates partition by the mode of deduction;—It must not however be supposed that because the mode by equal division is more generally practised, and the form by deduction seldom observed, that the former is the only mode sanctioned by law, and the latter unauthorized: for a partition by the mode of deduction may take place at the will of [younger] brothers by reason of greater veneration [for their elder brother.]

13. But the mode by equal division is the only one adopted in the present age, because younger brothers are now-a-days seldom met with, who entertain this great veneration, and elder brothers deserving of it are [equally] rare.

14. "Seniority:" That is, priority of birth among brothers, all born of mothers or step-mothers alike by class. A text of Manu declares: "As between sons, born of wives equal in their class [and] without [any other] distinction, there can be no seniority in right of the mother; but the seniority ordained by law is according to birth."*

15. "Women equal in their class:" That is, of the same class.

16. An appointed daughter and a legitimate son are entitled to equal participation. The appointed daughter is not entitled to the share of an elder brother by reason of priority of birth, for a text of Manu declares: "But a daughter having been appointed to produce a son for her father, and a son [begotten by himself] being afterwards born, the division of the heritage must in that case be equal: since there is no right of primogeniture for a woman."†

17. The deduction of a twentieth takes place only in the case of partition among brothers not uterine, but in a partition made among brothers of the whole blood alone, the eldest is entitled to two shares. Thus Vṛhaspati declares: "All sons of regenerate men, born of women alike by class, should share alike, after giving a deduction to the eldest."

18. "Women alike by class." Meaning, where there are several of them.—Since the mention of a deduction occurs in this text with respect to "sons born of [different] women alike by class," therefore, what has been declared regarding the eldest taking two shares, by that part of the text of Manu,‡ which says: "Let the eldest take a double share," and also by the text of Gautama: "Let the first born have a double share," must be understood to apply to the case of a partition made among uterine brothers alone, according to the principle which admits of a special provision, limiting the operation of a general rule.

19. Further, since the above cited text [of Vṛhaspati] specifies "women alike by class," Bráhmaṇa and other sons born of women of different tribes are entitled in their due order, to four, three, two and one share. Thus Manu declares: "Let the son of the Bráhmaṇí take four parts; the son of the Kshátriyá three; let the son of the Vaiçyá have two parts; let the son of the Çúdrá take a single part [if he be virtuous.]§

20. A Çúdrá is entitled to one share, because he is bound to perform certain religious initiatory ceremonies, after the birth of his son.

* Manu 9. 125.

† Manu 9. 134.

‡ Manu 9. 117.

§ Manu 9. 153.

21. The term "regenerate," in the above quoted text of Vṛhaspati, (§ 17) is merely illustrative; consequently the deduction of a twentieth, and the other [namely the double share] take place even in favour [of the eldest son] of a Çúdrá, who is equally entitled to a larger share, since he, without distinction, confers benefits by delivering his father from the hell, named Put.

22. Therefore the text of Manu, which declares: "For a Çúdra is ordained a wife of his own class and no other: all produced by her shall have equal shares, though she have a hundred sons," should be considered as prohibiting the marriage of a Çúdra with a woman of a different class, and declared for the purpose of forbidding an unequal distinction by reason of difference of class;—not as prohibiting the deduction of a twentieth, &c. This is considered to be right.

23. In a partition made between legitimate and adopted sons, the legitimate son has two shares, and the adopted sons, who are of the same class with the father, take one share; but adopted sons belonging to an inferior class, are not entitled to any share.—They need only be supported with food and raiment.

24. Nárada declares: "All these sons are pronounced heirs of a man, who has no legitimate issue by himself begotten, but should a true legitimate son be afterwards born, they have no right of primogeniture. Such among them as are of equal class, [with the father,] shall have a third part as their allotment; but those of a lower tribe must live dependent on him, supplied with food and raiment.

25. "Heirs:" That is, partakers of the father's whole estate.—"Such among them:" Meaning, such sons as are of equal class [with the father.]

26. A partition should be made by sons of the wealth of their deceased father, which remains after discharging his debts; or with the consent of the creditors, the partition may take place first, and the debts be afterwards discharged.

27. Nárada declares: "What remains of the paternal inheritance over and above the father's obligations, and after payment of his debts, may be divided by the brethren; so that their father continue not a debtor."

28. Here from the expression, "So that the father remain not a debtor," it appears, that the debts may be cleared off subsequent to the partition: otherwise, it would be unmeaning.

29. In like manner, whatever excess has been expended by one brother, in consequence of his having a large family, should not be taken into account at the time of the partition. But a partition should be made of the wealth, which is actually forthcoming.

30. The text of Nárada declares: "Among unseparated kinsmen, let not one restore what has been expended. A partition should take place of the visible wealth, corrected for income and expenditure."

31. From the use of the particle ["va,"] in this text, the meaning of the word strictly is intended to be conveyed. Consequently, having compared the amount of the wealth, which had accumulated at a time when no partition had taken place, with the amount expended, a division should be made of the balance actually remaining.

32. Vyása has declared, that the initiatory ceremonies of uninitiated brothers and sisters, should be performed from the paternal wealth: "Uninitiated brothers should be initiated from the father's wealth by those elder brothers, for whom the ceremonies have been already performed," and the sisters should also be disposed of in marriage; if there be no wealth of the father, they must be initiated at the expence of their brothers. A text of Nárada recites: "If no wealth of the father exist, the ceremonies must without fail be defrayed by brothers already initiated, contributing funds out of their own portions."

CHAPTER VIII.

ON THE DISTRIBUTION OF EFFECTS CONCEALED.

1. The partition of effects concealed by some one parcener at the time of partition, and subsequently discovered, is next declared.

2. On this subject the following text of Manu occurs: "When all the debts and wealth have been justly distributed according to law, any thing which may be afterwards discovered, shall be subject to an equal distribution."—The distribution of such concealed effect with the concealer, should be exactly conformable to that, which had been before made. A less share is not to be given to him by reason of his concealment, nor is he on that account to be altogether excluded from participation: This is the meaning of, "shall be subject to an equal distribution." It is not intended by the text, that all shall share equally in the concealed effect, as there exists not any reason for the prohibition of the deduction of a twentieth, and it would moreover follow, that the Bráhmaṇa and Kshátriya sons would participate equally. Thus Kátyáyana declares: "Effects which are withheld by by them from each other, and property which has been ill distributed, being subsequently discovered, let them divide in equal shares." So Bhṛgu has ordained.

3. "Subsequently discovered:" By this it is shown, that partition is to take place of the concealed effects alone, and not that a second partition is to be made, of what has already been once divided.

5. Property which has been ill distributed :" Intending that property, of which a distribution has been made contrary to law,—through error and the like, must be again divided according to law, for that part of the text of Manu,* which declares : " Once is the partition of inheritance made," is intended to forbid a second partition after the first has been legally made. It is therefore determined, that the division of concealed property must be made with the person, who concealed it, as has already been declared.

CHAPTER IX.

ON THE ALLOTMENT OF A SHARE TO A CO-PARCENER RETURNING FROM ABROAD.

1. Vṛhaspati declares : " Whether partition have or have nôt been made, whenever an heir appears, he shall receive a share of whatever common property there is."

2. " An heir :" An inheritor.

3. " Common property :" Common to all.

4. Further. " Be it debt, or a writing, or house or field, which descended from his paternal ancestor, he shall take his due share of it, when he comes, even though he have been long absent."

5. By this it is not meant, that he alone shall take his due share of it, but that his descendants, (who are Sapiṇḍas) down to the seventh degree, shall also take their shares,—as the same author has declared : " If a man leave the common family and reside in another country, his share must no doubt be given to his male descendants, when they return. Be the descendant, third, fifth or even seventh in degree, he shall receive his hereditary allotment on proof of his birth and name. To the lineal descendants, when they appear of that man, whom the neighbours and old inhabitants know by tradition to be the proprietor, the land must be surrended by his kinsmen."

6. " Old inhabitants :" Meaning cognates.

7. " Neighbours :" Those residing in the vicinity.

8. " Land :" This expression is merely used figuratively for any description of common property.

9. Therefore, it is a settled point, that one who travelled in a foreign country, at a period when no partition had taken place, and returned after a long lapse of time, as well as his descendants, as far as the seventh in degree, after they shall have made themselves recognized by the elder inhabitants and neighbours, shall obtain a lawful share of the heritable wealth.

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* Manu, 9.

10. This is the law relative to the allotment of a share to a parcener, who had journeyed into a strange land.

11. But descendants only, as far as the fourth degree of one, who had remained all along in his own country, are entitled to share his wealth, for it has been formerly declared, that the fifth in descent and the rest confer no benefits on a deceased owner, since they are not competent to present funeral oblations to him at solemn obsequies.

CHAPTER X.

ON PARTITION BETWEEN SONS BORN OF THE SAME MOTHER, BUT OF DIFFERENT FATHERS.

1. Vishṇu says: "If there are two sons begotten by two fathers, but born of the same mother, let each of them take that which was the father's property and not the other." Let the son take the wealth of him, from whose soever seed he is produced, and not the other, that is, the son born from another's seed should not take it. Such is the meaning.

2. The law regarding equal participation, &c., does not therefore apply to this case.

3. In like manner, in a partition by sons of this description, let each son take, (exclusively of the other;) of the wealth of their mother, what was given to her, by their fathers respectively, according to the text, of Nárada which declares: "If two sons begotten by different fathers contend for the wealth of the woman, let each of them take that which was his father's property and not the other."

4. In the case however of an acquisition made exclusively by the mother, the participation is equal.

CHAPTER XI.

ON THE POWER OF ONE PARCENER TO MAKE A DONATION OR OTHER ALIENATION OF JOINT PROPERTY.

1. Some maintain, that a gift cannot be made by one [parcener] of joint property, a prohibition against such transfer being contained in this text: [of Vṛhaspati] "The prohibition of giving away, is declared to be eight-fold: A man shall not give joint property, nor his son, nor his wife, nor a pledge, nor all his wealth, nor a deposit, nor a thing borrowed for use, nor what he has promised to another;" and they have further deduced the want of the right of one parcener to make a gift of the whole immoveable estate, or of what is common to the family, from the two following texts of Vyása: "a single parcener may not without the

consent of the rest make a sale or gift of the whole immoveable estate, nor of what is common to the family."—"Separated kinsmen, as those who are unseparated, are equal in respect of immoveables; for one has not the power over the whole, to give, mortgage or sell it."

2. The opinion held by those, who maintain the invalidity of a gift or sale, [of joint property,] at the will of one parcener, is grounded on the doctrine, that co-parceners possess a general property in the estate:—in fact, that all of them have a right to the whole estate. This opinion is incorrect; for it has been rejected by the author of the Dáya-Bhága, as unsupported, by authority.

3. Accordingly, the author of the Dáya-Bhága, having cited the texts of Vyása, for the purpose of refutation, and taken up the argument maintained from those texts by those of the opposite opinion, namely, the want of authority of any single parcener to make a gift, says: "For here also as in the case of other goods, there equally exists a property consisting in the power of disposal at pleasure," and adds "But the texts of Vyása exhibiting a prohibition are intended to show a moral offence: since the family is distressed by a sale, gift or other transfer, which argues a disposition in the person to make an ill use of his power as owner. They are not meant to invalidate the sale or other transfer." This is determined.

4. "As in the case of other goods:" Meaning goods, which are not common.

5. "Here also:" "In the very instance of land held in common."

6. "Equally exists:" Intending that there is no distinction of ownership.

7. Since therefore there is no general property of parceners in the whole estate, it is fallacious to suppose, that a plurality of owners constitutes community, and community must therefore be considered as meaning the state of not being separated. For as propriety exists in the common property, even before partition, there is nothing to prevent the gift or other alienation by a parcener of his own share, even at that time. This is the opinion entertained by the author of the Dáya-Bhága, who maintains a partial right to a certain portion [of the estate ascertainable by partition] vested in each individual owner. Accordingly Nárada says: "When there are many persons sprung from one man, who have duties apart and are separate in business, and character, if they be not accordant in affairs, should they give or sell their own shares, they do all that as they please, for they are masters of their own wealth," and thereby, shows that in transactions about to be concluded by one parcener, he has the power to give or otherwise dispose of his own share, without the consent of the rest.

8. It should not be said, that this text refers to a state of separation, for since the want of ownership [by one parcener in the portion allotted to another] is in that case clearly determined, the consent of

either to the transactions of the other, is totally out of the question. Such being the case, the text [of Vṛhaspati above cited] which enumerates common property as not being a subject of donation, must be considered merely in the light of a prohibition, and not as meant to invalidate the transfer.—It is thus stated in the Smṛti Ságara and other books.

9. Therefore, a gift by a parcener of his own share of the common property is valid, whether such gift have been made antecedent, or subsequent to partition.

CHAPTER XII.

ON SLAVERY.

SECTION 1.

Descriptions of Slaves.

1. The debt incurred by a slave for the support of the family of his master, while in a foreign country, or elsewhere, must be entirely discharged by the master. Manu says: "Whatever contract a dependent may conclude for the benefit of the family, let not his master, whether in his own or in a foreign country rescind."*

2. "A dependent:" A slave.

3. "Contract debt, &c." Slaves are of fifteen descriptions and are thus described by Nárada: "One born [of a female slave] in the house of her master; one bought; one received [by donation;] one inherited [from ancestors;] one maintained in a famine; one pledged by a former master; one relieved from a great debt; one made captive in war; a slave won in a stake; one who has offered himself in this form, "I am thine;" an apostate from religious mendicity; a slave for a stipulated time; one maintained in consideration of service; a slave for the sake of this bride; and one self-sold, are fifteen slaves declared by the law."

4. "Born in the house:" Born of a female slave in the house [of her master.]

5. "Inherited:" Succeeded to from ancestors.

6. "Maintained in a famine:" By reason of a dearth.

7. "Pledged by a former master:" Granted as a pledge in consideration of a loan.

8. "One relieved:" One who has consented to become a slave, in consequence of being relieved from a great debt. Such is the meaning.

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* Manu, 8. 167.

9. "I am thine:" One who not being the slave of any one, surrenders himself in this form to slavery.

10. "An apostate from religious mendicity:" Abandoning the order of Sannyásí.

11. "Stipulated:" One who influenced by some motive or other, contracts an engagement in this form, I am thine for a certain period.

12. "Maintained:" One who has consented to become a slave even in a time of plenty, for the sake of obtaining a maintenance.

13. "A slave for the sake of his bride:" One who has consented to slavery under the influence of desire. Vṛhaspati says: "But the man who co-habits with the female slave of another should be considered as a slave for the sake of his bride; he must perform work for her master like other slaves, or like servants for pay."

14. "Her master:" The master of the female slave.

Nárada declares, as follows, respecting the apostate: from religious mendicity [illegible] is an apostate from religious men- [illegible] king, giving a pair of cows, and he [illegible] to be [illegible]ncipated [illegible]"

16. Those only of the Kshatriya and Vaiçya [illegible] tatize, become slaves to the king; but Bráhmaṇas of this description, should suffer banishment, in lieu of slavery. Thus Kátyáyana says: "Where men of the three twice-born classes forsake religious mendicity, let the king banish a man of the sacerdotal class, and reduce to slavery a man of the military or commercial tribe."

17. The expression "military or commercial" [Kshatra and Viç] [illegible] form of a conjunctive compound, and if considered in [illegible]

SECTION 2.

Emancipation from Slavery.

the slaves [illegible]

are not of right released from slavery, [illegible] be emancipated the indulgence of their masters.

2. "A slave maintained in a famine," becomes emancipated on repaying what he consumed during the dearth, and on giving a pair of oxen.

3. "A slave maintained only," is enfranchised by relinquishing [illegible]

for the sake of his bride," is emancipated by quit-

5. "A slave pledged," is redeemed from his slavery to the creditor, on [illegible] payment of the debt incurred by his [former] master.

6. Should any one of these slaves rescue his master from danger menacing his life, or from impending peril, he is entitled to emancipation.

7. Kátyáyana declares: "A free woman, or one who is not a slave of the same master, becoming the bride of a slave, also becomes a slave to her husband's owner, for her husband is her lord, and that lord is subject to a master."

8. Here by reason of the connection implied by the term slave, the woman is understood to become the female slave of the master, suggested by that term.

9. The female slave is of two descriptions: first, not mancipated to any one; and secondly, the slave of another.

10. The woman of the first description becomes simply by her marriage with a slave, the female slave of the master of her husband.

11. The female of the second description becomes a slave with her husband's permission, but not otherwse.

12. In like manner by parity of reasoning, if a man, not the slave of any one, marry a female slave, then he becomes a slave to the master of his wife.

13. But should a man, the slave of another, marry with the consent of his master, he becomes the slave of the master of the female slave.

14. In like manner, if a female slave unite herself in marriage with a slave, without her master's permission, then each remains the property of their masters respectively, but their offspring should be shared by both owners.

15. It must not be supposed from the following texts of Manu, "Whatever man, owns a field, if seed, conveyed into it by water or wind, should germinate, the plant belongs to the land owner; the mere sower takes not the fruit.—Such is the law concerning the offspring of cows, and mares, of female camels, goats, and sheep, of slave girls, hens, and milch buffaloes,"* that such offspring belongs exclusively to the owner of the female slave; for the female slave therein mentioned, refers to one, who has been once married, [and afterwards contracted another marriage with the slave of a different owner.]—But the offspring as above described of a female slave [regularly] married, must be shared.

16. Thus is concluded the Compendium of the Law of Inheritance, by Çrí Kṛshṇa Tarkálankára

* Manu, 9. 54 and 55.

THE

DATTAKA-MÍMÁNSÁ,

AND

DATTAKA-CHANDRIKÁ,

TWO ORIGINAL TREATISES

ON THE

HINDÚ LAW OF ADOPTION.

TRANSLATED FROM THE SANSCRIT,

BY J. C. C. SUTHERLAND, ESQ.

WITH

NOTES ILLUSTRATIVE AND EXPLANATORY,

AND

A BRIEF SYNOPSIS OF THE LAW,

BY THE TRANSLATOR.

CALCUTTA.

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PREFACE.

THE religious ordinances of the Hindús inculcate the indispensable necessity that a man should be survived by male offspring for performing his exequial rites and other purposes. In consequence, on defect of real legitimate issue, the affiliation, under prescribed rules, of a kinsman or other person is enjoined: and an individual, thus regularly adopted, acquires the filial rights which attach to the real son. This law, peculiar perhaps to the Hindú Code, must often operate harshly towards relatives connected by the nearest ties of kindred: and it is not surprising, that cases of great importance, involving questions as to the legality of an adoption, should, (and they frequently do,) arise.

The admirable translations by Mr. Colebrooke, of the treatise of Jímúta-váhana, and that in the Mitákshará, on the law of inheritance, have laid open to all, that important branch of Indian jurisprudence. But, though the judicious notes, subjoined to that part of the latter treatise, which refers to the succession of adopted sons, afford valuable information on many questions of consequence, relative to adoption; still, the want of an English version of some work of authority, professedly treating, on the subject, and which might exhibit the law of adoption fully and connectedly, has been sensibly felt. It was with a view to supply this deficiency, that the present publication was undertaken under the authoritative sanction of Mr. Colebrooke's advice.

The Dattaka-Mímánsá is the most celebrated work extant on the Hindú law of adoption. Its author, Nanda Paṇḍita, has attained considerable literary pre-eminence—an "excellent and copious"* commentary by him, on the institutes of Vishṇu, denominated the Vaijayanti, exists in much esteem, and he likewise was the author of a commentary on the Mitákshará, under the title of Pratitákshara. The Dattaka-Mímánsá, as its name denotes, is an argumentative treatise, or disquisition, on the subject of adoption; and though, from the author's extravagant affectation of logic, the work is always tedious, and his arguments often weak and superfluous—and though, the style is frequently obscure, and not unrarely inaccurate,—it is on the whole, compiled with ability and minute attention to the subject, and seems not unworthy of the celebrity which it has attained. But whether justly or unjustly, the estimation in which it is held, peculiarly suggests its selection for the purposes of the present publication.

The Dattaka-Chandriká is a more concise treatise, on the same subject, by Devaṇḍa-bhaṭṭa, the author of an eminent compilation of law entitled the Smṛti-Chandriká. It is a work of authority, and supposed to have been the ground-work of Nanda Paṇḍita's

* Mr. Colebrooke in his Preface to the Dáya-bhága, &c.

tion. The doctrines of the two books, vary on some points, and as the work is short, it was deemed advisable to include it in the present publication.

Having said thus much, in explanation of the selection made, the Translator would willingly annex some account of the authors, whose tracts are now presented in an English dress. With very limited opportunity, however, he has failed in ascertaining any particulars, relative to them, further than that they are both writers of Southern India. Of the Smṛti-Chandrikā of Devaṇḍa-bhaṭṭa, Mr. Colebrooke observes,—"This excellent treatise of judicature, is of great and almost paramount authority, as I am informed, in the countries occupied by the Hindú nations of Dravira, Tailinga and Karnáta; inhabiting the greatest part of the peninsula or Dekhan."—It is not unlikely, that the Dattaka-Chandrikā may have attained equal distinction.

The method in which Hindú lawyers, (and indeed Hindú writers in general,) treat every subject, is highly uncongenial to European taste: and in fact, in order to acquire or retain a correct knowledge of the subject, treated on, and the author's peculiar opinions, indistinctly blended, as they often are, with those of others, it is necessary to devote much attentive application,—generally more, than inclination and leisure will admit of being bestowed, by the officers entrusted with the administration of civil justice in India.—The Translator in consequence, in the hope of augmenting the general utility of the work, has compiled, and added a brief Synopsis or summary of the Hindú law of adoption; in which, it has been attempted to exhibit succinctly, every topic practically important. This compilation, of course, possesses no intrinsic authority whatsoever. Of the positions, it contains, many are dubious, and some may prove erroneous. Still however, it is hoped that, it will be found useful, in directing the attention of judicial officers to the various questions, which may arise in case of adoption—questions, which in many instances, would not occur to those, who have not made this branch of law, the object of particular study, and which, the native officers, on whom the duty of exposition devolves, might ignorantly or wilfully leave unnoticed, or erroneously solved.

In regard to the law of inheritance, important distinctions obtain, in the doctrines of the Gaura or Bengal, and other schools of law—and this difference has given rise to controversial writing, and various tracts, professedly treating on that branch of judicature, as received in the different schools respectively.—But the case is not the same, in regard to the law of adoption. Some difference of opinion, may be indeed observed amongst the individual writers on the subject, but it does not appear, that any set of dogmas, has been espoused, or opposed, as the peculiar doctrine of any particular school.—The points, on which any difference of opinion obtains, are noted in the Synopsis; and the translator has in some instances intimated, what appears to him, the more correct and prevailing doctrine. But compiled, as this work has been, under circumstances, affording little facility for enquiry or collecting information, he has not, from an apprehension of misleading, attempted to debar, or restrict the operation of any particular rule, to the limits

of any peculiar tract of country. In fact, such precision is scarcely to be attained. Every contested question or dubious point, which may arise, can only be determined, by reference to the Hindú law-officers; who, in delivering their opinions, would be guided by the law, as generally received in the part of India, where the case might arise. Much collision, however, of decision, would be obviated, and the accuracy of undeviating principles attained, if the opinions, of the subordinate Paṇḍits, on any question or point of the nature referred to, were submitted for verification, to the Paṇḍit of the Ṣadr Díwáni 'Adálat.

The translation, particularly of the more abstruse treatise of Nanda Paṇḍita, in many places, unvoidably partakes of the obscurity of the original: to render it more intelligible, notes have been occasionally introduced: other notes have likewise been added, in illustration of particular allusions and rites, and rarely to exhibit variations in the reading of the text. It is hoped, that these notes, (they may always be passed by others,) will not prove unacceptable to the curious, and still less to the Sanscrit reader, whose study of the original treatises, particularly in the absence of all commentary, it is presumed, the volume now published, is calculated to facilitate. The addition of the Synopsis has superseded the necessity, which otherwise would have existed, of indicating in notes, on what points the respective treatises may differ, and in what respects they may be supported and contradicted by other authorities.

Five years have nearly elapsed, from the commencement of the translation of the treatises now presented to the public. Its progress has always been retarded, and often totally suspended by official avocations and other causes. This circumstance, no doubt, has been productive of some inaccuracies and omissions, which a continuous application to the work would have obviated. Much labour, however, has been bestowed to render the translation correct, and it is hoped, that on the whole, it will be found a faithful version. The Translator is conscious, that from a publication, such as that now offered, no literary reputation can be derived, but he indulges in the hope, that the humble merit of having devoted to an useful purpose, some hours of occasional leisure, will not be denied; and ample indeed, will he regard the remuneration of his labour, if this meed be bestowed, or should the present work be found in any degree, to facilitate the dispensation of civil justice in India.

MONGEER,
1*st July*, 1819.*

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* The manuscript of this work, was sent down from Mongeer, to a friend in Calcutta, who kindly undertook to superintend its progress, through the press, in which duty he had much experience: to his death, and the change which the pursuits and profession of the Translator have undergone, is to be ascribed the great delay with which the publication has taken place.

DATTAKA-MÍMÁNSÁ.

A TREATISE ON ADOPTION,

BY NANDA PAṆḌITA.

SECTION I.

Adoption why, and by whom to be observed—By a Woman when valid—By what precept ordained—What descriptions of Sons to be Adopted in the present age.

Subject pro-tioned.

1. HAVING prostrated himself before Vinâyaka,* whose two feet are to be adored by the world, Nanda Pandita argumentatively discusses the subject of affiliation.

Topics men-tioned.

2. By whom; how qualified; at what time; for what purpose; from whom; and who may be adopted as a son? That, on which former writers have not deliberatively treated, is fully propounded here.

Atri quoted to shew that the sonless man only is enjoined to adopt—and why.

3. On this subject Atri says, "By a man destitute of a son only, must a substitute for the same, always be adopted: with some one resource, (yasmât tasmât prayatnatas) for the sake of the funeral cake, water, and solemn rites."

ANNOTATIONS.

3. By a man, &c.] This text is here translated so as to conform with the interpretations subsequently given by the author, this will account for the deviation in some parts from the more obvious sense of the passage.

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* Geneça.

4. A man destitute of a son (aputra,) is one, to whom no son, has been born, or whose son has died: for a text of Çankha expresses. "One to whom no son has been born or whose son has died, having fasted for a son, &c.:" Another reading recites, "The impotent man or also one whose offspring has died."

Term "Aputra" of Atri explained.

Çankha.

5. "By a man destitute of a son, &c." Since it is shewn by this, that the being so destitute, is a cause; in omitting to adopt a son, an offence even is incurred; for the precept enjoining the production of a son being positive, it results that the contravention of it, is the cause of an offence; and on defect of any son in general, exclusion from heaven is declared in this text; "Heaven awaits not one destitute of a son, &c."* And further in the following passage, also, a son in general, is shewn to be the cause of redemption from debt. "A Bráhmaṇa immediately on being born, is produced a debtor in three obligations: to the holy saints, for the practice of religious duties: to the gods, for the performance of sacrifice: to his forefathers, for offspring. Or he is absolved from debt, who has a son: has performed sacrifices: and practises religious duties."

Omission of the sonless man, to adopt argued to be an offence and authorities in support cited.

The expression 'only' in the text of Atri meant to exclude adoption by one having a son.

6. "By a man destitute of a son only."] The incompetency of one having male issue is signified by the term "only" in this passage.

7. By this the word 'distress' (ápat) used by Manu in the following text is explained. "Whom the father or mother during distress, may give as a son, confirming the gift with water, &c."† And it is explained in the same manner by Aparárka "during distress that is the adopter having no son."‡

This elucidatory of the word "distress" in a text of Manu.

So explained by Aparárka.

8. Or it may be interpreted 'during distress' during a famine and so forth: as in the Mitákshará.|| "By specifying distress it is intimated that the son should not be given, unless there be distress: this prohibition regards the giver." Accordingly Kátyáyana. "During a season of distress the gift or even sale [of a son] may be made: otherwise the same must not be done: this is the injunction of the holy institutes."

Mitákshará noticed.

* Both passages here cited are from the Vedas.

Manu 9. 168, cited also at length in the Mitákshará on inheritance, v. Colebrooke's translation, Ch. 1. Sect. XI. § 9. and notes where this and other explanations are noticed.

‡ Aparárka the author of a commentary on Manu.

On inheritance, vide trans. Ch. 1. Sect. XI. § 10 and notes.

9. Manu also "A son of any description must be anxiously adopted by one who has none: for the sake of the funeral cake, water, and solemn rites; and for the celebrity of his name." He who has no son may appoint his daughter in this manner to raise up a son for him, &c., &c."

Text of Manu on the subject of adoption cited.

10. As the instance, appearing, of the adoption as sons of Dévaráta and the rest by Viçvámitra, and others, although possessing male issue: that from its repugnancy to the revealed law, as contained in passages before quoted (v. § 5,) must be understood, (in the same manner as the eating the haunch of a dog, and so forth,) not to imply the existence of a revelation [authorizing the act.*]

in scripture of sons being adopted by persons possessed of male issue, is not conclusive of a revelation to that effect.

Objection, that the indication of a revelation supersedes that recorded from memory, anticipated and refuted.

11. It is not to be argued, that a revelation recorded, from recollection, does not supersede the indication of a [different] revelation: for it is of greater authority being supported by direct passages of revealed law, such as: "Heaven awaits not one destitute of male issue;" and so forth.

ANNOTATIONS.

9. Manu also.] Two texts are here quoted. The first though also cited in the Dattaka-Chandriká and other works, as from Manu, is not found in the institutes of that author. It may however be from Vṛhat-Manu, a work frequently quoted in law treatises, but which if extant is very rare. The latter text is from the institutes: Its sequel is thus. "[Saying.] The male child who shall be born from her in wedlock shall be mine for the purpose of her forming my obsequies." Manu, 9. 127.

10. The adoption as sons of Devaráta and the rest, &c., &c.] On this subject the following passage from the Vishṇu Puráṇa occurs. "The son of Viçvámitra was Çuna-sepha, a descendant of Bhṛgu given by the gods: subsequently he was called Dévaráta. And afterwards persons called Madhu-chchhanda, Jaya-krit, Dévashṭaka, Kachchhapa and Haritaka were the [adopted] sons of Viçvámitra." Viçvámitra was born in the Kshatriya or military class and by excessive devotion raised himself to sacerdotal rank. The passage quoted has reference to that period of his life when he had become a Bráhmaṇa:

The eating the haunch of a dog.] It is recorded of Viçvámitra that when perishing with hunger he ate the haunch of a dog. (v. Manu 10. 108.) It is not however to be inferred from this that there exists a revelation authorizing the act.

11. It is not to be argued.] The author anticipates that an adversary may allege that the instance recorded in scripture of Viçvámitra and others adopting another son though possessed of male issue, indicates the prior existence of a revelation authorizing the act: and that a revelation so indicated is more cogent than the rules of revealed law recorded from memory by Atri and Manu in § 3 and 9. This objection he refutes.

* It may be here observed once for all that words or sentences included within these marks or brackets [ ] are not expressed in the original, but inserted by the translator to complete the sense of the text or render it more clear.

But even if admitted, the father having issue, must have the assent of the same to adopt another son.

A revelation to this effect indicated, and Objection refuted.

12. But, however if you pertinaciously insist on the superior cogency even of the indication of a revelation, to a revelation recorded from memory: then we accede that a man though possessed of male issue, may adopt another son with the sanction of such issue: on account of the revelation indicated in the following passage: "By that which our father recognized we abide. We place you before us, you, we follow, &c." Neither should it be urged, that this regards the making an elder son, not the adoption of a son; for the one would be invalid if the other, may not be done. It is useless to enlarge.

The word "son" includes the son and grandson of a son as appears from

A text of Manu.

13. "By a man destitute of a son." The word son here used is inclusive also of the son's son and grandson, for [through these] the exclusion from heaven, denounced in such passages as "Heaven awaits not one destitute of a son" is removed: since it is declared in the text subjoined, that the mansions of the happy are attained through the grandson and the other. "By a son, a man conquers worlds: by a son's son, he enjoys immortality: and afterwards by the son of a grandson, he reaches the solar abode."*

They as well as a son may per-

Nor can it be alleged that the adoption of a son [though a grandson and his son exist,] is for the sake of the funeral obsequies; for from this text it appears, the other two also are competent to perform such rites. "The son of a son and the son of a grandson like these the offspring of a brother, &c., &c."†

A woman has no authority of herself to adopt as appears from a text of Vasishtha.

15. 'By a man destitute of a son.'] From the masculine gender being here used, it follows that a woman is incompetent [to adopt.] Accordingly Vasishṭha ordains; Let not a woman either give, or receive a son in adoption: unless with the assent of her husband."‡

It follows a widow cannot adopt;

16. From this, the incompetency of the widow is deduced since the assent of her husband is impossible.

ANNOTATIONS.

12. Neither should it be urged that this regards.] The passage quoted is apparently from the Vedas: but the translator not having succeeded in discovering it, is unable to estimate exactly the scope or merit of the arguments used. It is difficult to suppose that the author means to assert the analogy between investing a younger son with seniority and the affiliation of a stranger. To reconcile this part satisfactorily, it appears necessary to assume, that the passage cited, regards the case where a father creates as an elder son in preference to his other real sons, one previously adopted.

† From the Vishṇu Puráṇa v. infra Sect. II. § 60, where this text is completed.

‡ Vasishṭha. 15. 4.

17. Nor should it be argued, that the assent of the husband is requisite for a woman whose husband is living: because she is subject to control: but not so the widow, for mention being made of woman in general, dependency on control is not the cause: and [were it,] her subjection to the control of kinsmen exists as shewn in the following text: "On default of these the kinsmen, &c."

Nor can it be said her independency confers such right.

She is even dependent on kinsmen.

18. If it is contended, then, that she may adopt a son, with the assent of the kinsmen even; it is wrong: for the term "Husband" would become indefinite: and the purpose would not be attained. Now the purpose of the husband's sanction, is that the filiation, as son of the husband, may be complete, even by means of an adoption, made by the wife.

But may not adopt with their assent.

19. Accordingly, [as appears,] from this aphorism, ("lastly of the mother, first of the father, &c.") the connection of the son affiliated, through the wife to both, is declared in the following compendious rule of Satyáshádha: "Of the son by marriage: the Kshatriya or wife's son: the son made: the son of an appointed daughter: the son affiliated through the wife: the son of a marriage according to the Ásura form: the son of a female given as a gratuity, [the relation of lineage] to both parents [obtains.]" Now the connection of lineage to the father, is the filiation as his son; and such filiation proceeds from the sanction only of the father; not from the act of adoption: for the agent of that, in this instance, is the wife.

Satyáshádha confirms.

20. "'The son by marriage,' is the son received with a pregnant bride (Sahódha.) 'The son affiliated through the wife,' is the son demanded by the wife (Strí-yáchíta) or the son obtained through the wife (Strí-sattáka.) 'The son by a female given as a gratuity,' is one born on a damsel obtained, as a fee at a sacrifice. The rest are obvious. Thus expounds Savarasvámí."

Explanation of his technical terms by Savarasvámí cited.

21. And in the case in question, the wife being mentioned as the instrumental means, a primary author of the act, is obtained; for otherwise, one accepted in adoption by the wife, being son to such his mother [only], since his connection, as lineage to her husband, would be wanting, his incompetency to perform the funeral rites of the husband would result; and no father existing,

From one of which the necessity of the prior sanction of the husband is inferrible.

ANNOTATIONS.

17. As shewn in the following text.] The text alluded to is the following of Yájñavalkya: "The father protects her when a damsel. The husband when married: sons in old age: on default of those kinsmen, a female attains not independence."

19. Accordingly as appears from this aphorism.] In the passage from Satyáshádha the term 'pitroh' occurs. This may either signify 'to both fathers' viz., the adoptive and natural fathers or as translated "to both parents" the father and mother. To clear the ambiguity and confirm the latter construction, which the author adopts, he adduces the other aphorism; "Lastly of the mother, &c."

21. And in the case in question.] That of the son adopted through the wife.

at his marriage, and so forth, the paternal family and other particulars of consequence remain unspecified.

22. If the case is thus, then the assent of the wife is requisite for the husband also; for the purpose [of such sanction] would be the same; [as that of the husband to the adoption by the wife].—This (if alleged) is wrong; for in consequence of the superiority of the husband, by his mere act of adoption, the filiation of the adopted, as son of the wife, is complete in the same manner as her property, in any other thing accepted by the husband.

The filiation of one by the husband as son of the wife is complete without the sanction of the wife.

23. Moreover Váchaspati, ""Having offered a burnt offering (Hutvá) with recitation of the holy words, he should take an unremote kinsman, &c." In this text, the indeclinable past participle 'Hutvá,' (Having offered, &c.), indicating the government of both verbs, by the same agent, being used: the adoption by one only, who may offer a burnt offering, (Homa) is valid: therefore women, from their disqualification to perform such sacrament, are incapable to adopt."

Váchaspati declares the inability of women to adopt from incapacity to perform the requisite sacrament.

24. It must not be argued, that, since under a text of Çaunaka the employment of a priest is according to the approved doctrine, the "Homa" may be completed by his intervention: for although that were completed, still would the adoption [by the woman] be imperfect, since she is not competent to perform the prayers requisite for the same.

Or, if for this a substitute be admissible, they cannot perform the prayers.

25. These Çaunaka has specified: "And taking him by both hands, with recitation of the prayer commencing ("Devasyatva, &c.:") having inaudibly repeated the mystical invocation, "Angád-angat, &c." having kissed the forehead of the child* &c."

Which Çaunaka has specified.

Çúdras however may adopt under an express passage which refutes Váchespati, who denies their power as incapable of the sacrament and prayers.

26. Nor does thus the want of power of Çúdras follow: for, their ability [to adopt], is obtained from an indication [of Law], conclusive to that effect, in this passage: "Of Çúdras from amongst those of the Çúdra class."† By this Váchespati is refuted, who says: "Çúdras are incompetent to affiliate a son, from their incapacity to perform the sacrament of the Homa, and prayers prescribed for adoption."

ANNOTATIONS.

24. Under a text of Çaunaka.] The part of Çaunaka here alluded to, is subsequently cited. v. §.

25. "Angád-angat, &c."] These are the initial words of a passage from the Vedas subsequently cited at length. "From my several limbs, &c." (v. Sect. 7. § 7.)

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* V. infra. Sect. 5. § 15.

† Çaunaka subsequently cited at large, v. Sect. 2. § 74.

27. Since the [only] power of widows is fixed to using property during their lives, it is that they have not power to adopt a son. But it must not be affirmed, that it follows that in the same manner women also, whose husbands are living, are incompetent: on account of their incapacity to perform the burnt sacrifice, prayers, and so forth. For, by the reservation "unless with the assent of her husband" ability to perform what is principal [viz., adoption], being established, from their consequent power to perform what is subordinate [viz., those solemnities], the burnt sacrament, prayers, and so forth, might be inferred. Therefore, since by this passage ("of women and Çúdras without prayers") a dispensation with respect to prayers, is established, the adoption [of the women in question,] would be valid without prayers; like their acceptance of any chattel.

But the inability applies to widows only, and not to women whose husbands live; in whose case the observance of particular solemnities, may be dispensed with.

A text cited.

28. Besides, this part of the text, "unless with the assent of her husband," is an exceptive exemption from the general prohibition, contained in the part preceding; "Let not a woman either give, or accept a son;" and in it, the assent of the husband is the cause. Therefore, the widow is incompetent [to adopt]; for, her husband being dead, since his assent is impossible, the exemption destitute of the cause [to give it effect], is without validity; and other means of deducing [her authority,] are wanting. Thus the doctrine of every writer is rendered even consistent.

The doctrine of the author further supported.

29. Nor must it be argued, that this being the case, [that is, if the widow may not adopt] her exclusion from heaven would not be obviated. For that, in the following text, is declared by Manu to be removed by devotion to pious austerity. "Like those abstemious men, a virtuous wife ascends to heaven, though she have no child; if after the decease of her lord, she devote herself to pious austerity."* Thus the whole is unexceptionable.

Adversary's argument refuted.

30. "By a man destitute of a son." From the singular number being here used, it follows; that, the same son must not be adopted, by two or three persons.

One son may not be adopted, by more than one father.

31. But would not thus, the law as to the son given, and the rest, being 'Dvyámushyáyaṇas,' (or sons of two fathers) be contradicted? Accordingly, there is this passage of law, in the Prayogapárijáta. "Sons given, purchased, and the rest, are sons of two fathers. Their marriage

Opponent's objection mentioned:

ANNOTATIONS.

27. A dispensation with respect to prayers.] Prayers here must be considered, as used for the whole of the solemnities.

31. As was the case of Çringa and Çaisira.] The translator has failed in discovering the particulars of the case here referred to.

* Manu, 5. 160.

may not take place in either family; as was the case of Çringa and Çaisira."

32. It is not so: for, the state as son of two fathers, imports both a natural and an adoptive father; and the prohibition regards two adoptive fathers. Thus there is no contradiction.

And refuted.

33. The substitute is of eleven descriptions: the son of the wife, and the rest, according to a text of Manu which recites, "Sages declare these eleven sons, (the son of the wife and the rest,) as specified, to be substitutes for the real legitimate son; for, the obsequies would fail (Kriyálopát)."*

The substitute for a son, is elevenfold. as shewn by Manu.

34. Of these, those are substitutes by right even, who are related, by containing portions of either, of the husband, and wife; and the text, [of Manu] intends a restriction [as to the substitutes not so circumstanced]. Again, those who bear not such connection, are substitutes in virtue of passages of Law.

Of these, some are substitutes by inherent right, others from the authority of a text of Law.

35. For instance: the son of the wife, the son of an appointed daughter, the daughter appointed to be a son, the son of an unmarried daughter (Kánína), the son of a twice married woman, the son received with a pregnant bride, the son of hidden origin, are principal substitutes, as partaking partially of portions [of the pair], from their kindred, in some instances, to their mother only, and in others in a small degree, to both parents. The son given, the son bought, the son made, the son self-given (Dattátma), and the son rejected, are substitutes in virtue of express texts of Law. Now, the term 'substitute' is applicable to both classes even,

The first class enumerated.

The second also.

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33. The substitute is of eleven descriptions.] The following is the specification of these succedaneous sons, in their order enumerated, by Manu—The 'Kshatriya' or son of the wife by a kinsman. The 'Dattrima' or son given. The 'Kritrima' or son made —The 'Gudhotpanna' or son of hidden origin—The 'Apaviddha' or son deserted —The Kánína' or damsel's son—The 'Sáhódha' or son received with a pregnant bride —The 'Kríta' or son bought—The 'Paunarbhava' or son of a woman twice-married— The 'Swayandatta' or son self-given,—and the 'Çaudra' or son by a 'Çúdrá' woman.— These technical terms are explained fully in Sir Wm. Jones' translation of Manu, Chap. 9. verses 158 to 179—But more extensive information will be found in Chap. 1. Sect. XI. of Mr. Colebrooke's translation of the Mitákshará, and the copious and very valuable notes subjoined.

35. In the same manner as, &c.] Allusion is here made, to an elaborate, and obscure disquisition on the passage from the Vedas quoted, which forms the 17th topic, 4th chapter, 1st Book of the Mímánsá. It is there proposed, as the subject for discussion, whether the passage in question, contains a precept in itself; or is merely confirmatory of a precept conveyed, in some other passage. The latter position is demonstrated, to be the correct one: and it is shewn, in the course of the argument,

* Manu, 9. 180.

by reason of its frequent use [in such general sense]; in the same manner as in the passage, "He places Bricks (Srishṭi)" the term 'Srishṭi' [intends bricks generally].

Medhátithi cited, who denies that adopted sons can be substitutes.

It has been said by Medhátithi.—"These cannot be substitutes: a substitute is supplied on defect of the means of completion of an act commenced.—Now a son is no such means, for, he is the primary object of the act, of the production of offspring: Hence the term Putra (son,) applying even to the son of the wife, and other adoptive sons, the designating these substitutes, is for the sake of shewing respect to the son of the body (Aurasa); for, the expression 'substitute' as current, denotes a lesser degree of benefit. To the same extent, as the real son can confer much benefit, the others are unable."

Though so called, as being succedaneous sons.

37. This must be canvassed; for, the position to be proved, being this, that the sons given and the rest are not substitutes; the cause assigned, viz., the not being the means of completing the act, of the production of a son, does not apply to the persons affected by the point to be proved: since these, as they already exist, are not liable to be produced.

Doctrine of Medhátithi canvassed.

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that 'Srishṭi' occurring in the passage, does not mean particular bricks, at the laying of which, for an altar and so forth, 'Mantras' in which that term occurs, are read; but bricks in the general, since the term is frequently used in such general sense.

36. A substitute is supplied.] The reader is referred to a subsequent note to § 47.

Means of completion.] The Sanscrit term so rendered is Anga. In the language of Logic, it signifies the materials, or means of completing any work.

37. This must be canvassed.] Nanda Pandita assumes the argument of Medhátithi to be this—A substitute is supplied on defect of the means of completing an act commenced:—adopted sons are not substitutes, because a son (real or adopted) being the object of the act proposed (viz., the production of a son,) is no completive means (either primary or as a substitute).—Accordingly (if this be the meaning of Medhátithi), he correctly states that the reason assigned, does not apply to the adopted sons, or persons affected by the point to be proved: as these already existing, are not liable to be produced.—Medhátithi subjoins "Hence the term Putra (son) applying even to the son of the wife and other adoptive sons, &c."—This passage gives colour to the construction, assumed by Nanda, of the argument of the author mentioned: yet, the following syllogism exhibits a preferable, if not, the more obvious sense of the argument in question.—A substitute is supplied for the deficient means of an act commenced,—the son (legitimate), being the object of the act proposed (viz., the producing a son), is no such means—Therefore, sons given and the rest cannot be substitutes for the real legitimate son. Nanda however, rests his refutation of the doctrine of Medhátithi, by shewing in the following section, that a son, though not the means of completing the production of a son, is however, the means of accomplishing another act, and consequently there may be logically a substitute for a son, as such means.

The persons affected by the point to be proved.] The single Sanscrit term 'Paksha' is rendered by this circumlocution. In the language of logic it signifies, the party or object whose quality and so forth, would be affected by the position to be proved.

38. Again, in the precept, enjoining the production of a son, the son, being the object to be produced, is no means of completion. But this is the case in respect to, that precept only, not any other precept.—For, from passages of scripture such as, ("or he is absolved from debt who has issue, &c." v. § 5.) this precept resulting, 'Let him procure absolution from debt through a son,' it is established, that the son, as being the instrumental cause of such absolution, is a means of completion: and the instrumentality of the son, is even expressly declared by Manu, in this and other passages, "By a son, a man conquers worlds &c." (v. § 13.)

And further controverted.

39. *If* this be the case: then there may be for the sake of attaining immortality, and the solar abode, a substitute for a grandson, and great grandson—Be it so: we are in no-wise affected.

An objection disregarded as immaterial.

40. Nor does an identity of precept follow, from both, [viz., the precept enjoining the production of a son, and that directing the attainment of redemption from debt, through a son] having a common result: for, in the same precept, the two instrumental causes, (connubial intercourse at due season, and a son,) and their several effects (a son and redemption from debt,) cannot be included: and were they, three contradictory things would become two.

Argument of opponent anticipated and refuted.

41. Consequently, the son being the instrumental cause, in an act, the object to result from which, is absolution from debt: on his failure the son given, and the rest may without repugnancy, be substitutes: in the same manner, as [at a sacrifice] where the 'Soma' plant is wanting, the 'putika' is a substitute.

Correct conclusion deduced.

42. This even is made obvious, by Manu [who says.] "For, the obsequies would fail" (v. § 33.) Because the failure of these would ensue; if on default of a legitimate son, the affiliation of a substitute might not take place.

Supported by a passage from Manu.

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40. Nor does an identity of precept follow.] The author here anticipates an argument of an opponent. If the two precepts, from implying the same result (viz., the acquisition of a son), are identical; the argument of our author in § 38, would not hold.

Three contradictory things would become two.] That is, if the two causes, and their two effects, specified in the text, be included in the same precept, they would be blended into one cause, and one effect: and in this manner, three contradictory things, (viz., connubial intercourse at due season, a son and redemption from debt,) would become two.—The two causes and their two effects are enumerated only as three; because the son is mentioned, as the effect of one cause, and the cause of the other effect.

41. Where the Soma plant is wanting, &c.] This is in allusion to the following rule in the Vedas.—"Should he be unable to procure the Soma, let him cut the putika." This rule forms the subject of an elaborate disquisition in the 13th topic, [illegible] section of the 6th Book of the Mímánsá of Jaimini.

Obsequies, are funeral rites, consisting in presenting oblations of food and water, and so forth. In the same manner by Atri also [it is said]; "For the sake of the funeral cake, water and solemn rites" (v. § 3.) Thus the whole is unimpeachable.

And Atri.

43. "There is no substitute for mastership, a wife, a son, a country, time, fire, the divinity, an act and word, &c.," as for also the exclusion of the substitute for a son, by this text of Satyáshádha; that [is propounded by the author], after having authorized to one, having no son, a substitute for the same, (in such passages as that subjoined,) for the sake of obviating, the recital of the benediction [therein alluded to]. "He recited, for offspring, that benedictory prayer called "Jyotishmati." Accordingly, there is this passage of revealed Law. "He, to whom no son may have been born, should recite for offspring, the prayer commencing 'Jyotishmati.'"

Prohibition by Satyáshádha of the substitute for a son, noticed and reconciled, as being particular: not general.

44. So in the Sáman Veda, in the part treating on father and son, after having by such passages as "The father of such a one sacrifices, &c.," authorized, to one destitute of a son, the substitute for the same: [the subsequent prohibition] is meant to avoid, such particular passages; but not intended to exclude, in every case even, a substitute for a son; for, that would contradict the following and other passages of recorded Law: "A substitute for a son must be adopted." (§ 3.) "To be substitutes for the real legitimate son." (§ 33.)

This opinion of the author, confirmed by a parallel instance in the Sáman Veda.

45. It is next deliberated, whether this substitute for a son, who is ordained, is so, in virtue of, the precept enjoining the production of a son, or that regarding the funeral obsequies. For, allusion has been made, as to both; for instance, with respect to the precept to produce a son, by the first part of Atri's text. "By a man destitute of a son only, a substitute for the same, must always be adopted,"—and with respect to the precept regarding funeral obsequies, by the concluding part of the same text: "For the sake of the funeral cake, water and solemn rites."

Discussion proposed as to the precept in virtue of which the substitute for a son is ordained.

ANNOTATIONS.

43. That [is propounded by the author], after having authorized, &c.] Nanda Pandita assumes that the prohibition, of a substitute for a son, by Satyáshádha, here noticed, is only with reference to the particular passage recited, by which, that author had previously authorized, such substitute for the particular purpose therein contemplated.

For the sake of obviating, &c.] A different reading of this passage in the original is found: 'ávíraçansana' instead of 'áçiráçansana'—If the latter be correct, (which it does not appear to be,) the translation should be, 'for the sake of obviating the appellation of childless.'

46. Of these positions, the first is not correct: for, there can be no substitute in virtue of the precept to produce a son; as the son, by reason of being the object to be produced, is no means of completion.

Not by that, directing the production of a son.

47. Neither is the second accurate; for, a contradiction would be involved. The substitute for a son is ordained for one having no male issue: but not funeral obsequies performed by such person: and exequial rites, the agent of which is a son, [are ordained]; but there is no precept executed by a son, directing a substitute on his (the son's) account. Nor is there a substitute for an agent.

Nor that regarding the funeral obsequies.

48. Or it also may be affirmed that the substitute is supplied, with respect to being an agent, in the performance of the act, but not in respect to enjoying the fruit; in the same manner as in the case of the death of either of the seventeen priests engaged in a sacrifice (Satra), a substitute is supplied, with respect to being an agent in the act: so also, in the case in question.

An adversary's mode of reconciling the difficulty anticipated.

49. This also is wrong; for, the cases are not parallel. In the instance of the sacrifice, the substitute is for one, by whom an act was commenced: But in the case proposed, since the act's commencement even, (being completely non-existent,) is impossible, how can there be a substitute? Nor is the commencement of an act, by a substitute, admitted by one versed in logic.

And controverted.

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47. A contradiction would be involved, &c.] The translator is far from confident, that, he can satisfactorily illustrate this very obscure part, of which different readings occur. To render it however, at all intelligible, the following maxims of Hindú Logic, must be premised.—'There can be no substitute for the agent, or object of an act: but only for its materials or means of completion: should these, or any of them be wanting, a substitute for the same, can be constituted by the agent only.'—Now, if it is asserted, that, the substitute for a son, is ordained in virtue of a precept directing the performance of obsequies, it must be affirmed, that, the person, for whose sake, the substitute is supplied, and the performer of the obsequies, are the same —For, the person, for whose sake, the substitute is supplied, is the individual, who constitutes the substitute. Now, as an agent only, can constitute a substitute for the means of completing his own act; it follows, that the individual in question, would be the agent of the obsequies. But these are admitted, to be distinct persons: and thus a contradiction would be involved. Accordingly, the author with reason says,—"The substitute for a son, &c. Moreover, a son, being the agent of the act, enjoined in a precept, directing the performance of obsequies, the author further refutes the doctrine, that a son is ordained, in virtue of that precept, by adding, in allusion to the maxim above specified, "Nor is there a substitute for an agent."

48. Or it also may be affirmed that] The author anticipates, that it might be alleged in support of the position, which he controverts, that a substitute might be supplied, in virtue of the precept proposed, merely as the performer, of the act required; as in the case alluded to in the text.

50. Or it may be next alleged that there is a precept regarding oblations of food, and so forth, performed c having no son, at his own funeral repast taking place during his life. In virtue of this only, is a substitute [ordained]. This is likewise incorrect: for, if [in this case] there might be, the substitute for a son, the precept itself, regarding the funeral repast to take place during the life of the individual, would be of no effect.—Besides, himself being the agent, in the performance of the funeral repast, taking place during his life; the substitute would be even for himself, not for the son: since the son [in this case] is not the agent.

Another mode anticipated and rejected.

51. Therefore, in virtue of the two precepts first mentioned, there can be no substitute for a son. Moreover, the assigning also as a reason, "For the sake of the funeral cake, water and solemn rites" (§ 3) would be inapposite; for, it would not apply, to the person to be affected by the point to be proved. It has already been said, that exequial rites, performed by the man having no son, are not suggested.*

Conclusion, that in virtue of neither of the precepts proposed, is a substitute ordained, supported by an argument applicable to both.

52. The question is thus solved: "By a son, a man conquers worlds, &c." In virtue of the precept, implied in this and other texts, and supported by confirmatory passages, (such as "Heaven awaits not one destitute of a son"); on failure of the legitimate son, the son of the wife, and the rest, are ordained to be, the eleven-fold

Difficulty solved, and a precept shown in virtue of which a son is ordained.

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51. Moreover the assigning also as a reason, &c.] The following is hazarded as an illustration to this obscure part.—The author adverting to the text of Atri (§ 3), by which the constituting a substitute for a son, by one having no male issue, is enjoined, proposed a discussion, in respect to the particular precept, in virtue of which, such substitute is ordained; accordingly, he suggests and rejects two, viz., that which enjoins the production of a son: and that which, directs the performance of exequial rites; and he here uses an additional argument, to support the rejection. If it be held, that the first of these precepts, be that required, then the 'Paksha' or individual to be affected by the point to be proved, is the man wanting a son; the point to be proved, his obligatory production of the same; and the reason (that used by Atri), 'on account of exequial rites.' If the second be regarded, as the precept; the 'Paksha' and reason would be the same, as in the first supposition; and the point to be proved, his obligatory adoption of a substitute. Now it is rule of Logic, that the reason assigned, should bear on the person affected by the point to be proved, and this is not the case in either of these suppositions. To be so, such person (here the man wanting male issue), should be the performer of the exequial rites: but it has been shewn that he is not—It is to be feared, that the author's extravagant affectation of logic, has here illuded him into an error.—His argument is good, on a supposition, that the reason in question is logical, or one of the premises of a syllogism.—It is obvious, however, that it is not so, but is rather used as a cause or motive.

52. In virtue of the precept, inplied in this and other texts, &c.] The author here shews a precept, in virtue of which, the substitute for a son, is ordained; to which, none of the objections, made to the two first suggested, apply.—In the first place, in

* V. supra. § 47.

substitutes; and in the precept alluded to, an act being required, to operate intermediately, in completing the state of Heaven, and the son, severally, as the effect to be produced, and the efficient means: it is added "For the sake of the funeral cake, water and solemn rites."

Import of the term 'always' in Atri's text shown.

53. The term 'always' (§ 3) signifies, that in the present case, no definite period is required, as in such cases, as [that contemplated in this passage] "The barren woman, in the eighth year, is to be superseded."

Other terms explained.

54. The funeral cake] the 'Çrá́ddha' or funeral repast.—Water] that is, the presenting water in the two united palms, and so forth. Solemn rites] meaning, rites in honor of the deceased, cremation and the like. These are the cause (hetu):

A distinct affiliation not necessary, for each exequial ceremony.

55. The reason, occasioning the adoption, is the cause. This, from being used in the singular number, shows, that these ceremonies collectively, are the cause, and not individually; and consequently, the meaning is, that there is not a distinct affiliation, severally for each; but one adoption only, on account of the whole: for, on default of a son, the failure of the oblation of food, and other rites, is the consequence.

As confirmed by a phrase, from a text of Manu.

Which is explained.

56. Accordingly, Manu says "Sages declare these to be substitutes; for, the obsequies would fail (kriyá-lopát)."* Here, this part, "for, the obsequies would fail" is a reason, subjoined on a negative hypothesis: "The meaning is,—because, if there were no substitute for a son, the obsequies would fail."

Another exposition of it suggested.

57. Or, there may be this disjunction, [of the compound term 'kriyálopát;' kriyá+] alopát—alopát, would then be, the fifth or ablative case, used after the rejection, of the indeclinable past participle, formed by the affix 'lyap:' The meaning is,—for the sake of preventing a failure.

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the precept, enjoining the conquest of worlds by a son, the son is neither the object or the agent: but the means of the act; therefore, there may be a substitute for a son, in virtue of this precept: again, the objection just made to the two precepts, first suggested, does not apply to this precept. Here the 'Prakáça' or person affected by the point to be proved, is the son: that point, that he is an efficient means for the conquest or attainment of Heavens; the reason, of course as before; and it here, accurately applies to the Paksha: that person, and the performer of the exequial rites, being identical.

55. This, from being used in the singular number.] Atri has in his text 'pindodaka kriyáhetoh' translated, 'for the sake of the funeral cake, water and solemn rites.'—Here, 'hetoh' ('for the sake') is the fifth or ablative case singular, of 'hetu' a cause.

57. Or there may be this disjunction, &c.] In disjoining the compound term 'kriyálopát,' occurring in the text of Manu (§ 33), kriyá+lopát, or kriyá+alopát, may be obtained—For, by the rules of orthography: kriyálopát would be equally produced,

* Vide supra, § 32.

58. "On failure of the son, let the wife be, &c.,"* although, by this and other passages, the capacity of the wife, and other [heirs] also, to perform the obsequies, is declared: still, it must be unquestionably affirmed, that, from the authority of such passages, as this ("Heaven awaits not one destitute of a son"), the mansions of the happy, attainable by obsequies, performed by a son, are not acquired by such rites executed by the wife, and the rest. For, otherwise, the wife and other heirs, of one destitute of male issue, being competent to perform rites, which would be equally effective; the specification, of failure [of the son], would be unmeaning; as an alternative results, from such equality.

Though the wife, and the rest, may perform obsequies: yet, these rites performed by them, are not so beneficial as those executed by a son.

59. Hence, for the acquisition of some particular Heaven, to be attained by obsequies performed by a son, the substitute for a son, is indispensable. And, it is said by Medhatithi, "Now, as for the assigning there, the first gradation to the legitimate son, that, is not productive of any temporal effect, [but, on account of] excessive spiritual benefit: to the same extent, as the legitimate son, can confer much benefit, the others are unable—and 'substitute' as generally accepted, implies a diminution of benefit."

Conclusion that a substitute for a son, is necessary for a spiritual effect.

Medhatithi on this subject noticed.

60. Kriyálopát.] The 'kriyá' or act, here alluded to, is from "'kriyate,' what is done:—the precept [by which it is enjoined], 'offspring, must be produced.' Let there be no omission (lopa), of this.—This precept is peremptory: in some manner, or another, it must be ac-

Interpretation by that author of the phrase 'kriyálopat' cited.

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whether lopát, or alopát, were subjoined to kriyá:—that is in the first case, no permutation of letters, would take place: and in the second, a single long á would be substituted for the final long á of kriyá, and initial short a of alopát. Accordingly, the author after preferring that mode of construction, by which 'lopát' would be read, here indicates the other, which would give 'alopát.'—This latter, is in fact, that adopted by the scholiasts of Manu.

Used after the rejection of the indeclinable past participle formed by the affix 'lyap.'] The term 'lyap' in the text, is used, to denote the participle, of which it is the grammatical affix: its first and last letters are servile. The author alludes, to an emendatory rule of Kátyáyana, on Páṇini, 2-3-28—the result of which, is this,—If a mode of expression, composed of an objective or accusative case, and the indeclinable participle ending in 'lyap,' might have been used, but is rejected: and the ablative or fifth case be adopted; it denotes the object to such participle.—Thus, "he sees from the top of the house (prasádát)" that is: "having mounted (aruhya), the top of the house, he sees." In the same manner, the author regards the ablative case 'alopát,' where, the second mode of construing the term kriyálopat, occurring in Manu's text (§ 33), may be preferred; thus, "sages declare,———on account, of preventing, a failure of obsequies (kriyálopát):" that is,—'having intended a prevention, of a failure of obsequies' (kriyálopam-udeçya).

58. As an alternative result.] The rites might be indifferently performed, by the son, or wife and other heirs.

60. Kriya or act, &c.] Medhatithi, the author of a commentary on Manu, explains the term kriya, occurring in this phrase, as signifying the act of acquiring a

Çankha. The sequel is thus "[The performer of the funeral rites]: on her default the whole brother."

complished, by the householder. Of the offspring alluded to, the real legitimate son is the first in rank; should such not be acquired, these descriptions of sons [that of the wife and the rest], must be resorted to."—This interpretation by that author [Medhátithi] alone, must be canvassed. It is said [by him], that, the precept directing the adoption of the son given, and the rest, is a substitute for that directing the procreation of a son; or perhaps that the son given, and the rest, are the substitutes for a legitimate son?

And canvassed: either of two meanings attributed to the author;

61. Of these [supposed meanings], the first is not correct: for, the substitute of an act, is forbidden, in the passage "of the divinity, fire, a word, an act, &c." Neither, is the second accurate; since it would be at variance, with preceding passages [of the same author]; such as, "These [the wife's son, and the rest] cannot be substitutes, &c." (§ 36). For, in this passage it is declared, there can be no substitute for a son: as a son, by reason of being the object to be produced, is no means of completion.

The first shown to be inaccurate.

The second also.

62. Therefore, from the term 'kriya' (in the expression 'kriyálopát'], the precept to produce a son cannot be inferred; but on the contrary, funeral rites alone must be understood; on account of unity of import with the text of Atri, which expresses: "For the sake of the funeral cake, water and solemn rites." It would be useless [to enlarge.]

Correct interpretation of the term 'kriya' shown.

63. 'Prayatnatas' (resource)]. The affix 'taçil' of the fifth case, is used to form this word, for the sake of agreeing in construction, with the preceding terms "yasmat tasmát" (with some one): and consequently the meaning is, that by some one resource (or mode) whatsoever, a substitute for a son is to be affiliated.—And, although in that text, any resource in general, is mentioned, still, since eleven descriptions of sons have been ordained, eleven resources only are recognized.

Explanation of Atri's text resumed.

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This is contrary to the interpretation of other scholiasts, and general acceptation: according to which, in this and similar passages, it bears its secondary sense of, 'obsequies' or solemn rites,' &c.

By the householder.] The Grihí or householder, is the second of the orders or stages (açrama), prescribed for the devout. These, are thus enumerated, in Mr. Colebrooke's translation of the Kosha of Amara Sinha—1st. The religious student (Brahmachárí) who has received investiture, and is unmarried.—2d. The householder (Grihí) or married man.—3d. The hermit or anchoret (vánaprastha)—4th. The mendicant or ascetic (Bhikshu).

63. The meaning is, that, by some one resource, &c.] The author presently will apparently forget this his interpretation of the term prayatnatas, occurring in Atri's text. In Sect. 4, § 21, he suggests, that, the same word, in a text of Çaunaka, may signify 'on account of the distress of the adopter': viz., the want of male issue. This he confirms by referring to the text of Atri; thereby indicating that the word in question, has there, a similar import.

64. "Sons of many descriptions, who were made by ancient saints cannot now be adopted by men: by reason, of their deficiency, of power, &c." On account of this text of Vṛhaspati, and because, in this passage, ("There is no adoption, as sons, of those, other than the son given, and the legitimate son, &c.") Other sons, are forbidden by Çaaunaka; in the kali or present age, amongst the sons however, [who have been mentioned,] the son given, and the legitimate son only, are admitted.

The son given, and the real legitimate son, however, are now only admitted.

65. The term "given" is inclusive also, of the son made, (kritrima) on account of a text of Paráçara, on the occasion of treating on the law of the kali age, which expresses, "The son of the body, (aurasa), the son of the wife, also, the son given, the son made, &c."

Term 'given' illustrative of others on account of a text of Paráçara.

66. Nor, is it to be argued from this, that, in the kali age, there may be the son of the wife [technically so called]: for, such is forbidden, by the mere prohibition, against the appointment in that age, [of a wife to raise issue to her husband by another.]

The mention there of the wife's son, does not prove that such son in its technical sense may now exist.

67. Should it be contended, that, then an option would proceed, from the wife's son, being ordained, and forbidden [by different authorities]. It is wrong, for many objections would be the consequence.

Contrary argument of an adversary anticipated.

68. Again, if it be asked, in what light then, the mention of the son, of the wife, in this passage, [must be regarded]? We reply, as an epithet of Aurasa, (the son of the body). Accordingly Manu says: "Him, whom a man has begotten on his own wedded wife, let him know to be the first in rank, as the son of his body, (Aurasa)."

And the mention of the expression reconciled.

SECTION II.

Who is to be adopted?

1. Of these two: the rules regarding the 'Dattaka,' or adopted son, are now propounded. The three points, on this subject, to be considered, are,—who is to be adopted? how qualified? and in what manner?

Rules regarding the adopted son.
Topics suggested.

2. As to the first of these points, Çaaunaka has declared; "the adoption of a son, by any Bráhmaṇa, must be made from amongst 'sapiṇḍas' or kinsmen connected by an oblation of food; or, on failure of these, an 'asapiṇḍa' or one, not so connected, may be adopted: otherwise let him not adopt."

Çaaunaka on the subject of the first cited.

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67. Many objections.] In the original 'eight' occurs: a definite, for an indefinite number.

3. "From amongst 'sapiṇḍas'"—That is, from amongst such kinsmen, extending to the seventh degree inclusive: and the term being used in its general sense, it follows —'from among such kinsmen belonging to the same or a different general family (gotra).'

Import of the term 'sapiṇḍa; who may be of the same, or a different general family.

4. Of these, with respect to the being of the same general family, this text of Vṛddha Gautama, is an authority—"The sons given, purchased, and the rest, who are adopted, from those of his own general family, by observance of form, acquire the state of lineage (gotratá) [to the adopter]. But the relation of sapiṇḍa, is not included.

Vṛddha Gautama cited as authority.

5. State of lineage (gotratá) [that is, the condition of offspring (santatitva); for, a passage from the Káliká Puráṇa recites—"Sons given, and the rest, though sprung from the seed, of another, yet being duly initiated [by the adopter], under his own family name, become sons [of the adoptive parent]"—and in the Trikáṇḍa or vocabulary, of Amara Sinha, the terms 'santati,' and 'gotra,' are exhibited with others, as synonyms signifying 'race or lineage.'

The term "gotratá" used, interpreted.

6. Nor, by the term 'gotratá,' is connection by the same general family, declared: for, the declaration would be unnecessary, as that connection is obvious, from the affiliation, taking place only, from amongst those of the general family, of the individual himself.

Supposition that the term in question might mean connection by family refuted.

7. "But the relation of sapiṇḍa is not included"—By this, in the case of the affiliation, of one not being a 'sapiṇḍa,' such connection, as extending to both the fifth and seventh degrees, is barred.

Import of the close of the text in § 4.

8. With respect to the affiliation, of one, belonging to a different general family, the following passages, severally, from Manu, and Vṛhat Manu, are authorities. "A given son, must never claim the family, and estate of his natural father, &c."* "Sons given, purchased, and the rest, retain relation of sapiṇḍa, to the natural father, as extending to the fifth and seventh degrees:—like this, their general family, [which is] also, that of their adopter."

Authorities as to the adoption of one of a different family: Manu and Vṛhat Manu.

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4. The text of Vṛddha Gautama]. Nílakantha, in the Vyavahára-Mayúkha denies the authenticity of the text quoted.

5. And in the Trikáṇḍa, &c.] In the text, a verse from the Trikáṇḍa is cited at large.

8. Passages severally, from Manu, and Vṛhat Manu]. The authenticity of that attributed to Vṛhat Manu, is denied in the Vyavahára-Mayúkha.

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* Manu 9.142. This text is subsequently quoted at large. v. infra. Sec. 6 § 6.

9. That, which has been explained, is the primary class: in case, [the adoption] cannot be made from this, the author [Çaunaka] propounds a subordinate class; "on failure, of these, an 'asapiṇḍa,' &c." 'On failure of that is of the sapiṇḍas, or kinsmen connected by an oblation of food, a person, not so connected (asapiṇḍa), must be affiliated.

Subordinate class propounded.

10. Those not sapiṇḍas are kinsmen beyond the seventh degree and persons not allied at all. And these also are of two descriptions: those belonging to the same, and those belonging to a different general family. For this also the passages before cited are authorities.

Which may also be sub-divided.

11. Of what has preceded, this is the abstracted meaning.—The 'sapiṇḍa' belonging to the same general family, is the first [in rank]: on failure of him, such kinsman of a different general family.

Result deduced from what has preceded.

12. Although the "sapiṇḍa" of a different family, and a person of the same family, but not a "sapiṇḍa," are both equal with respect to their severally wanting a quality possessed by the other: still, however, by reason of propinquity, the individual deriving his claim, from the connection as "sapiṇḍa," is preferable, to him claiming by family; and hence it is, that though of a different family, a "sapiṇḍa" even, from the family of the maternal grandfather, must be adopted.

Sapiṇḍa of a different family preferable to one of the same family, not a sapiṇḍa.

13. In every case, on default of a "sapiṇḍa," one not related as such, is to be adopted: of this description, the kinsman allied by a libation of water (Sodaka), to the fourteenth degree, being of the same general family, is the nearest;—On failure of him, one not so allied, but of the same general family, to the twenty-first degree; and on defect of such also, one, not belonging to the same general family, and not related as a 'sapiṇḍa.'

Deduced result, continued.

14. Sakulya has declared this, "Let a regenerate man, being destitute of male issue, adopt as a son, the offspring of a 'sapiṇḍa' kinsman: or next in order, the son of one of the same general family (sagotra): on defect of such, let him bring up one born in a different general family."—By the expression 'sagotra,' those allied by a libation of water (sodaka), and belonging to the same general family, are included.—Now, in this text, the proximity [in order], of each successively, is particularly shewn.

Confirmed by Sakulya.

15. Vasishṭha, also propounds the same—"should take an unremote kinsman or near relation of a kinsman, &c."

Vasishṭha also.

16. The construction of this passage is thus. He is an unremote kinsman, who is both a kinsman, and in a near degree;—meaning, a near 'sapiṇḍa.'—Now, propinquity is of two descriptions,—by belonging to the

Illustration of the passage cited.

same general family,—and by the intervention of few degrees. Of those allied by propinquity, the 'sapiṇḍa,' of the same general family, and removed by few degrees, is the principal: on default of him, a 'sapiṇḍa' of the same general family, though removed by many degrees; on failure of such, a sapiṇḍa belonging to a different general family: on defect of this latter also, "the near relation of a kinsman," —meaning, of a 'sapiṇḍa' kinsman, the near relation or 'sapiṇḍa,'— being one allied to the individual himself, by libations of water (sodaka), but not his 'sapiṇḍa.' Such is the import which is deduced.

17. Relationship also, there alluded to, is of two descriptions;— by belonging to the same general family,—and by the intervention of few degrees. The first in rank, is the 'sapiṇḍa' kinsman, of such kinsmen of the man himself, removed by few degrees, and belonging to the same general family, as that person, though not his own sapiṇḍa. On defect of such, the 'sapiṇḍa' of his own 'sapiṇḍa' kinsmen, being of the same general family, though removed by many degrees.—One connected by a libation of water, is intended.

Illustration continued.

18. If a 'sapiṇḍa', or 'sodaka' relative, cannot be procured, one belonging to the same general family, to the twenty-first degree, must be adopted: should none such exist, a person of a different family, although not asapiṇḍa, must be adopted; for, the text of Çankha (§ 2) expresses, "or, on failure of these, an 'a sapiṇḍa:'" and this is indicated by Vasishṭha, [who says,] "But if doubt arise, let him set apart like a Çúdra, one whose kindred are remote."

And concluded, by shewing that one neither a sapiṇḍa or sagotra, is meant, as an object of adoption, in the last instance.

Çankha cited.

Vasishṭha.

19. He, whose kinsmen are distant, is 'one whose kindred are remote:' the meaning is,—one not allied by an origin from the same stock, or by the relation of 'sapiṇḍa.' The doubt, alluded to in this passage of Vasishṭha, regards lineage, disposition, and so forth: it arises in the case, of one unconnected as a 'sapiṇḍa,' and not sprung from the same general family. This is also implied in the passage, "otherwise let him not adopt." (v. § 2).

Passage of Vasishṭha, quoted, in the preceding §, explained.

20. Although none other than such as are connected, as 'sapiṇḍas' and not so, can exist: still, since by this sequel of the text, ("of all, and the tribes likewise, in their own classes only, not otherwise"*) those, connected as sapiṇḍas, and not so, are qualified, as being of the same class; both sapiṇḍas, and those not such, who do not belong to the same class, are excluded [from being adopted]. For, they might be inferred as a subordinate class, by the rule of logic "What is not denied, is admitted."

In all instances of adoption, the adopter, and adopted, must be of the same class.

quoted, v. § 74.

As is ordained by Vṛddha Gautama.

21. Accordingly, Vṛddha Gautama* forbids the participation in inheritance, of one, not of the same tribe, thus,—"or should one of a different class be taken as a son, in any instance, let him (the adopter) not make him a participator of a share, this is the doctrine of Çaunaka."

One of a different class cannot be adopted.

22. Hence, it is established, that one of a different class cannot be adopted as a son.

Manu indicates as much: whose expression 'alike' in the text here cited, means, of the same class.

23. Accordingly Manu. "He is called a son given, whom his father, or mother affectionately gives, as a son, being alike, &c."†. Alike,] that is,—of the same class; for, a text of the chief of the saints (Yájñavalkya) expresses, "This law is propounded by me, in regard to sons, equally by class."

An apparently conflicting use of the same term, by that author, reconciled.

24. As for what has been said by Manu himself; "He is called a son bought, whom a man, for the sake of having issue, purchases of his father, and mother: whether the child be like or unlike"‡: this must be interpreted, whether like, or unlike, in qualities, not in class.

And contrary interpretations by Medhátiṭhi, and in the Kalpataru refuted.

25. "Alike not by tribe, but, by qualities suitable to the family: accordingly, a Kshatriya, or a person of any other inferior class, may be the son of a Bráhmaṇa." As for this interpretation of Medhátithi, and one in the Kalpataru, "a Çúdra even is certainly a son, such is the meaning:"—these both must be rejected, on account of their repugnance, both to the passage from Yájñavalkya before cited, ("This law is propounded by me in regard to sons, equal by class")—and the text of Çankha, which recites, "[in their own] classes only: not otherwise."§

The Çúdra son, propounded by Manu, is one born out of wedlock of Çūdra parents.

26. "A son self-given, and a son by a Çúdra, are the six kinsmen, but not heirs."‖—The enumeration by Manu, in this passage, of the son by a Çúdra, as a substitute, must be explained, as meaning, that, one procreated by a Çúdra, on a female slave, but not born in wedlock, inasmuch, as he is not a principal son, is a substitute

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24. As for what, &c.] The author has copied this § nearly verbatim, from the Mitákshará, on inheritance.—The reader is referred to Colebrooke's translation, chap. 1. Sec. XI. § 16, and the note subjoined.

25. As for the interpretation of Medhátithi.] This gloss of Medhátithi, is noticed by Mr. Colebrooke, in his translation of the Mitákshará on inheritance. Vide, note, subjoined to ch. 1. Sec. XI. § 9. in which the text of Manu here cited in § [illegible] is quoted.

26. By Manu in this passage.] The text, of which part is quoted, in its complete state, is thus—"The son of a young woman unmarried: the son of a pregnant bride:

* By an error of the author or his transscriber Vṛddha Gautama, has been written for Çaunaka. v. infra § 32.

† Manu 9. 168. ‡ Manu 9. 174. § V Infra, § 74. ‖ Manu 9. 166.

This is supported by Yájñavalkya.

for the same. For, a text of Yájñavalkya expresses "Even a son begotten, by a Çúdra on a female slave, may take a share by the father's choice. But, if the father be dead, the brethren should make him the partaker of the moiety of a share: and the one who has no brothers, may inherit the whole property, in default of daughter's sons."*

Conclusion that the term 'alike' means of the same class.

27. Hence, the explanation by Aparárka, of the term in question, is only correct; "alike, being of the same tribe, &c." Yájñavalkya also.—"This Law is propounded by me in regard to sons, equal by class."

A nephew must be first selected for adoption.

28. Now, amongst near sapiṇḍa kinsmen of the same general family, a brother's son only must be affiliated: and this doctrine is recognized also, by Vijñaneçvara.†

He must be the son of a whole brother: as shewn by Manu.

29. By the position, that, 'a brother's son only must be affiliated,' it is meant, that the son of a whole brother only, must be affiliated. Manu declares this:—"If one, among brothers of the whole blood (ekajáta), be possessed of male issue (putraván), Manu pronounces, that, they all are fathers of the same, by means of that son."‡

From the text cited, it is argued, a brother cannot be adopted.

30. In this text, the state of brothers, as adoptive fathers, being propounded, their incapacity to be the objects of adoption follows.

And brothers of the half blood, cannot be the adoptive parents, such as there alluded to.

31. Of the whole blood]. By this expression it appears, that, this condition of adoptive fathers alluded to, applies to those only, begotten by the same father, on the same mother, not to such as are born of a different father or mother.

The masculine gender being used sisters are not in-

32. Brothers.] From the masculine gender being used, it results that brothers, and sisters also, of the whole blood, are not reciprocally the adoptive parents of the son [of any one of them]: and this conclusion is confirmed by the

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a son bought; a son by a twice-married woman: a son self-given, and a son by a Çúdra, are the six kinsmen: but not heirs."—The author obviates the inference, which might be drawn from this, that a son by a Çúdra woman, and consequently of the servile class, may be a subsidiary son, of his natural father of a superior tribe.

32. By the mention of two terms, &c.] In the original of the text of Manu, "of the whole blood (ekajâta)" is an epithet of 'brothers,' agreeing with that term, in

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* Yájñavalkya 2. 134. 135.

† Author of the Mitákshará, vide translation chap. I. on inheritance, Sect. XI. § 36.

‡ Manu 9. 182.

cluded, in this reciprocal state of adoptive parents.

mention of two terms [in that gender]. Vṛddha Gautama, declares the same. "In the three superior tribes, a sister's son, is nowhere [mentioned as] a son."*

Vṛddha Gautama supports this.

And completely, as the term 'sister's son' is explained to include a brother's son.

33. The expression 'sister's son,' is inclusive of the son of a brother also. Hence, this meaning is deduced, that, a brother's son must not be adopted by a sister; for, brothers only are mentioned, to be adoptive parents [in the text of Manu § 29].

34. "'Brother' and 'son,' when occurring in combination, severally, with 'sisters' and 'daughter,' are retained; [the other terms being omitted.]"† Although, by this rule of grammar, [the term 'brothers'] may be a compound, formed by the retention of one term, and omission of an other: and thence, the reciprocal affiliation, by a brother and sister, of a sister's and brother's son, respectively, might be inferred: still, those are 'ekajáta,' whose játa or játi (kind) is the same: for, these words with 'samánya,' are cited in the dictionary, as synonimes signifying kind or sort;‡ [therefore,] since by 'ekajáta,' the epithet of 'brothers,' it is intimated, that, those [signified by that term,] are of the same kind, the affiliation, by brothers, who are male, of a brother's son, and by sisters, who are female, of a sister's son, would be established. The adoption of a brother's son by a sister, or a sister's son by a brother, could not take place, on account of the difference of their kind, in being male and female [respectively.]

In Manu's text (§ 29), the epithet ekajáta, signifying of one kind, bars the reciprocal affiliation, by brothers and sisters, of their sons respectively, inferrible by construing 'brothers' as a complex term standing for both.

35. But the single expression 'ekajáta,' once uttered, can not bear two meanings, namely, 'being of the whole blood,' and 'being of the same kind': for, this maxim in logic, would be contradicted; "A term once uttered, conveys a single meaning."—Should this objection be made, it is wrong: for, the word 'sansrishṭa,' occurring in the following passage, has been explained by Vijñaneçvara, as signifying, a whole brother, and re-united as a co-

Objection, that the term 'ekajáta' can not at once import two meanings over-ruled, by the authority of Vijñaneçvara, who explains in two

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gender, case, and number.—These may be the two terms alluded to, or, they may be, 'brothers', and the term 'one' represented in the original, by the word 'ekaḥ', which is in the nominative case, and masculine gender, of the singular number.

35. The word 'sansrishṭa' occurring in the following passage, &c.] The very obscure text, of which a portion is cited, is the following of Yájñavalkya. "A half brother, being again associated, may take the succession, not a half brother, though not re-united; but one united (sansrishṭa), &c., &c., &c."—In his gloss on this passage,

* This passage is a portion of Çaunaka's text cited in § 74. It may belong however to both authors: but it is most likely that in the same manner as in the preceding instance; the author has here erroneously substituted the name of Vṛddha Gautama, for that of Çaunaka. (V. § 21).

† Páṇini 1. 2. 68. ‡ Dictionary of Amara, Book 1 chap. 1 sect. 1. verse. 9.

distinct senses, a word used in a text of Yájñavalkya.

parcener: "..... though not re-united; but one united (sansrishṭa) [by blood, though not by co-parcenery] may obtain the property, and not [exclusively] the son of a different mother."* So even, in the present case likewise. Thus, there is no inconsistency. Sufficient has been said.

The case of two brothers, is included by the plural number, in which, 'brothers' is expressed.

36. The plural number is inclusive also, of the dual: for, two are contained in many: and the being son of two fathers, is shewn in the following text: "If he be son of two fathers, let him designate both, in each distinct oblation of food."

The force shewn of the word 'one' used by Manu. Who sanctions the affiliation of the only son, of a single brother.

37. "If one"—that is, 'if one even'] By this, where two or more are the fathers, the author implies a fortiori, the more easy adoption of a son, by the others, destitute of the same: he does not bar, the affiliation of the only son of a single brother: on account of,—the cogency of the specification of the term 'one,'—and the singular number, in the expression 'that son.' The derivative adjective 'putravân' possessed of male issue, applies to him, of whom, there are, one, two, or more sons.

The prohibition of the gift, in adoption, of an only son, does not refer to the case proposed, the reason not applying.

38. And hence, from the sanction of the gift, of an only son even, in the present case, there is no room, for the application of the prohibition, ("Let no man give or accept an only son, &c.") For, since, as propounded in the sequel of this text, assigning the reason ("For he is [destined] to continue the line of his ancestors,"†) the continuation, of the line of his ancestors (the father, and the rest), is completed, by means of a son, although

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Vijñaneçvara, the author of the Mitákshará, holds that the word 'united' (in the same manner as the expression 'not re-united,') is connected, with both its preceding, and following terms; and that accordingly, in one sense it means, united by blood, or a whole brother, and in the other, (that is, taken as an epithet, of the son of a different mother,) it signifies re-united, as a co-parcener: *vide* Colebrooke's translation of the Mitákshará on inheritance—chap. II. Sect. IX § 7. 9. and 10 and notes subjoined.

37. He does not bar &c.] The author here further supports his position, (in [illegible] and also alluding to the prohibition, in the text below noticed, shews that Manu in his text (§ 29), intimates that an only son of one brother, may be affiliated by another brother; for, by the singular number in the expression "that son" the case of one brother having a single son even, is indicated: the term 'putravân' applying, as well to a person having one son only, as to him, who has more.

The derivative adjective 'putravân']. This is designated in the original, by the affix 'matup,' by the subjunction of which to 'putra,' the derivative noun, 'putraval' in its crude state, of which, 'putravân' is the inflected nominative case, is formed. Thus the 'up,' of 'matup,' is redundant: and by a special rule, the 'm' becomes, 'v,' where the last vowel of the root, (as in this case,) is the short ă, or á—In his illustration of this derivative, the author alludes to Panini 5. 2. 94; by which rule, it is used to supply

* Yájñavalkya,

Case in point of Vetála and Bhairava cited from the Kálika-puráṇa.

45. And accordingly, in the Kálika-puráṇa, an indication of Vetála and Bhairava, sons of Çiva, becoming both fathers of male issue, by means of the same son, is thus found: "The sages said: 'There is no salvation for one destitute of male issue. This is recognized in the world and Vedas. Vetála and Bhairava formerly went to a mountain to perform devotion. Previous to that, they were unmarried, and sons of them, are not mentioned, [as having been born or not born. If sons were born, O excellent of the regenerate,] we much wish to hear, the particulars concerning them.' Markaṇḍeya replied; 'salvation is not for one destitute of male issue, both in the next world, and in this: O excellent saints, those, who are fathers of male issue, by means of their own sons, and those of brothers, attain heaven. Having in this world attained great perfection, when Vetála and Bhairava reached the abode of the great deity, they were happy on the hill Kailása. Then, Oh! twice-born men, Nandi* by the order of Çiva, as one consoling addressed them,

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45. Çiva.] Or the great deity is mentioned in this extract, under his names, 'Sankara,' or the benefactor, and 'Hara' or the destroyer.

The sages said, &c. &c.] It is to be feared that an instance here occurs of literary fraud, too commonly practised among Hindú authors, and perhaps those of every nation, where the art of printing has not reduced works of authority to an accurate and unvarying standard. On collating this pretended extract from the Kálika-puráṇa with a copy of the original, it proves to be artfully mangled and fabricated. Indeed, were an extract authentically made from that work, it would tend to establish the converse of the position, in favour of which it is adduced.—The following notes will explain these assertions:

And sons of them are not mentioned.] The translator has supplied from the Kálika-puráṇa what here follows between these marks [ ], with a view of rendering the passage the more intelligible. This part has been apparently omitted by the author, to favour the omissions below noticed.

Both in the next world and in this.] Instead of 'pretyachêhacha' thus rendered, in the copy of the original Kálika-puráṇa, consulted by the translator, 'nischitanchéti,' occurs, meaning, 'and this is certain.' The circumstance of three copies of the author's work concurring in the former reading, deterred the translator from adopting the latter, which in point of sense, is unquestionably the preferable.

Attain heaven.] A stanza of the original immediately following here has been purposely omitted: It is to this effect "Oh, Bráhmaṇas, the sages Vetála and Bhairava had offspring born to them. Listen illustrious saints, while I declare their progeny."

Is easily attained.] Here stanzas to the following effect have been purposely omitted:—"One destitute of male issue, beholds the hell named Put.—None can escape from that, either by religious austerities or devotion: Liberation from it proceeds from the production of a son only. Therefore, beget ye sons on the bodies of divine females; your immortality has been produced, by drinking the milk of Kátyáyana:† therefore procreate immortal sons on immortal beings: wherefore having in any manner produced sons from the bodies of celestial beings, your welfare will quickly follow."

We will make one [son] only.] The author by the substitution of one letter for another, has ingeniously produced a sense directly opposite, to that of the Kálika-puráṇa. The Dattaka Mímánsá reads ekamevá, '[one] only;' the original 'evameva,' by which the sense would be, "we will do thus even."

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* One of the celestial attendants of Çiva. † A name of the goddess Durga.

in private, in the following true and instructive speech: he said "Do you sons of Çiva, destitute of male issue, exert yourselves in the production of a son. By one to whom a son is born everywhere salvation is easily attained." Markaṇḍya continued:— 'having heard these words of Nandi, they became elated in their hearts, and said to him: "we will make one [son] only." Accordingly Bhairava, at some time, copulated with Urvasi, a celestial nymph, and procreated on her a son named Suveça. Vetála also affiliated him as his son: and in consequence, by means of this son, both attained heavenly salvation.'"

Dilemma suggested as an objection.

46. But must not this relation of one as son to many [brothers] be either produced at once, or in gradation? Not the first: for, there is no precept enjoining that they should receive in adoption at once. Nor is the other supposition accurate: for a boy precluded by a previous initiation, another initiation of the same description as the first, cannot be performed.

Refuted. And the conclusion, that a nephew may be given, to several associated brothers, supported by the analogy, to the 'Tulápurusha' gift.

47. Should this be alleged, it is wrong: for, analogous to the case exemplified in the passage ("seventeen are inferior and twenty-four superior sacrifices, &c."), the words 'they,' and 'all,' being the abridged form of the conjunctive compound: the association of the adopting brothers, is meant to be declared thereby: hence the gift even [of a son] to several brothers associated, is valid. In the same manner, as at the religious gift denominated 'tulápurusha,' the united officiating priests are the objects to whom it is made, and the receivers.

The analogy in this instance indicated by Váchaspati Miçra.

48. Váchaspati Miçra declares the same, thus: "since the plural number is used in "officiating priests" in this passage, ('Having thus prayed to the gods, let him give the officiating priests ornaments of gold,') the whole of them conjointly even, are the object, to whom the gift is made: and hence, after having placed, his spiritual preceptor's hand, above all, and arranged in order under it, those of the officiating priests, who read the Rig-veda, &c. the ornaments are to be given."

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Accordingly Bhairava at some time, &c.] What follows from this part, to the end of the alleged extract, appears to be a fabrication. It is cited indeed in the Dattaka Chandriká, as from the Kálika-puráṇa: but is not found in that work. On the contrary, it is related with much prolixity, in the Kálika-purâṇa, that Bhairava had a son Suveça, by Urvasi: but it is not written, that such son, was adopted by his brother, who is mentioned as having raised distinct male issue to himself.

47. Religious gift denominated 'Tulápurusha.'] This gift (as its name denotes) is, where for pious or auspicious purposes, the donor presents united Bráhmaṇas, with his weight in some substance: some years ago Rájá Rájkishn, publicly gave away in Calcutta, his weight in gold: instances of such pious, or rather ostentatious munificence, are of course rare: though this gift in barley, rice, salt, &c. is prevalent throughout the country.—It should be observed, that it must not be made to an individual Bráhmaṇa.

49. Nor is even, the being son to many [brothers], at the same time, anomalous: for, analogous to Draupadi's, being the wife [of several brothers] by simultaneous acceptance, that relation of one, as son to many, though somewhat differing, is acknowledged; like the recognised state of the 'Dvyámushyáyaṇá' or son of two fathers.

There is no omaly in the ...al relation of one to many; it is supported by analogy.

50. "Fathers of male issue, (Putrinaḥ)]. "Of whom, there is a son."—By the verb 'is' (signifying existence) in this phrase, (into which this derivative adjective resolves,) since existence is declared; and existence not applying to one who has not been produced, an act of the adoptive fathers is implied.

In § 29, Manu implies that there must be an act of the adopting brother to establish the filiation of his brother's son as his own.

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49. Analogous to Draupadi's being the wife, &c.] Draupadi was the wife of, and received in marriage at the same time by, Yudhistira, Bhíma Séna, Arjuna, Nakula and Sahadeva, the five sons of Pánda, a king of Indra Prastha (Delhi). The following particulars, relative to this circumstance, are mentioned in the Mahábharata: Draupada, the father of Draupadi, was the sovereign of the Punjab country. He had heard of the virtues of Arjuna and his unrivalled skill in archery: and secretly desired him for his son-in-law. To promote this object, he caused to be erected a pole, on which a wheel having a hole in it, and which constantly revolved, was horizontally placed. He also proclaimed a vow, that he would bestow his daughter to the person whoever might succeed in discharging an arrow from underneath through the hole of the revolving wheel, so dexterously, as on its descent, to fall through the same aperture. A particular day was appointed for the trial: and he invited princes of the vicinity, and persons of all degrees, assembled at the court of Draupada. Previous to this, Arjuna, and his brothers had become ascetics—Bhima appeared at the place of trial, with other religious mendicants; and when no one in the assembly would attempt so difficult an undertaking, by the advice of his companions, brought his brother Arjuna from their abode in the city.—Arjuna advanced to the trial and accomplished the task imposed.—Draupada would have fulfilled his vow, but the princes and others, jealous of the success of one apparently so mean, attempted with force to prevent his receiving the prize his skill had won. Arjuna, however, with the assistance of his brother, succeeded in carrying off Draupadi.—Having arrived at their habitation, Arjuna addressed his mother, who was reclined with her face covered, that "he had brought something."—To this the mother (her face still covered) replied, by directing him, to divide it, whatever it was, equally with his brothers; and afterwards, when aware of the object, to which her son alluded, would not retract her injunction.—In the meantime, with the advice of Draupada, his priest repaired to the abode of the brethren, and secretly listening to their conversation, discovered, who they were: with this information, he returned to his master, who the next morning invited the whole family to his palace, for the purpose of solemnizing the nuptials of his daughter, and Arjuna. They attended with Draupadi.—The preparations were commenced, and when the king formally proffered his daughter in marriage to Arjuna, he explained the nature of his mother's command: and that he would not espouse her, except in conjunction with his brothers. The king reluctantly consented, and Draupadi was received in marriage, at the same time, by the five brothers.

50. This phrase into which this derivative adjective resolves.] The Sanskrit reader will perceive that a literal version, here, has not, and indeed could not well have been given. 'Putrinaḥ' cited from Manu's text (§ 29) is the nominative case plural, of the derivative, formed by the affix 'in.' This is used in the same sense, as that formed by the affix 'matup,' already noticed in § 37 and note subjoined, and is consequently illustrated by the same periphrasis which Nanda Paṇḍita, accordingly introduces. v. Paṇini 5. 2. 115.

51. And accordingly Atri. "By a man, destitute of a son only, must a substitute for the same,

This is indicated by Atri.

ṭha also: "A person being about to adopt a son, should take an unremote kinsman, or the near relation of a kinsman, having convened his kindred, and announced his intention to the king, and having offered a burnt offering, with recitation of the holy words, in the middle of his dwelling." Likewise Çaunakha: "Having advanced before the giver, let him thus cause to be asked, 'Give this son,' &c."

Vasishṭha.

And Çaunakha.

A term used by whom is explained.

52. "Cause to be asked."] Here, by the causal form of the verb being used, it is meant:—'Let him ask, through a Bráhmaṇa employed for that purpose.'

The contrary doctrine refuted.

53. And consequently, the position that, the son of a brother though unadopted, bears filial relation to his paternal uncle, on account of this text of Vṛihat Parásara, ("Let the nephew of a paternal uncle, destitute of male issue, be his son: he only should perform his obsequies, of the funeral repast, and oblations of food, and of water,") is refuted. For, without an act of the adoptive parent, filiation, as his son, is not accomplished.

An act of the adoptive father, is implied in the cases of the sons of hidden origin, and self-given.

54. It must not be argued that in the cases of the son of hidden origin and the son self-given, there is no act of an agent, [as adopter]; because, in these passages,—("one secretly born in the house, is considered a son of hidden origin"—"Self-given, meaning, given by himself") no such act is mentioned. For, it is inferred, as otherwise, the consecution of an effect, to an act, would not be attained.

Were Manu and Parásara (§ 29 and § 53) literally construed; it would follow, there were thirteen sons.

55. Therefore, the text of Manu, and Vṛihat Parásara (§ 29 and 53)are not pertinent, to the extent of their verbal import; for, thirteen descriptions of sons would be the consequence.

Which would be at variance with the enumeration of twelve, by Manu.

56. Nor would thus, what was intended result: for the enumeration of twelve, in this text, would be contradicted: "of the twelve sons of men, whom Manu, sprung from the self-existent, has named: six are kinsmen and heirs; six not heirs, but kinsmen."*

Opponent's argument that such contradiction, is no objection: as the enumeration of sons is, variously specified by a text of law.

57. But, may not this contradiction of number be admitted on account of the passages below cited? Firstly: A different text of law: "The legitimate son, the appointed daughter, the son begotten, on another's wife, the son of the wife, the son of an appointed daughter, the son of a twice-married woman, the damsel's son, the son received with a pregnant bride, the son of hidden origin, the son given, the son purchased, the son self-

* Manu, 9. 158.

given, the son made, the deserted son, and the one born on a woman of unknown caste,—are the fifteen sons of a man."

Vṛihaspati. Secondly: A text of Vṛihaspati: "Of the thirteen sons, enumerated in their order, by Manu, the legitimate son, and appointed daughter, are the cause of lineage." Thirdly: A

Manu. text [of Manu]: "Sages declare these eleven sons, (the son of the wife, and the rest,) as specified, to the substitutes for the real legitimate son, for the obsequies would fail."—And

Manu. lastly: A text also of Manu, which declares: "The son of the body, and, the son of the wife, may succeed to the paternal estate: but, the ten other sons, can only succeed in order, to the family duties, and to their share of the inheritance."*

58. Should it be thus argued, by an opponent, we reply,—True! It is established, that there is no contradiction of the number twelve: for, the several enumerations in each authority, are consistent; since in some, particular sons are implied, and in others, expressed.

His argument refuted.

The gradation of the nephew, as fifth, in the order of inheritance, would be contradicted.

59. And moreover, the assigning in the following text, the fifth place, in the order of succession to the estate of one, who died without male issue, would be contradicted: "The wife, and the daughters, also: both parents, brothers likewise, and their sons."†

That is, if the brother's son though unadopted, were son to his uncle.

60. The exposition of this, is thus. If the brother's son, though unadopted, bear filial relation [to his uncle]; the enumerating the brother's son, on account of his wanting such relation, in the fifth place, in the order of succession to one dying without male issue, would be contradicted. The same also must be understood, in respect to the right in gradation, to perform the obsequies, as declared in this, and other texts. "The son, the son of a son, the son of a grandson: like these, the offspring of a brother, or, that of a Sapiṇḍa also, are born, Oh king! capable of performing obsequies."‡

A similar objection would apply to the order of performing ob-

But Vishṇu declares the incompetency of certain descriptions of sons, to perform obsequies or succeed to the estate, although filially related.

61. But, is it not deducing a false conclusion, to argue a want of filial relation from not performing the obsequies and succeeding to the estate; for, the son of an unmarried daughter, and the rest, notwithstanding their filiation, are shown by Vishṇu, in this text, to be incompetent to perform obsequies or succeed to the estate. "Exceptionable sons, as the son of an unmarried daughter, a son of concealed origin, one received with a pregnant bride, and a son of a twice-married woman, share neither the funeral oblation, nor the estate."‖ So also, notwithstanding participation in the obsequies and estate, may be wanting, the filial relation of the brother's son, though unadopted, may be admitted without objection.

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* Manu, 9. 165. † Yájñavalkya, 2. 136. ‡ Vishṇu-puráṇa.

‖ This text is unauthentic: vide note to Colebrooke's translation of the Mitákshará, Chap. 1. Sect. XI § 27.

62. Should this be objected: it is erroneous. Participation in the obsequies and estate has been declared to be the result of filial relation, in this passage ("Among these, the next in order is heir, and presents the funeral oblations, on failure of the preceding");* for, otherwise, like the impotent person and the rest, one, who merely bore the semblance of being a son, would be of no use; and in this text, ("By a man destitute of a son only, must the substitute for the same, always be adopted, &c.") an imperative mode of expression, being used, the filial relation of one unadopted, cannot exist.

Argument of opponent, founded on this circumstance over-ruled by reference to texts of Yájñavalkya, And Atri.

63. Nor must it be affirmed that the injunction in question regards those other than the brother's son: for there is no proof of such partial application; and on the other hand, it would be at variance with the instance of the adoption by Vetála of the son of [his brother] Bhairava, contained in the portion [of the extract from the Kálika-puráṇa, before quoted] commencing, "We will make one son only," and ending "Vetála also affiliated him, as his son."

Of whose text, it cannot be said, that it refers to one other than a brother's son.

64. Moreover, in the case, where, of ten whole brothers, five have each ten sons, and five are wholly destitute of male issue, it would follow, that, the five brothers destitute of male issue, would have each fifty sons; and it would also result, that the fifty sons would severally have ten fathers: thus, there would

Besides if the filiation of a nephew, existed without adoption, where of several brothers, some not sons, and

quence would result.

65. Nor, would an intended consequence thus result: for, in the passage, ("a substitute for a son must be adopted") unity, ascribed to the object to be adopted, is of definite import: and the singular number, used in the following passage to express severally both the male issue and the father of the same, would be contradicted. "If one among brothers of the whole blood be possessed of male issue, Manu pronounces that they all are fathers of the same, by means of that son."

Which cannot be intended.

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62. Amongst these, &c.] The text of Yájñavalkya, of which the initial part only, is here cited, is completed from the translation of the Mitákshará on inheritance. (v. Colebrooke's translation, Ch. I. Sect. XI. § 21). The passage quoted in the last paragraph, as from Vishnu, which is cited in § 27 of the Section noticed, is explained, as merely barring the right of the exceptionable sons in question, to a fourth share, legitimate issue existing: and as not affecting the text of Yájñavalkya, here alluded to, by which any description of son whatever, on default of legitimate issue, may inherit the whole patrimony.

Impotent person and the rest.] Meaning the outcaste, and his issue, one lame and the others, who are excluded from inheritance.

An imperative mode of expression being used.] 'Vidhiprayatyaya' or an affix of injunction, are the terms of the original thus rendered: by these, the injunctive future participle 'Kartavya' (must be adopted) used by Atri, is designated.

* Yájñavalkya.

class (Vaiçya-játeshu ; of Çúdras, from amongst those of the Çúdra class. Of all, and the tribes likewise, [in their own] classes only : and not otherwise. But a daughter's son, and a sister's son, are affiliated by Çúdras. For the three superior tribes, a sister's son, is no where [mentioned as] a son."

Though 'class' is used by Çaunakha in the general propinquity is a condition, by reason of the text Vasishtha.

75. "In their own class." In the Kshatriya tribe. Notwithstanding 'class' (játi); being used in its general sense, propinquity as before, here likewise, constitutes a restrictive condition ; on account of the text of Vasishtha: "a person being about to adopt a son, should take an unremote kinsman, &c."

Import of the passage "and even in the general family, &c." shown.

76. On default of a sapiṇḍa kinsmen, "and even in the general family, following the same primitive spiritual guide.—" Since there are no distinct and peculiar general families, of the [primeval] Kshatriyas ; the primitive spiritual guide is mentioned, [to particularize the class, from which, the adoption is to be made.]

From which it appears, on defect of a 'sapiṇḍa,' one of the same general family, is ordained ; to whom, the condition of equality of class, equally applies.

77. Accordingly, an account of his more remote connection, on failure of the "sapiṇḍa" kinsman, one, belonging to the same general family, is ordained. In respect to him also, the clause "In their own class, &c." is likewise applicable ; on account of the conclusion, of the passage "of all, &c." And hence a near or distant relation of a different class is precluded [from being adopted.

Çaunaka's terms Vaiçya-játeshu, explained.

78. 'Vaiçya-játeshu'] this must be rendered,—from amongst those of the Vaiçya class,—as if, 'játishu' had been used : for 'játa' or 'játi [of which the words are several inflexions, are recited in the dictionary, as synonims, signifying, 'class or sort.'

In respect to the Vaiçya, the condition of propinquity, and the

79. Here also, although the specification is general, propinquity as before, constitutes a restrictive rule. The clause too, ("and even in the general family, following the same primitive spiritual guide,") is here likewise understood ; on account of the text, commencing "[He specifies] the

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76. Since there are no distinct and peculiar general families of the [primeval] [Kshatriyas]. The general families of Kshatriyas and Vaiçyas, are distinguished by the primitive saint, or patriarch hereditarily acknowledged, in the family. This is not the case with Bráhmaṇas. The gotra, or general family of whom, is determined by lineal descent, from some particular saint. Çúdras again are all supposed to belong to the gotra of Káçyapa, the common progenitor of the four tribes.

78. Vaiçya-játeshu.] These terms occurring in the original, might also be rendered 'amongst those sprung from a Vaiçya :' accordingly, it is here the object of the author, to restrict them, to their other construction, viz., "In Vaiçya classes," which he prefers. The Sanskrit reader will observe, that a literal translation has not, [been] nor could not well be attempted here.

79. The text commencing, &c.] Not having met with this text in its complete state, the Translator offers with diffidence, the mode, in which, the initial words, of the original, are rendered. These occur in the Mitákshará, where they are cited, under the

clause, as to the general family following the same 'Guru,' are equally applicable.

general families of Kshatriyas, and Vaiçyas, as distinguished by following the same primitive spiritual guide: and because, the passage, the initial words of which, are "who are adopted from those of his own general family, &c. &c."* is common to the three tribes. It is equally the case, in this instance also, that, on default of a 'sapiṇḍa' kinsman, one of the general family, following the same primitive spiritual guide, [is to be adopted.]

Amongst Çūdras propinquity is a condition, but the clause regarding the general family of the same Guru, does not apply.

Their tribe in general is the order from which the selection is to be made.

80. 'From amongst those of the Çúdra class.' Here also propinquity as before, [constitutes a restriction;] and the clause, ("and even in general family following the same primitive spiritual guide,") does not here apply: since, [amongst Çúdras] a general family, distinguished by following the same primitive spiritual guide, is not ordained. Therefore it follows, that the Çúdra class, in the general, [is the order from which the adoption is to be made.]

The same is intimated in the Bráhma purána.

81. The same is declared in the Bráhma-puráṇa.—"In fact, for Çúdras, gaining their livelihood by servitude, living on another's bread, whose bodies depend on another, there is not a son, from any order whatever, [but their own tribe]: because a slave only is produced from a male slave and a female slave."

From which the import of the text cited is explained.

82. On account of the superiority of those of the three first tribes, and of those born in their direct order; and of the inferiority, of those born in the inverse order, a son cannot be adopted, from any order whatever, [by Çúdras, but their own tribe]. A Çúdra only, therefore, must be affiliated; for a slave is produced from slave parents.

Objection, that the passage commencing, 'of Kshatriyas;' should not have been propounded.

83. But the three sentences regarding the 'Kshatriyas' and the rest, (§ 74) should not have been propounded; because their import is obtained from the passage preceding (v § 2): and even if propounded, there is tautology in the part commencing "of all, &c."

Refuted.

This if objected, is wrong; because by the terms 'Kshatriya' and the rest, the inclusion of the Múrdhávasikta and other mixed classes regulated by the same rules as the Kshatriya and the rest, is meant: for, a text of Çankha expresses:—

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name of Açvaláyana, the author of a work entitled the Gṛihya-sūtra.—The same text is ntoiced in the Dattaka-Chandriká, where the additional word 'probriniti, "He specifies" occurs.

Vṛiddha Gautama, vide supra. § 4. In the original, those cited, are the initial of the text.

" one procreated,—on a female Kshatriya by a Bráhmaṇa, is a Kshatriya even : on a Vaiçya woman, by a Kshatriya, is a Vaiçya even : by a Vaiçya on a female Çúdra, is even a

The phrase 'in their own class' shews that, a Múrdhávasikta, or one of any mixed class, may not be adopted by one of the tribe with which he ranks.

85. 'In their own class.' This is to shew that, though the same rules apply to the 'Múrdhávasikta,' and other mixed classes, as to the Kshatriya and the rest; still those do not become sons to a Kshatriya, and the rest, on account of the indication, of direct order, in this text. "Three wives in the direct order of the tribes, &c. &c."

The sentence 'of all, &c.' is pertinent.

86. Nor, is there any tautology in this sentence, " of all, &c. :" for this part of the text : "of all, &c." by reciting a restriction, as to their own classes, in respect to the tribes, and those born in the direct order of the same, is pertinent, in indicating, that, that does not apply to those, born in the inverse order.

'Of all' is used, to include those born in the direct order of the tribes, who would not otherwise be included by the term 'all.'

It is not an epithet of tribes.

87. The expression 'of all' implies in fact this. From the cogency in the specification of the word 'tribes,' the restriction to their own class, would apply to the tribes only: not to those, born in their direct order. To include these the word 'all' is used. Now, they are included, because they are regulated by the same rules, as the tribes. Nor is this term, an epithet of tribes; for the conjunction 'and' would be insignificant.

Conclusion.

88. And therefore, the restriction is,—'of the tribes, and those born in the direct order of the same, in [their own] classes only.' 'Not otherwise'—meaning—not amongst others, born in the inverse order of the tribes.

ANNOTATIONS.

85. On account of the indication of direct order in this text.] The text, of which the initial words only are cited, is the following of Yájñavalkya. "Three wives in the direct order of the tribes, two, and one, are, for a Bráhmana, Kshatriya and Vaiçya respectively. For one born a Çúdra, a woman of his own tribe." The argument of the author, here used, requires illustration. A son begotten by a man of superior tribe, on a woman of inferior tribe, is of his mother's class, and technically called 'anupurvaja' and 'anulomaja :' that is,—one of a mixed class, born in the direct order of the tribes. Such issue is of several descriptions. For instance, the Mūrdhávasikta or offspring of parents of the Bráhmaṇa and Kshatriya tribes. Though considered however, as of his mother's tribe, such son, may not be adopted by a Kshatriya. It is a maxim, that a man, must only affiliate, one of his own class, of whom he might have been the natural father. Now the Múrdhávasikta, is born in the direct order of the tribes, being the issue of the union of a Bráhmaṇa, with a female Kshatriya; and not that of a Kshatriya, with a female Bráhmaṇa, which could not take place; as it would be in the inverse order of the tribes.

89. But why should not this part, [commencing 'of all, &c.'] be considered, as an exception to the rule, as to propinquity, inferred from the preceding passage [in § 2] ? Should it be replied, because, it would be repugnant to the text of Vasishṭha ("a person being about to adopt, &c.") : the argument is wrong ; for, the result, deduced, from that text, is, that, it is identical in its import with the passage [in question,] regarding Bráhmaṇas.

Objection that the part commencing 'of all' may possibly be an exception to the preceding part.

90. Such objection, if made, is inaccurate : for, were the passage in question, such exception ; the rule, founded on ancient practice, which makes propinquity as recognized by popular acceptation and in holy writ, a condition, would be contradicted : no advantage would result : it would be repugnant to the context : and lastly were an exception, as to propinquity in the general, meant even, by this passage, the exception as to particular relationship, conveyed in this part of the text, ('But a daughter's son, and a sister's son, &c.') would be inconsistent. Therefore, the interpretation only, as given, is pertinent.

Refuted.

91. This part of the text, ("but a daughter's son, &c.") propounds an exception, as to those of the three first tribes, with respect to the daughter's son, and sister's son, inferred from the mention of propinquity in the general.

The daughter's son, and sister's son, are excepted, from the three first tribes by the part "but a daughter's son,

92. Since, (the particle 'but,' having an exclusive import,) a restriction 'by Çúdras only,' is conveyed ; those of the three first tribes are excluded. On this point the author subjoins a reason : "For the three superior

This construction elucidated. It is supported by the part subjoined as a reason.

93. Since the filial relation of a sister's son to one of the three first tribes, is not exhibited in any authority whatever, the passage is relative only to Çúdras. This is the meaning of the whole.

Conclusion.

94. The expression, 'a sister's son' is of indefinite import, in the [part subjoined as a] reason ; for, [otherwise] it would follow, that it were therein an unmeaning term : or were it of definite import, one portion [of the preceding sentence, viz. 'A daughter's son'] would be void of sense.

'Sister's son' is used, in the reason, indefinitely : otherwise, that term, or 'daughter's son,' in the preceding sentence would be unmeaning.

ANNOTATIONS.

94. It would follow that it were therein an unmeaning term.] Literally epithet ; for, in the original of the passage of Çaunaka, alluded to, the single derivative word 'bhágineyaḥ' (sister's son,) may be construed as an epithet of 'Sutaḥ' (son) there occurring. The idiom of the English language requires that these terms should be disjoined in the translation : that is, that 'Sutaḥ' should be construed by itself, as the predicate of the sentence.

An argument used, to show that the daughter's son and that of the sister, refer to Çúdras only, identical with that applied in a parallel case.

95. The daughter's son, and that of the sister, refer to the Çúdra tribe: for, in no other authority, do they relate to those of the three first tribes; an argument, the same as that, used in the question, as to drinking spirits, and so forth. Hence, it is not accurate that these two refer to those of the three first tribes.

Objection that, by a literal construction, the sister's son, and not the daughter's, is excepted to the three tribes.

96. Next it may be alleged, that, both passages by being construed in a literal manner only, are demonstrative of their several subjects, but not so by being construed from inference. Consequently, it is the sister's son alone, that does not refer to the three tribes: not the daughter's son.

Overruled; as the text would be split, and an option of the daughter's son, accrue to those tribes.

97. This is also wrong: for a splitting of the text would result; and an option to those of the three first tribes, in respect to the daughter's son, follow: since by being an unremote kinsman, he would be inferred [as eligible] and interdicted [as such] by the restriction to Çúdras only.

The same option otherwise deduced.

98. Or thus. By the restriction to Çúdras only, a prohibition of the daughter's son, in respect to those of the three first tribes, would be established. And by the restriction that a sister's son only may not be [adopted] by those of the three first tribes, a sanction of the daughter's son would be obtained. Thus there would be an option.

If a literal mode of construction be adopted in the [illegible] there must be a restriction, as to the object or agent, as here illustrated.

99. Besides, if [the two passages in question,] are to be construed with reference merely to their verbal import, in the first passage, there would be either a restriction [as to the object of adoption], or one in respect to the agent (parisank'hya). In what does the one, and in what the other consist? 'By Çúdras, a daughter's son and a sister's son only [may be adopted]'.—This is a restriction [as to the object; required,] because [otherwise,] the daughter's son, and the other, would be inferrible, from one portion [of the general text],—and every relative commencing with the brother's son from another. 'By Çúdras only, a daughter's son, and a sister's son [may be adopted].' This is a restriction in respect to the agent; [which would be required,] as the daughter's son, and the other might be inferred [as eligible], to the four tribes collectively.

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95. In the question as to drinking spirits, and so forth.] The drinking spirits is declared lawful for Çúdras. But not so by any authority, for those of the three first tribes. Therefore it is argued that these are meant to be excluded.

100. If restriction, as to the object of adoption, be meant, then there would be, a contravention of the whole law ordaining the brother's son and the rest, [as eligible for adoption]: the word 'class' in this passage ("of all, and the tribes likewise in [their own] classes only: and not otherwise") as signifying the daughter's son and the sister's son, would be contracted in its import: and it would follow, where no daughter's son, or sister's son existed, the affiliation of a son could not take place.

If the first many objections would result.

101. But, supposing a restriction in respect to those who may be the agents, meant; then, by the mere restriction to Çúdras only, the interdiction of the sons in question, the three first tribes, being conclusively established, it would follow that the passage commencing, ("for the three superior tribes, &c.") as again prohibiting the same, were unmeaning.

So also.
If the second.

102. Therefore, by a construction deduced from inference only, is the interpretation of the two passages correct. And moreover, a verbal construction founded on revealed law, is more vexatious, than a construction deduced by the help of inference, and grounded on reasoning: and revealed law, being taken [as the basis of the construction], two revelations must be assumed. Now ratiocination being the ground-work, this would not be the case. Therefore, the apparent reason presenting itself, is the demonstrative means.

Conclusion, that the mode of construction, of the two passages, in question, must be, from inference only.

103. Although there is another reading,—"The daughter's son, and the sister's son, are declared to be sons of Çúdras"*: still, [both] are identical in their import, since the passage, commencing,—"For the three superior tribes, &c."—is introduced, to manifest, that a restriction even, is intended, for obviating a doubt, whether, "of Çúdras only,"—or "of Çúdras also,"—were meant.

Another reading of the first of these passages noticed: which equally admits of a restriction being meant.

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102. And moreover a verbal construction founded on revealed law, &c.] The following is offered as an illustration of this part. If the two passages in question, (viz. those which conclude the text of Çaunaka) be construed verbally, they must be regarded as unconnected, and declaratory of distinct positions, which can only be considered true, by assuming them, to be founded on revealed law. And, as the passages are distinct, two revelations or passages of that law must be assumed. In construing however, these passages liberally, by the help of inference, the author understands their import to be thus: 'A daughter's son and a sister's son are adopted by Çúdras only.' For in no authority are such sons mentioned as eligible to the three first tribes: as they are to Çúdras.' Thus, without referring to revealed law, he understands the position in the first passage, demonstrated by an argument in the second: and this seems, to be what he intends, when he says: "Therefore the apparent reason, &c. &c."

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* Vide infra. Sec. V. § 18.

104. Now, that a restriction is meant, thus [appears]. Were there no restriction, in respect to the act of affiliation, the object of which, is the daughter's son and sister's son, the whole four tribes might be inferred, as the agents therein. [But] from the consequent restriction to Çúdras, it is established, that 'of Çúdras only' is meant.

Which is thus intended.

105. And accordingly, the term 'sister's son' is inclusive even, of the daughter's son also; for, otherwise the restriction, that the daughter's son, and sister's son refer to Çúdras, would not be attained: or if attained, an option as to the daughter's son, in respect to those of the three first tribes, would result; as has been already

The term "sister's son" is inclusive, of the daughter's son, otherwise objections would exist.

106. If this is the case, then, let the non-relation merely, of the sister's son, to those of the three first tribes, be proved by the daughter's son, and sister's son, referring to Çúdras: should this be alleged, it would be wrong. For, as such position would be established, by this reason alone,—'from referring to Çúdras,'—the mentioning the daughter's son, and sister's son, would be unmeaning: and if a loose mode of expression must be assumed, the use of the term 'sister's son' only, without specific meaning, is less vexatious, than the use of both terms, in an indefinite import. Consequently, that only, which has been propounded, is accurate.

A mode of reconciling the construction of the passages in question, from inference, without involving what is objected in the last §, refuted.

107. Çákala has clearly laid down the above points: "Let one of a regenerate tribe destitute of male issue, on that account, adopted as a son, the offspring of a sapiṇda relation particularly: or also next to him, one born in the same general family: if such exist not, let him adopt one born in another family: except a daughter's son, a sister's son and the son of the mother's sister."

A text of Çákala, cited, as confirming the doctrine advanced.

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106. If this is the case, then let, &c.] In an enlarged state, the following appears to be the objection, which the author here anticipates. If the two last passages of Çaunaka's text, are to be construed only, from inference and reasoning: and if the restriction in respect to Çúdras, would not be attained, unless the term 'sister's son' were inclusive of 'daughter's son;' then, instead of the last of these passages, being considered, as containing the reason or argument demonstrative of the position declared in the first, let the first be regarded as the reason, establishing the position in the last: or, (in the words of the text,) "let the non-relation &c." In this case, the passages in question, would be still interpreted from inference, and what is objected in the preceding paragraph, would not apply.—The author anticipates, and refutes this mode of eluding, or retorting his arguments.

106. The mentioning the daughter's son, and sister' son.] In the first of the two last passages of Çaunaka's text, that is, in that, which is here proposed to be assigned as a reason.

107. One of a regenerate tribe.] That is of any tribe other than the Çúdra.

It appears from which, the term sister's son is illustrative of the mother's sister's son also.

108. By this it is clearly established, that the expression 'sister's son' [in the last sentence of Çaunaka's text § 74], is illustrative of the daughter's son, and mother's sister's son, and this is proper, for prohibited connection is common to all three. To enlarge would be useless.

SECTION III.

Rule, should one different by class be illegally adopted.

1. It has been declared that, one different by class, must not be adopted: should this rule be transgressed, what would be the case? In reply to this question, Çaunaka says: "If one of a different class, should however, in any instance, have been adopted as a son, he should not make him the participator of a share. This is the doctrine of Çaunaka."

ferent by class, be illegally adopted, what is to be done, is shown by Çaunaka.

Import of the expression 'different by class.'

2. The meaning is:—should one be adopted, according to form even, whose class is different,—being superior, or inferior, in respect to the adopter.

Force of the term 'share.'

3. Exclusion, from participation in the whole estate, is implied, from the cogency of the term 'share'; [which intends,] 'a share of the estate': and on account of,—a text of Kátyáyana, which expresses,—"But, if they be of a different class, they are entitled to food and raiment only,"—and a portion from Yájñavalkya, commencing, "amongst these, the next in order is heir, and presents funeral oblations, &c." and ending "this law is propounded by me, in regard to sons, equal by class."

SECTION IV.

The qualification of the person to be adopted.—The gift of a son, under what circumstances and by whom proper.—The son of a twice married woman, and slave's son specially referred to.

Çaunaka intimates the description of person, to be adopted.

1. Next, in reply to the question, as to the qualification of the person to be affiliated, Çaunaka declares: "By no man, having an only son (eka-putra), is the gift of a son, to be ever made. By a man having several sons (bahu-putra), such gift, is to be made, on account of difficulty (prayatnatas)."

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108. For prohibited connection, &c.] What is here meant is explained in Sect. IV. § 18.

His expression 'eka-putra' explained.

2. He, who has one son only, is 'eka-putra,' or one having an only son: by such a one, the gift of that son must not be made: for a text of Vasishṭha declares, "an only no man

By prohibiting the gift of an only son, Çaunaka bars also the receiving such, in adoption as declared by Vasish-

3. Since, the word 'gift,' means the establishing another's property after the previous extinction of one's own: and another's property cannot be established without his acceptance: the author (Çaunaka) implies this also,' in his text in question. Therefore, a prohibition likewise against acceptance is established by that very text. Accordingly Vasishṭha: "an only son, let no man give or accept, &c.

Who, assigns a reason, from which, it is argu-, that, both the , and adopter of an only son, incur an offence.

4. To this he subjoins a reason, "For, he is [destined] to continue the line of his ancestors." His being intended for lineage, being thus ordained: in the gift of an only son, the offence of extinction of lineage is implied. Now, [illegible] incurred by both the giver and adopter also. [illegible] the [reason in question,] is subjoined, after both [verbs: viz. 'give' and 'accept.']

Other texts, which prohibit the gift of a son, refer to the case, of an only son, not to where there are several.

5. As for another text of recorded law,—"In instruction, the father is absolute over a son and sons' wives: but not so with respect to the son, in sale and gift," and the text of the Holy Saint: "except a wife and a son, other things may be given:"—these texts regard the case of an only son.

'Ever' used by Çaunaka, indicates even, during a calamity: as intimated by, Nárada, Whose text refers to an only son.

6. 'Ever'] in a time of calamity: accordingly, Nárada says: "A deposit, a son, and a wife, the whole estate of a man, who has issue living; the sages have declared unalienable, even by a man oppressed by grievous calamities: although the property be solely that of the man himself." This text also, regards an only son; for it is declaratory of the same import as the texts of Çaunaka and Vasishṭha.

Çaunaka resolves a question, in declaring that a son is to be given, by 'one having several sons.'

7. Next, the author replies to the question,—By whom is a son to be given? 'By one having several sons.' He who has several sons is 'bahu-putra,' or one having several sons.'

ANNOTATIONS.

2. 'Eka-putra,' or one having an only son.] The compound, 'eka-putra' is capable of being variously rendered: The interpretation of the author restricts it to the sense in which it is here used.

7. By whom is a son to be given?] This is one of the topics specified in the commencement of the work.

8. "By no man having an only son." From this prohibition, the gift, by one having two sons, being inferrible: this part of the text ("By one, having several sons &c.") is subjoined, to prohibit the same, by one having two sons also. For, the speech of Çántanu, to Bhishma, expresses: "He who has only one son, is considered by me, as one destitute of male issue, oh! descendant of Kuru. One, who has only one eye is as one destitute of both: should his only eye be lost, he is absolutely blind."

By which the gift of one of two sons, (which might otherwise be inferred) is prohibited: and this is supported by an extract from the Bhúrata.

9. "By a man having several sons." Since, the masculine gender is here used, the gift of a son, by a woman, is prohibited. Accordingly, Vasishṭha says: "Let not a woman either give or accept a son;"—and [her] independency is not ordained.

The masculine gender, being used, a woman must not give a son, as declared also by Vasishṭha.

10. With the husband's assent, a woman also is competent. Accordingly, Vasishṭha adds: "unless with the assent of her husband."

She may with her husband's assent.

As authorised by Vasishṭha.

11. "Whom, his mother, or his father, gives (dadyát)*"—"his mother or father give (dadyátam)."† As, for what is contained in these passages, as intimating the equality of the father and mother: that is merely, with reference to the assent of the husband.

Two passages seemingly implying, the equality of the wife, consistently explained.

12. It must not be argued that thus the gift of her son by a widow, though during a season of calamity, could not take place, on account of the impossibility of the assent of her husband; analogous [to her incapacity] to adopt. For, by referring to the instance recorded

In a season of calamity, the widow, though the assent of her hus-

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9. And [her] independence is not ordained.] In rendering this passage from a variety of readings, which occur, and constructions, which might be adopted, those which appeared to agree best with the context, have been selected.—Two or three manuscripts referred to, concur in reading 'nairapeksha-sravanách-cha.' This however, is not so easily rendered with general consintence, as the reading of the third manuscript, which has been adopted; viz. 'nairapeksh' ásravanách-cha. To the former of these readings, the printed copy adds iti-bhava. This confirms as proper the construction of the sentence with what precedes, rather than what follows it; though thereby an inaccuracy of style (by no means however to him uncommon) must be imputed to the author. If the first of the readings noticed be preferred, the translation must be thus: "And [besides in the text of Çaunaka, in question, the man] is mentioned independently of and without reference to his wife."

12. Instance recorded of Gálava.] The translator has not yet succeeded, in discovering the circumstances here alluded to; indeed the terms of the original, 'Gálaviya-linga,' might equally be understood, as signifying an instance recorded by Gálava. It should be observed, that the printed copy reads 'mánaviya-linga,' which may be rendered 'the text of Manu': and if this reading be correct, that cited in § 11 and § 19

* Part of a text of Yájñavalkya, 2, 152. † Part of a text of Manu, 9. 168.

band, is impossible, may give her son: as confirmed a case in point.

of Gálava, such gift may be inferred as legal, and the singular number, indicating independanc of another, is used.

13. The husband, singly even and independent of his wife, is competent to give a son: for in the two passages cited (in § 11) the father is mentioned singly and unassociated with the mother, and there is this reason of Baudháyana found: "From the predominance of the virile seed, sons are regarded even, as not produced of the womb." In the Bhárata also, [a reason is found.] "The mother, is the fosterer: the son is of the father: he is [as it were] that very person, by whom produce." A passage of revealed law, is likewise [confirmatory]. "His-self is truly born a son."

The husband may give his son, independent of the wife: argued from passage, cited in § 11.
Of Baudhayana.
The Bhárata.
And Vedas.

14. And, from the intimation of the agency of both together, by the verb 'give' in the dual in Manu's text, the competency of both united is principal. Accordingly Vasishṭha says: "Man, produced from virile seed and uterine blood, proceeds from his father and mother, as an effect from it's cause, therefore, his father and mother have power, to give, to sell, or to abandon their sons." Baudháyana also. "For, the connection to the father and mother, is equal."

last of the passages, cited (in § 11) that, the power to give, of both united, is principal: as may be argued from passages of Vasishṭha and Baudháyana.

15. Conformably, in this passage, ("the mother or father given") Manu, intending,—from her dependance on the assent of her husband, the inferiority of the mother [as the agent, in the gift of a son];—the mediocrity of the husband, on acount of his independance of the wife;—and the pre-eminence of both united, from their being equally parents,—propounds each position in order last, according as he prefers it, to that preceding.

"The mother or father give." In this part of his text, (§ 11), Manu propounds three positions.

16. It must not be argued that this is merely a single sentence, on account of the only verb being used in the dual number: for the disjunction in the middle [by the particle, 'or'] would be inconsistent. Therefore the passage in question comprises three positions.

Objection refuted.

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wherein the expression 'during distress' occurs, is alluded to. Three distinct copies referred to by the translator, concur in the reading adopted by him: for which reason he regards the other as a substitution, made by some pandit, to obviate the difficulty on the reading adopted.

The singular number, indicating independance of another is used.] In the passages quoted in § 11, 'mother' is mentioned in the singular number, and (as it were,) independant of the father.

14. Therefore his father and mother, &c.] In the original, the compound of conjunction "Mátápitarau" occurs, indicating the association of the father, and mother.

The text of Yájñavalkya, is confirmatory.

17. Accordingly, the chief of saints, in this passage, "whom his mother or his father gives," has read the verb in the singular number even, though [illegible] to each [nominative case.]

In Çaunaka's text (§ 2) 'on account of difficulty'; is assigned as the reason.

Explanation of the term.

18. On the subject proposed, the author [Çaunaka] assigns a reason,—"on account of difficulty (prayatnatas)." That time in which there is great trouble is [a time of] difficulty, that is, a season of calamity.

Conclusion, that the gift of a son, must be only made, during distress as declared by Káty áyana. Whose text alludes, to sons, and wives.

Manu also.

19. Hence, the meaning is this;—a gift of a son, is to be made in a time of calamity only: not otherwise. Thus Kátyáyana says: "But during a season of distress, the gift or sale even, may be made; otherwise he must not attempt the same. This is the injunction of the holy institutes."* From the context, —"of sons and wives," is understood. Manu also: "Whom his mother or father give during distress, confirming the gift with water."

In the gift of a son, during no distress, a sin is incurred.

20. "During distress."] In a famine, and so forth: should the gift be made, no distress existing, the giver commits a sin, on account of the prohibition, "otherwise he must not attempt the same."

Other construction of Çaunaka's term 'difficulty' noticed.

Confirmed by a passage of Atri.

And an interpretation by Apararka, and the Chandriká.

21. Or, the term 'prayatnatas' may signify—'on account of difficulty of the adopter.' During distress; that is,—when destitute of male issue: on account of the text of Atri, commencing,—"By a man destitute of a son only, must, a substitute for the same, always be adopted &c."†: and it is thus interpreted, even by Apararka, and in the Chandriká. ‡ "'During distress' —that is,—the adopter having no son."

Another special rule in the Káli-ka-puráṇa.

22. Another special rule, is propounded, in the Kalika-puráṇa. "Sons given, and the rest though sprung from the seed of another, yet being duly initiated under his own family name, become sons. O Lord of the earth, a son having been initiated under the family name of his father, unto the ceremony of tonsure inclusive, does not become the son of another man (anyatas). The ceremony of tonsure and other rites (Chuḍádya) of initiation, being indeed performed, under his own family name, sons given, and the rest may be considered as issue: else, they are termed slaves. After their fifth year, O King, sons, given, and the rest are not sons. [But] having

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22. Another special rule, is propounded in the Kalika-puráṇa.] This passage from the Kálika-puráṇa down to 'sacrifice for male issue,' is inserted in the following note, by Mr. Colebrooke, in his translation of the Mitákshará on inheritance, Chap. I. Sect. XI. § 13.—"Raghunandana in the Udváha-tatva, has quoted a passage from

* Before cited with a variation in the reading: v. Sect 1. § 8.

† V. Supra Note to Sect, 1 § 63. ‡ V. Supra Sect, 1 § 7.

taken a boy five years old, the adopter should first perform the sacrifice for male issue. But, the son of a twice-married woman, immediately on being born, he should duly take as a son. Having performed positively (vai) for such, immediately on being born, the burnt sacrifice for the son of a twice-married woman, the man should complete every initiatory rite, the ceremony for a male born (játakarma) and the rest. The burnt sacrifice for the son of a twice-married woman, being completed, from these (tatas) a son of that description, is filially related."

Exposition of the import of the passage in the extract commencing "son given and the rest

23. The meaning is,—although sprung from the seed of another, sons given, and the rest, when 'duly initiated under his own family name,' (that is, by the adopter, according to the form prescribed by his own code, under the family name of himself,) into the different rites, commencing with that for a male born, then become sons of the adoptive parent, not otherwise.

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Kalika-purána, which with the text of Vasishṭha* constitutes the ground work of the law of adoption, as received by his followers. They construe the passage, as an unqualified prohibition of the adoption of a youth or child, whose age exceeds five years, and especially one whose initiation is advanced beyond the ceremony of tonsure. This is not admitted, as a rigid maxim by writers in other schools of law; and the authenticity of the passage itself, is contested by some, and particularly by the author of the Vyavahára-mayúkha, who observes truly, that it is wanting in many copies of the Kálika-purána, others, allowing the text to be genuine, explain it, in a sense more consonant to the general practice, which permits the adoption of a relation, if not, of a stranger more advanced both in age and in progress of initiation. The following version of the passage conforms with the interpretation of it given by Nanda Pandita, in the Dattaka-Mímainsá."

23. The different rites commencing with that for a male born.] These are specified, in the following note of Mr. Colebrooke, in his translation of the Digest, on text 134, Chap. 111, Book 5: "By these eight ceremonies I understand. 1st, Játakarma; a ceremony ordained, on the birth of a male, before the section of the navel string, and which consists in making him taste clarified butter, out of a golden spoon. 2d, Námakaraṇa; ceremony on giving a name, performed on the tenth day after birth; or on the eleventh, twelfth or even the hundred and first day. 3d, Nishkramaṇa; carrying the child out of the house to see the moon, on the third lunar day of the third light fortnight from his birth; or to see the sun in the third or fourth month. 4th, Annaprácana; feeding the child with rice, in the sixth or eighth month, or when he has cut teeth. 5th, Chúḍákaraṇa; the ceremony of tonsure, performed in the second or third year after birth. 6th, Upanayana; investiture with the marks of the class, performed in the eighth year from the conception of a Bráhmaṇa; but it may be anticipated in the fifth, or be delayed to the sixteenth year. 7th, Sávitrí; ceremony of investiture hallowed by the Gayatrí, which must not be delayed for a Bráhmaṇa, beyond the sixteenth year: it should be performed in the fourth day after the first investiture. 8th, Samávarttana ceremony on the return of the student from his preceptor's house. The whole number or ceremonies, called Sanskára, as expiating the sinful taint contracted in the mother's womb, and as effecting regeneration, in other words, as perfecting the class of a twice-born man are ten To the eight ceremonies now enumerated, must be therefore added the ceremony which precedes conception (Garbhádhána,) and marriage, which is the last of these sacraments. Rituals contain other ceremonies, two of which are mentioned in the text and in the preceding note, but these are not assential."—Allusion is made to the punsavana or ceremony to obtain male issue, performed at the expiration of the third months of pregnancy, and the Símantonnayana performed in the 4th, 6th, or 8th months of the first pregnancy. This rite consists in combing the wife's tresses and need only be performed once.

* Vasishṭha 15, 1, 7.—the same cited in this work in Sect. v. §

24. Vasishṭha declares this,—"and a given son, even sprung from one following a different branch of the Vedas, being initiated [by the adopter], under his own family name, according to the form prescribed in his own branch of the Vedas, is a follower of the same branch."

Confirmed by Vasishṭha.

25. "The son given, and the rest." By the term "rest," here used, the son made, and the others, are included; on account of this part which preceded [in the Kálika-puráṇa.] "The legitimate son, the son of the wife, the son given, the son made, the son of concealed birth, and the son rejected, take shares of the heritage. The son of an unmarried girl, the son of a pregnant bride, the son bought, the son by a twice-married woman, the son self-given, and the slave's son; these six are contemptible as sons: on failure of the first in order respectively, let him invest the next with filial rights. But let him not appoint to the empire, the son of a twice-married woman, nor a son self-given, nor one born of a female slave."

Import of the term 'rest,' shewn by reference to a part in -puráṇa. ... directs that on failure of each preceding, the son next in order, successively shall be invested with filial right.

Certain exceptions in the case of empire.

26. The non-appointment to empire of the son of the twice-married woman, and the other two, which is directed in the latter part of this quotation, holds, even on default of any other son besides the legitimate son. For this part of the passage is subjoined as an exception to the preceding part, ("on failure of the first would be respectively, &c.") and their non-succession to the empire, should a legitimate son exist, was declared in this preceding passsage.—"A legitimate son existing, let not the king invest in the empire, the wife's son, and the rest: [nor] cause to be completed [through such sons] the solemnities for his forefathers."

To which, those excepted, under no circumstances can succeed.

Their non-succession was before generally declared in a part preceding

27. The meaning is,—A legitimate son existing, let him not invest with empire the son of the wife, and the rest: '[nor] cause to be completed,'—that is, nor cause to be performed [by such inferior sons] the 'solemnities,' meaning the funeral repast and other rites, in honour of his forefathers.

Which is explained.

28. "Under the family name (gotreṇa)."] Although, it is not ordained, that the family name is immediately instrumental in the ceremony, for a male born, and others; still since, in the vṛddhi-çráddha, a component essential of those ceremonies, use of the family name, is made; it applies also, to what is principal, [viz. those ceremonies themselves]. But in the

Though the specification of the family name, is not directly made in the Játakarma and other rites, it is in their component part, the vṛddhi-çráddha.

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28. Still since, in the vṛddhi-çráddha.] This is a ceremonial, performed on the occasion of every initiation, to secure prosperity to the individual.—It consists, in offering to the manes of three sets of three ancestors, oblations of rice, &c. &c.—The first set comprises, the mother, the paternal grandmother, and great-grandmother—

But it is directly made, in tonsure and other rites.

rites of tonsure and the rest, it is used directly; for a text expresses: "The coronal locks of the boy, must be made with the enunciation of his patriarchal tribe."

Filial relation proceeds from initiatory rites: which are affirmatively, and negatively shewn, in the extract in § 22.

29. It is declared that filial relation proceeds from initiatory rites: these, [as applicable to different cases,] the author propounds affirmatively and negatively—"a son having been initiated, under the family name of his father, &c. &c."

Exposition of the passage alluded to.

30. That son, who is initiated under the family name of his natural father, unto the ceremony of tonsure, that is in rites ending with that of tonsure, does not become the son of another man—'anyatas' must be rendered, in the sense of the regular genitive, 'anyasya' ('of another.')

Apparent contradiction in the extract alluded to, reconciled.

31. In respect to the passage in question, there is this reconciliation.—It must certainly be affirmed, that, what is there declared, that, one on whom the ceremony of tonsure is completed, becomes not the son of the adopter, refers to the state, as son not in common; otherwise by this part,—"Having taken a child of five years, &c." the propounding one even, whose ceremony of tonsure has been completed, to be son of the adopter, would be contradicted. That this passage necessarily regards a child on whom the ceremony of tonsure has been performed, will be made clear (v. § 48).

Conclusion, that if one initiated as far as tonsure, be adopted, he is the son of two fathers.

32. Hence, if one who has been initiated in the different rites down to tonsure be adopted, he becomes son of two fathers: for he is initiated under both family names; and that the effect of this is his connection to both families, will be decided in the sequel.*

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The second, the father, paternal grandfather and great-grandfather.—The third, the maternal grandfather, great-grandfather, and great-great-grandfather. If any of these should not be dead: the next nearest deceased ancestor, whose relation is analogous is substituted.

29. These the author propounds affirmatively and negatively.] Difficulty occurs in explaining, and translating, the intent of the author, in this part, consistently with his eleborate and abstruse commentary. The following illustration is offered with diffidence. In the extract from the Kálika-puráṇa, there is this passage, "A son having been initiated, under the family name of his father, unto the ceremony of tonsure inclusive, does not become the son of another man." By this the author implies negatively, that rites ending with tonsure, are the cause of filial relation to the adoptive father; and this has reference, to what the author regards, as the most preferable adoption—viz., that of a boy wholly uninitiated, and consequently recently born. "The ceremony of tonsure and other rites of initiation, being indeed performed under his own family name, sons, given, and the rest may be considered as issue."—By this sentence, the author declares affirmatively, that tonsure and the rites following, are the cause, of filial relation. and this must be regarded, as applicable to the case, provided for in § 35, —viz. that, where a boy wholly uninitiated is not procurable.

* V. infra sect. 6 § 41 et

Deduction, that

33. Thus, the different initiatory ceremonies, a male born, down to tonsure inclusive, are the cause of filiation. [in the case of the adoption of one wholly uninitiated.]

...re inclu-sive, are the cause of filial relation.

34. Áchúḍam ('unto the ceremony of tonsure') might have been used [by itself]. The subjunction of the term 'inclusive' (anta) is for the sake of authorizing, the affiliation of one whose coronal locks have not been made according to the form of his patriarchal tribe. For, the principal rites, not being completed, he is capable of becoming a son, and the part, commencing—("The ceremony of tonsure and other rites of initiation, &c. &c.,") is about to be explained.

The use of the word 'inclusive' subjoined to the 's 'unto tonsure.'

The part, "the ceremony of tonsure, &c." is added with reference to the case, where one uninitiated in preceding rites, may not be procurable.

35. How is the case, should a boy, on whom the rites, commencing with that for a male born, have not been performed, not be procurable? Anticipating this question, the author adds—"the ceremony of tonsure and other rites of initiation, &c."

Exposition of the part in question.

36. When indeed, the rites of initiation, commencing with that of tonsure, are performed under his own family name,—that is—under the family name of the adopter, (the particle 'vai' (indeed) having an exclusive import): then, only can sons given, and the rest be considered as issue, else they are termed slaves.

Import of the phrase 'chuḍádya' restricted.

37. The complex phrase "chúḍádya" signifies those rites, of which tonsure is first; but not rites antecedent to tonsure. For, with reference to what preceded, tautology would result.

Conclusion that one initiated in every rite preceding, tonsure may be adopted.

But, that, as an object of adoption, one wholly uninitiated is principal, and one initiated as far as tonsure exclusive, is secondary.

38. Therefore, even should the ceremonies commencing with that after birth and ending with that of 'annaprácana' or feeding with rice, have been performed under the family name of the natural father, there is no repugnancy [in the adoption]: and thus it is established, that the child, on whom the ceremon... for a male born and the rest, have not been perform... is principal [as the object of adoption]; and one, on whom the rite of tonsure has not been performed, [but the other previous rites have,] is secondary.

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37. The complex phrase 'chúḍádya,' &c.] This compound term, might admit of either interpretation.

Tautology would result.] The same position as that contained in the first sentence of the extract, would be declared.—This has been explained by the author, as referring to the adoption of one wholly uninitiated and consequently just born. In which case, the whole initiatory rites preceding tonsure, are to be performed by the adopter.

By "The rest" the son made, and the other sons are included, whose filial relation is from initiatory rites also.

39. Sons given, and the rest.] By the term 'rest' are included, the son made, and the others, as has in fact been declared: they become sons by initiatory ceremonies also: not merely by adoption: for, that would defeat the opposite alternative subjoined "else they are termed slaves."

Import of the word 'else' occurring in the passage alluded to.

40. 'Else']. The meaning is, should the ceremony of tonsure, and the rest, not be performed [by the adopter], or should one be adopted, on whom the ceremony of tonsure and other rites have been performed; a servile state ensues, not that of a son.

General conclusion, that one uninitiated should be adopted.

41. Since, that filial state, is produced from ceremonies; in the same manner as the being a sacrificial post and so forth; it is established, that one uninitiated is to be adopted.

A limited period necessary and propounded to be the fifth year.

42. A limited period for adoption being necessary, the author adds "after their fifth year, &c."

After which one, though uninitiated, is not to be adopted.

Reason, why the position that the five first years are the season for adoption, is propounded negatively.

43. One, though uninitiated, is not to be adopted after the fifth year: for, the time having gone by, he cannot become a son. By this it is declared, that the five [first] years only, are the season for adoption. Now, the propounding this position negatively is for the purpose of shewing that an age beyond five years, is not even a secondary season: for, otherwise by the rule, ("every season ulterior to the appropriate season, is pronounced secondary") it would follow, that any time, beyond the fifth year, were secondary.

Term 'tonsure' in the extract § 22 intends the third year.

44. And, therefore, as by this passage ("commencing from birth, unto the third year &c.") the third year, is the principal season for its performance: and since, year is mentioned in the conclusion ("after the fifth year &c.") it follows, that in the extract in question, the word 'tonsure,' is meant to signify the third year. For, otherwise the consequence would be, that, where the ceremony of tonsure, took place at the same time, with the investiture of the characteristic cord, at his eighth year; one on whom the ceremony of tonsure had not been performed, might be adopted. Nor would, what was meant thus result: for, it would be at varience with the part commencing "after the fifth year, &c."

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41. Sacrificial post and so forth.] The post and other implements, necessary for a sacrifice are consecrated by the performance of ceremonies, and thus are qualified for the purpose.

Conclusion, that as far as the third year, is the primary season, and beyond that till the fifth, the secondary.

45. Hence, it is established, that the term 'tonsure,' in the passage,—"unto tonsure inclusive"—intending also, the third year, [limits] the proper season: that, beyond the third year, to the fifth, is the secondary season: but that after that, no time is even secondary [for the adoption of one initiated in rites preceding tonsure, but not in that rite].

Deduction from the phrase 'are not sons.'

46. 'Are not sons.'] By this, it is intimated, that though filial relation be not produced, yet tonsure and other rites of initiation may be completed; for the time for the performance of these respectively, yet exists: still, however, they are only slaves, for filial relation is wanting; and this is the third cause of a servile state.

A text of Kátyáyana, and an interpretative passage of Sarvajñya on Manu, from which the gift and adoption severally of one beyond the 5th year, are inferrible, explained as referring to a child, of that age.

47. "Let not wives and sons, being unwilling, undergo sale, nor even gift." As for the prohibition in this text, of Kátyáyana, against the gift and so forth, of persons unwilling, that even, must be interpreted as forbidding, the gift of a boy of five years only: not of one older.—And:—"one discriminating, not a minor." As for, what is thus interpreted by Sarvajñya, adverting to this reading,—("discriminating good and evil") in the text,—"whom a man takes being alike, &c."*: that must be explained thus—'a boy of five years only, discriminating by the faculty of reason: but not a minor [generally].' The meaning is, "he should not take [any] one, coming within, this definition,—'a minor (bála) is till the sixteenth year.'

Purpose and import of the passage 'having taken, &c.' in the extract 22.

48. Then, if there be none uninitiated [unto tonsure inclusive], what is to be done? In reply to this, the author adds,—"having taken, &c." The meaning is,—having taken a boy five years old, initiated in rites ending with tonsure.

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46. And this is the third cause of a servile state]. The other two causes are indicated in § 40.

47. As for the prohibition in this text, &c.] From the text in question, the possibility of the gift of a son, however old, is inferrible, the author accordingly, to reconcile it with the doctrine, that the adoption is not to take place, after the fifth year, interprets, (though unsatisfactorily,) that, the text regards the gift of a child of that age: there being no ground to presume, the gift of one older.

As for what is thus interpreted, by Sarvajñya, &c.] The text alluded to, as interpreted, is one of Manu, describing the son made, or adopted—the expression, "discriminating good and evil," there occurring, is an epithet of the object of adoption.—If this phrase, as the interpretation by Sarvajñya, might imply, signify, one passed the years of minority: the rule, excluding from adoption, one of six years old, and upwards, would be contradicted: accordingly, the author restricts the passage of Sarvajñya, as intending, one of five years, capable of discrimination, not any minor in the general sense of the term.

* Manu, 9, 169,

The passage, "the adopter should first perform a sacrifice for male issue" why subjoined.

49. But how can such be adopted, since he is declared to be a slave? Anticipating this objection, the author subjoins,—"The adopter should first perform the sacrifice for male issue." The objection is thus reconciled.

A passage from the Vedas cited, by which such sacrifice is shewn to be productive of offspring.

50. "He who is desirous of issue should offer to Agni, parent of male offspring, an oblation of kneaded rice, roasted on eight potsherds; and to Indra, father of male issue, a similar oblation of rice, roasted on eleven potsherds. Fire grants him progeny, Indra renders it old." In this passage [of the Vedas] sacrifice is declared as a cause productive of offspring.

Deduction, that where one initiat- be adopted, the effect of the sacrifice, besides filial relation, is the removal of the servile state.

51. Hence, in the case where the offspring is not born, its production is the effect to be produced: but where offspring already born is adopted, it is implied, that, in that case, since the birth has taken place, the filial relation, is the effect to be produced: for otherwise, the precept proposed would not be accomplished. Now, this relation cannot subsist, without the removal of the servile state: therefore the removal of that also [by the sacrifice,] must of necessity be admitted: otherwise, were [the sacrifice] productive of filial relation only, it would take place in any mere adoption of a son; and if [it be argued that] there, it is not required, since the filial relation is produced from initiatory rites only; then, the same is the case, in the instance proposed: for, those rites are here inferred from the term 'first;' and it is declared in the sequel; "The man should complete every initiatory rite, the ceremony for a male born and the rest."

Whence it is concluded, that one though initiated may be adopted.

52. Therefore, since filial relation, preceded by the removal of the state of slave, which had been occasioned by previous initiation, is produced by a sacrifice for male issue; it is established, that one though initiated [unto tonsure inclusive,] may be adopted.

Objection obviated.

53. If this is the case, then the passage should only recite,—"Having taken one initiated [unto tonsure inclusive]." What occasion is there, to use the expression, "a boy five years old?"—Should this be objected, it is erroneous; for, the passage intends this restriction—'a boy five years old only

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51. The precept proposed.] That is the one, enjoining the production of a son.

Those rites are inferred from the term 'first.'] By the use of the word 'first' in the passage; "The adopter should first perform the sacrifice, for male issue,"—the performance of rites, subsequent thereto, is implied, and initiatory rites are meant, as subsequently shewn.

53. For the sake of securing an investiture of the characteristic thread, &c.] The Vedas, or holy scripture must not be studied, till this ceremony has been completed; the fifth year, is the proper season, for learning the letters: therefore to secure an investiture of the characteristic thread, such as may be productive of holiness, resulting

[i. e., under six]' : and the restriction, is for the sake of securing, an investiture of the characteristic thread, conductive to the holiness, resulting from the study of scripture, which is preceded by the previous acquisition of letters.

Further argument of opponent refuted.

54. And it must not be argued, that this restriction is established by the preceding sentence : for, this from its limiting the period, for [the adoption,] of one, whose initiation [as far as tonsure inclusive,] has not been performed, is received, as not intending the meaning in question.

Import of the term 'first.'

55. 'First',—that is, previous to initiatory rites being performed.

Objection obviated.

56. But it is asked, why is it not meant,—"previous to the sacrifice for adoption? " Because, the past participle "having taken" being used, an antecedent time for the act of adoption, including all its essentials, is inferred : and the previous initiatory rites, being annulled by the sacrifice for male issue, the performance of other rites is absolutely necessary.

The passage; "But the son of a twice-married woman, &c." is subjoined as an exception.

57. "After their fifth year, sons given, and the rest are not sons." In respect to this previous position, the author subjoins an exception ; "But the son of a twice-married woman, &c."

Definition of the son of a twice-married woman.

58. "A child begotten on a woman, whose [first] marriage had not been consummated, or on one, who had been deflowered [before marriage], is called the son of a twice-married woman.* By this definition, one born on a twice-married woman, of any of the seven descriptions, is included.

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from the study of scripture, it is necessary that the adoption should be restricted to one of five years.

54. The meaning in question.] A boy five years old, or one, the sixth year from whose birth, has commenced.

57. The author subjoins an exception.] By the first sentence, ("after their fifth year, &c.) it is implied, that sons given, and the rest within their fifth year by adoption, acquire filial relation.—By the expression sons given, and the rest, the son of the twice-married woman, is included.—To except such description of son, from the operation of the rule mentioned, the author supposes the subsequent passage, ("But the son of a twice-married woman, &c.") to be subjoined.—By this, the adoption of such son, is restricted to the time of birth.

58. A twice-married woman of any of the seven descriptions.] These are specified in a text of Nárada, cited in the Mitákshará, in the chapter on granting loans.—They are the following :—1. The re-married damsel, whose first marriage had not been consummated.—2. A woman who having been guilty of incontinence, is given in marriage to another husband, by relatives apprehensive of legal penalties.—3. One given in marriage by kinsmen to a sapinda relation of her first husband, no brothers of the same existing.—4. One who during her husband's life co-habits with another.—5. Such a one who subsequently returns to her husband.—6. The widow who after her husband's death,

* Yájñavalkya.

Explanation of 'immediately on being born.'

59. 'I immediately on being born'] that is, as soon as produced: hence the time of birth only, is meant, no other.

Import of the term 'duly take.'

60. Duly take] that is adopt according to the rules of adoption.

61. But, for one just born, is not the ceremony for a male born, alone proper, on account of this rule,—"Before others have touched the new born boy, &c." Therefore, how can it be said: "immediately on being born, he should duly take as a son.?" Excellent! for then, one unadopted, not having filial relation to the man himself, initiatory rites could not be performed: for, a text expresses,—"Let the father initiate his own sons, &c."

Objection obviated.

62. Neither can it be said, that paternal right proceeds alone, from the relation, as natural father: for, this is denied, by this passage,—"the receptacle is more important than the seed;"*—and a text of Gautama recites, "of the other by special agreement, &c." The meaning is [the child begotten, on one man's wife,] is the son of the other,—that is the procreator,—by special agreement only, &c.

Further argument of opponent refuted.

Conclusion, that in the case in question, adoption first takes place.

63. Hence in the case, in question, adoption takes place, anterior to the performance of the ceremony for a male born.

The passage "having performed &c." propounds a variation to a general rule.

64. The performance of the initiatory rites, being inferred, as following the adoption, the author propounds a variation in this respect; "Having performed, &c." The meaning is this: After the adoption, having performed the burnt sacrifice, for the son of a twice-married woman, subsequently, let him perform the ceremony for a male born, and the other initiatory rites.

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avoiding his brothers and other kinsmen, from lust co-habits with another.—7. A woman forcibly taken, purchased, or induced by distress, who voluntarily prostitutes herself with another man.—It should be observed that the three first only in the strict sense of the term are 'punarbhú' or twice-married women, the others being denominated 'svairiní' or self-guided. The whole however, are classed under the general term 'parapúrvá" meaning one who has had previous connection with another man.

62. By this passage the receptacle, &c.] The close of a text from Manu, is here cited, which in its complete state, is thus. "Unless there be a special agreement between the owners of the land and of the seed, the fruit belongs clearly to the land owner, for the receptacle is more important, than the seed."—The text of Manu, as well as that of Gautama, refer to,—where a husband being impotent, may appoint another, to raise up issue to him on his wife: in which case, unless with express agreement, the offspring bears not filial relation to the procreator.

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* Manu 9. 52.

65. But, is not this impossible, since it is contrary to the argument, exemplified in the sacrifice [to fire] for a son born? Accordingly, on the same principle, as this is ordained, so is the burnt sacrifice, for the son of a twice-married woman, directed in the case in question. [Now this according to your opinion] is performed, previous to the ceremony for a child born: therefore, since it is to be completed in five days, the principal rite [being the ceremony] in question, would be barred.

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66. Should this be objected: it is replied, that, in the case in question, the burnt sacrifice for the son of the twice-married woman, is not analogous to the sacrifice [to fire] for a son born, which is ordained in respect to spiritual purposes. Besides, [that used,] may be a mere unrestrictive order, of mentioning the former sacrifice, and the ceremony for a child born, and other rites for a son produced from the wife of another: in the same manner, as in this passage,—"Having performed the sacrifices prescribed for the day of the new moon, and that of the full moon, let him offer an oblation with the Soma plant." Thus there is no repugnance.

Refuted.

It is not, a restrictive or absolute rule that the burnt sacrifice is to be first completed.

67. The particle vai [positively], having an exclusive import, the construction is,—"For one directly after birth only, at no other time:"—therefore, a restriction as to the priority in time, or otherwise, of the sacrifice, for the son of the twice-married woman, is not deduced; as in the case, of the sacrifice [to fire] for a son born.

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65. The argument exemplified in the sacrifice [to fire] for a son born.] Allusion is here made, to the 18th Topic, 3d Section of the 4th Book of the Mímánsá, by Jaimini, it is there proposed, as a subject for a disquisition, whether the sacrifice to fire, takes place immediately after birth, or when the ceremony for a child born, has been completed. The opponent argues, that the consequence should immediately follow its cause, and therefore, the sacrifice to fire, occasioned by birth, should be consecutive thereto —On the other hand, the supporter of the right opinion contends, that, as the giving the breast to the infant, is ordained, after the completion of the ceremony for a child born, if the sacrifice is to be performed, previous to this ceremony, from the great delay, which must necessarily occur, before the breast could be given the child, its death would be occasioned; and in that case, there would be no object, to whom the fruit of the sacrifice, consisting in purification, and so forth, would accrue. Therefore, the sacrifice in question, does not immediately follow birth, but takes place, after the completion of the ceremony for a child born.

66. In the same manner as in the passage, &c.] In the 3rd Topic, 4th Section, 5th Book of the Mímánsá, a disquisition is proposed, whether a restrictive order, is intended, or not, in the passage in question, for the performance of the ceremonials speci-

lishing a consecrated fire, in the passage,—"one about to offer an oblation, with the Soma plant, should [first] establish a consecrated fire." It should be observed, that without having first established such fire, an individual cannot sacrifice after the forms prescribed, for the Darça and Paurṇa-mása sacrifices, or those on the days of the new and full moon.

67. Therefore a restriction as to the priority, &c.] Great obscurity pervades the whole of this part of the work. The translator conceives, that in this particular place, the author has omitted to express the train of reasoning, by which he arrives to the

68. By the term 'every' alone, the meaning being complete, the mention of the ceremony, for a male born, and the rest, is added to exclude anterior rites, whilst the offspring was in the womb.—As for the use of the expression 'all,' notwithstanding the mention of the ceremony for a son born and the rest: that is, for the purpose of suggesting, whatever initiatory rites may belong to any particular individual; and hence, it is to be inferred, that although for Çúdras, there is no investiture of any characteristic cord, and so forth, still, they become sons even, by the ceremony of tonsure and other rites.

Purpose and import of the term 'every.'

69. "The man." Although a general expression is used, still, since one of the three first tribes only, is competent to perform, the burnt sacrifice, for the son of the twice-married woman; in respect to others, the filial relation proceeds from mere initiation alone.

A person not of the three first tribes cannot perform the sacrifice.

70. The author thus concludes, that the burnt sacrifice, and initiatory rites united, are the cause of filiation; "Being completed, &c. &c."

Deduction of the author from the passage "being completed, &c."

71. The meaning is: the burnt sacrifice for the son of the twice-married woman, being completed, 'from these,' that is,—from these initiatory rites,—a son of the twice-married woman, becomes filially related.

Passage explained.

72. Under the same head, the author of the Kálika-puráṇa propounds a rule, applicable to the son of the twice-married woman. "He should perform, at the funeral repast of his father, a rite dedicated to a single ancestor (ekoddishṭa); not any párvaṇa, or double rite, and so forth."

Rule in respect to the son of the twice-married woman, declared in another passage of the Kálika-pu-

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conclusion advanced. In the extract fron the Kálika-puráṇa, it is first stated, that a person should regularly adopt the son of a twice-married woman, immediately after birth. The following sentence adds "having performed positively, (vai) for such, immediately on being born, the burnt sacrifice for the son of a twice-married woman, the man should complete every initiatory rite, the ceremony for a male born, and the rest."—This the author construes as implying pointedly, the performance of the sacrifice directly after birth. But the preceding sentence directs that adoption should then take place. From the contrast of the two injunctions, the author argues that no positive and restrictive rule, as to the priority in time or otherwise, for the performance of the sacrifice for the son of a twice-married woman, can be deduced.

As in the case, of the sacrifice [to fire] for a son born.] On a reference to the note subjoined to § 66, it will be perceived, that the sacrifice here alluded to, is restricted to be subsequent to the ceremony for a child born.

72. A rite dedicated to a single ancestor (ekoddishṭa) not any párvaṇa or double rite, &c.] The first sixteen funeral repasts, taking place after the ten days immediately succeeding the day of death, as well as that on the anniversary of such day, are ekoddishṭa. On these occasions the following articles are first presented in honour of the deceased; —raw rice, liquid butter, honey, barley, soaked peas, fruit, water, frankincense, white flowers, kuça grass, a lamp, sandal wood, betel, cloth, a thread, and water for the feet. The oblation of the funeral cake, then takes place—The párvaṇa or double rite, consists in the same oblations, and other ceremonials, being consecrated, on the death of the father and other sire, in honour of the ancestors on the mother's side, as well as in that of those

73. The son of a twice-married woman, at the funeral repast of his father, on the anniversary of the day of death, should perform rites, dedicated to a single ancestor, not any párvana, or double rites, and so forth.

Passage explained.

74. By the terms, "and so forth," the different variations of the párvaṇa rites, are likewise prohibited. For, a text of Jatu-Karaṇa expresses,—"Annually, let the son of the wife, and legitimate son, perform [obsequies] according to the párvaṇa form: the other ten sons should perform a rite, dedicated to a single ancestor,"—and, a text of Parásara, recites; [A funeral repast] by the legitimate son, for a father, who has departed this life, on all occasions, is in honor of three ancestors: that, by those of a different general family, is consecrated to a single ancestor, on the anniversary of the day of death."

Import of its terms, 'and so forth.'

Játukaraṇa.

Parásara.

75. On the subject of sons, it had been said,*—"The son self-given, and the slave's son, (Dása-putra)." Of these he describes the latter: "A female purchased by price, who is enjoyed, is a slave: it is thus declared. The son who is born on her, is considered a slave-son."

The slave's son, described in a passage of the Kalika-puráṇa.

76. That female, though of equal class, being purchased by price, who is, 'enjoyed,'—co-habited with,—is denominated by former sages, a slave. For, a text expresses,—"That woman, who is bought by price, is not considered a wife: she neither [avails] in rites, in honour of the gods, nor in rites, in honour of

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on the father's side. Thus, besides, the articles above enumerated, a funeral cake is offered, to each of the three nearest deceased male ancestors, on the father's side, and mother's side. The oblations in honor of the ancestors on either side, being preceded by a Visvadeva offering—The term Visvadeva, denotes a certain set of divinities collectively, and the offering so called, is in their honor, and consists of the different articles, above enumerated: these should also be presented both on the occasion of a párvana and ekoddishṭa rite, to the Lord of the soil—Rites in the form of párvaṇa, are celebrated by a rigid Hindu, on the following occasions; on the last day of every moon (amávásya)—on the 8th and 9th days of the dark fortnights of Pausha, Mágha, Phálguna and A'çvina, when oblations are made in honor of the mother, and two nearest deceased female ancestors in the line of the father,—on the full moon of Mágha,—during the whole of the first fortnight of A'çvina, which is denominated 'Pitṛipaksha' as peculiarly set a part for the performance of rites in the honor of ancestors: and particularly on the 13th of this month,—on any day of Agráhyana, previous to using the rice of the new crop,—in Vaiçákha, on occasion of the grain which then ripens,—in A'sháda for the rains: when the sun enters the constellation Ardra—on occasion of Eclipses, and visiting places of Pilgrimage.

74. The different variations of the párvaṇa rite] such as the daily funeral repast, consisting in oblations of rice, &c. to be performed in honor of either set of the three ancestors, on the side of both parents respectively, and a portion of the ceremony of 'sapiṇḍi-karaṇa.' The first of these, differs from the real párvaṇa rite, inasmuch as no piṇḍa or Visvadeva oblation is offered. In the second, the same ceremonials are observed, but the objects in whose honor they are performed, are different (v. Note to § 35 of Sect. 6.)

* Vide supra. § 25.

the manes. The sages regard her as a female slave." One born on her, is a slave's son. The son of a female slave, is 'a slave's son (dásaputra', the feminine of 'Dása' (slave) being like the masculine in the Vedas.

Other interpretation, of the compound term

77. Or, the compound Dása-putra, may be explained,—'one who is both a slave and a son' or, thus —'a son denominated a slave.'

Rules regarding such son, laid down in another passage.

78. The author lays down the rules, regarding this son,—" [such a son] must not participate in the dominion of a king: nor of Bráhmaṇas, perform the funeral repast: he is the lowest of all sons: hence, let him reject him."

Explanation.

79. The meaning is,—since, he is lowest of all sons, he must not share in the dominion of a king, nor perform the funeral repast of Bráhmaṇas.

SECTION V.

The mode of adoption—Form by whom propounded—Necessity of observance—Effect of omission.

The mode of adoption.

1. The qualification of the person to be adopted, has been defined. The mode is now propounded.

Declared by Çaunakha.

2. On this subject, Çaunakha has said "I, Çaunakha, now declare the best adoption: one having no male issue, or one whose male issue has died, having fasted for a son."—

Illustration of parts of the text.

3. 'Adoption'—the form of adoption.—Having fasted on the day preceding, that of adoption—Vṛiddha Gautama has "The impotent man, or also, one whose offspring has died."

Continuation of Çaunakha's text.

4. "Having given two pieces of cloth: a pair of ear-rings, a turban, a ring for the fore-finger, to a priest religiously disposed, a follower of Vishṇu, and thoroughly read in the Vedas; having venerated the king and virtuous Bráhmaṇas, by a 'madhuparka' (or prepared food consisting of honey, liquid butter and curds);"—

'King' there occurring means, the owner of the village.

5. 'The King' here signifies, the chief of the village, for a text of Vṛiddha Gautama recites,—"having invited all kinsmen and the chief of the village also."

A similar term in another passage has the same

6. As for also the term, 'Lord of the soil (Prithivíçáli)' in a subsequent passage of the same author even,—" After this, let him give a madhuparka to the Lord of the soil:"—that intends only the owner of the village: for, this, being expressed in what preceded, is the more forcibly suggested.

7. The meaning is,—having venerated three Bráhmaṇas, by a madhuparka, and so forth, for the purpose of asking [for the child to be adopted.]

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8. "Both a bunch of sixty-four stems, entirely of the grass, and fuel of the paláça tree also: having collected these articles, having earnestly invited kinsmen and relations;"—

Çaunaka continued.

9. 'Kinsmen' (bandhun)—his own, his father's and mother's kinsmen. 'Relations' (jñyatin)—sapiṇḍas. The invitation of kinsmen, and the others, is for the sake of their witnessing: in the same manner, as the invitation of the king: for both terms are confirmatory of this, in the sense,—'They unite with (badhnanti),'—and 'know (jánanti)' as their own, the adopted person.

Exposition.

10. "Having entertained the kinsmen with food: "and especially Bráhmaṇas;"—The meaning of this is,—having entertained invited kinsmen and Bráhmaṇas, previously appointed, and (on account of the conjunction 'and' in § 8) invited relations.

Çaunaka continued.

Interpretation.

11. "Having performed the rites, commencing with that of placing the consecrated fire, and ending with that of purifying the liquid butter. Having advanced before the giver, let him cause to be asked thus,—'give the boy.'"

Çaunaka continued.

12. The meaning is,—let him cause a demand, to be made through Bráhmaṇas, previously appointed.

Explanation.

13. "The giver, being capable of the gift, [should give] to him, with the recitation of the five prayers, the initial words, of the first of which, are,—ye-yajñena, &c."

Çaunaka continued.

14. The capacity to give, consists in having a plurality of sons, and the assent of the wife, and so forth.—'Should give,' is understood before this part,—"with the recitation of the five prayers;" for, gift is indicated in the prayer, commencing—"Let him receive a male from an intelligent person."

And commented on.

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9. For, both terms are confirmatory of this, &c.] Both terms, viz. 'Bandhun' (kinsmen) and 'jnyátin' (relations). 'Bandhu' and, 'jñyáti' of which, these terms are severally the accusative case plural, are derivatives of the roots 'badha' bind, 'jñyá' know.

13. With the recitation of the five prayers.] The translator has not yet been able to learn the particular five prayers, alluded to.

14. And the assent of the wife.] The reading 'pati' (the husband) is found in some copies: but that of 'patní' (the wife) appears to be the more prevalent, and on that account adopted in the translation. The author does not mean that the gift of a

Çaunaka continued.

15. "Having taken him by both hands, with the recitation of the prayer, commencing,—"devasyatva, &c.;" having inaudibly repeated the mystical invocation "Angadangat, &c.;"* having kissed the forehead of the child: having adorned with cloths, and so forth, the boy, bearing the reflection of a son:"—

Comment.

16. 'The reflection of a son.'] The resemblance of a son,—and that is, the capability to have sprung from [the adopter] himself, through an appointment [to raise issue on another's wife], and so forth; as [is the case] of the son, of a brother, a near or distant kinsman, and so forth. Nor is such appointment of one unconnected impossible; for, the invitation of such [to raise issue] may take place under this text: "For the sake of seed, let some Bráhmana be invited by wealth, &c."

Deduction, that a brother, uncle, &c. who could not have been begotten by the adopter, are not to be adopted.

17. Accordingly, the brother, paternal and maternal uncles, the daughter's son, and that of the sister, are excluded: for they bear not resemblance to a son.

To which position, a subsequent passage of the same author has reference.

Where, the term 'sister's son' includes all not resembling a son, on account of prohibited connection.

As explaned.

18. Intending this very position, it is declared in the sequel, by the same author:—"The daughter's son, and the sister's son, are declared to be the sons of Çúdras. For the three superior tribes, a sister's son, is no where [mentioned as] a son.†" Here even, the term 'sister's son' is illustrative of the whole not resembling a son, for prohibited connection is common to them all. Now, prohibited connection is the unfitness, [of the son proposed to be adopted,] to have been begotten by the individual himself, through appointment [to raise issue on the wife of another.]

Passage of the Gribyaparisishta, describing prohibited connection in the case of marriage noticed and explained.

19. "The mutual relation between a couple, being analogous to the one, being the father or mother of the other, connection is forbidden: as for instance,—the daughter of the wife's sister, and the sister of the paternal uncle' wife."—The meaning of the text is this. Where, the relation of the couple, that is of the bride and bridegroom, bears analogy to that of father or mother: if the bridegroom be, as it were, father of the bride, or

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16. Through an appointment [to raise issue on another's wife] and, so forth.] By such an appointment, or marriage, and the like.

As [is the case] of the son of a brother, &c. &c.] Such son, might have been begotten by the adopter himself, had he been appointed by the husband of the boy's mother, on account of his own impotence, to raise up issue on his wife; or, if the adopter himself, had married, the mother of the boy.

* V. infra § 7. Sect. VII where this passage from the Vedas, is cited at large.

† V. supra 2. 74.

the bride stand in the light of mother, to the bridegroom, such a marriage is a prohibited connection. The two examples illustrate these cases in their order.*

Conclusion, that, one with whose mother the adopter could not have legally married, must not be adopted.

20. In the same manner as in the above text, of the Grihyapari-sishta, on marriage, prohibited connection, in the case of marriage, is excepted; so, in the case in question, [one, who, if begotten by the adopter, would have been the son of] a prohibited connection, must be excepted; in other words, such person is to be adopted, as with the mother of whom, the adopter might have carnal knowledge.

Çaunakha continued from § 15.

21. "Accompanied with dancing, songs and benedictory words, having seated him in the middle of the house: having according to ordinance, offered a burnt offering of milk and curds, (to each incantation,) with recitation of the mystical invocation,—"Yastva-hrida:" the portion of the Rig-veda, commencing,—'tubhyam-agne:' and the five prayers, of which the initial words of the first, are Somo-dadat, &c.'"

Explanation.

22. The meaning is,—with such seven incantations, having offered seven burnt offerings of milk and curds.

Rule propounded by Vṛiddha Gautama.

23. Vṛiddha Gautama, propounds a special rule: "Let him then, cause to be offered, as burnt offerings, an hundred oblations of milk with liquid butter, contemplating in his mind, as the object, the lord of created beings, with recitation of the prayer "prajapate-na-tva-detam, &c."

Stanzas following, the part of Çaunakha in § 15, have been before cited and explained.

24. The stanzas, which follow the passage, [of Çaunakha last quoted,] commencing,—"The adoption of a son, by a Brâhmaṇa, &c."† and ending with,—"such gift is to be made, on account of difficulty,—"‡ having been before explained.

Çaunaka continued.

25. Next in order, to these stanzas, is this passage,—"Let the best of the regenerate to the extent of his ability bestow a gratuity on the officiating priest."

Comment.

26. "The best of the regenerate."] A Brâhmaṇa.

Text.

27. "A king half even of his dominion: next in order, a Vaiçya three hundred pieces."

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20. In the case in question.] That of adoption.

* The translator has here omitted an explanation in the original, by other terms, of the words used in the quotation, to express the daughter of the wife's sister, and the sister of the paternal uncle's wife. The translation in English would be a ludicrous tautology.

† Sect. 11 § 2 et. seq. ‡ Sect. IV. § 1, 8, 18, 19, 20 and 21.

28. 'Half even of his dominion.'] The produce for one year, of half his dominion; for a text of Vṛiddha Gautama, recites,—"Let him proffer the profits, arising from half his dominion, received in one year." And, this is with respect to one of the royal tribe.—'Pieces.'] Three hundred stampt coins (nánaka), and this must be understood, to mean of gold, silver or copper, with reference to the state of the individual, being superior, middling, or inferior, respectively: on account of the text of Vṛiddha Gautama,—"Let him proffer three hundred pieces in gold, or in silver, or in copper, according as his condition may be superior, or otherwise."

Comment.

29. "A Çúdra, the whole even of his property: if indigent to the extent of his means."

Text.

30. "The whole of his property."] That is, the amount earned by the labour of one year: for, the expression,—'Received in one year,'*—is not special; and there is this prohibition, "if offspring exist, the whole of the property, must not be given."

Comment.

31. Vasishṭha propounds another mode. "Man produced from virile seed and uterine blood, proceeds from his father and his mother, as an effect from its cause. Therefore, his father and mother have power to give, to sell, or to abandon, their son. But let no man give or accept, an only son: for, he is [destined] to continue the line of his ancestors. Let not a woman give or accept a son, unless with the assent of her husband. A person being about to adopt a son, should take an unremote kinsman, or the near relation of a kinsman, having convened his kindred and announced his intention to the king, and having offered a burnt offering, with recitation of the prayers denominated 'Vyáhriti' in the middle of his dwelling. But, if a doubt arise, let him set apart like a Çúdra, one whose kindred are remote. For, it is declared [in the Vedas] 'Many are saved by one.' When a son has been adopted, if a legitimate son, be afterwards born, the given son, shares a fourth part."

Mode of adoption propounded by Vasishṭha.

32. Of this, the part commencing from,—"Man produced from virile seed and uterine blood, &c." and ending,—"unless with the assent of her husband,—" has been before explained.

First part of this text has been before explained.

33. 'Kindred'] The kindred of himself, his father and mother—'The king.'] The chief of the village.—'Dwelling'.] His house.

'Kindred' and other terms explained.

34. 'With recitation of prayers, &c.'] On conclusion of the 'ájyabhága' sacraments, having offered with fire, four oblations with recitation of the prayers, denominated "Vyáhriti" severally, and collectively. Such is the meaning.

Import of the phrase 'with recitation of the prayers, &c.

* Occurring in the passage of Vṛiddha Gautama, cited in § 28.

Term 'unremote kinsman' before explained.

35. 'An unremote kinsman'] this has been explained.*

But if 'a doubt arise, &c.' explained.

36. 'But if doubt arise, &c.'] He, whose kinsmen are in a distant country, is one whose kindred are remote, being widely different by country and language: should such a person be adopted, a doubt even exists, with respect to his race, disposition, and so forth; this being the case, let him set him apart like a Çúdra: until the ascertainment [of doubtful particulars] let him not hold communion with him; this is the meaning.

Explanation of the passage, 'It is declared, &c.' which is subjoined as a reason.

37. On this point the author subjoins a passage of revealed law, as a reason. "It is declared, &c." through one son, 'many,'—the father and other ancestors,—are to be saved. On this account the adoption of a son takes place: not that through one, many may be condemned: now, a doubt existing, on one side, condemnation is possible: therefore, he should not hold communion with him: for an offence, though eventual, must be avoided.

Different reading and construction in the Kalpataru, noticed.

38. But, the author of the Kalpataru, adverting to the reading,—"asannikrishtam-eva"—says: "'one even whose kinsmen are not at hand, (asannikrishtam-eva)'—even one whose good or bad qualities are not known. The particle 'eva' is in the sense of,—even—or though. 'But if doubt arise';—on account of his kinsmen, not being near, should a doubt, with respect to his class arise; considering him as a Çúdra, let him set him aside, destitute even of initiation—A Çúdra even, is indeed a son, this is the implied import."

And shown to be inaccurate.

39. Either of these expositions of the implied meaning, is inaccurate: for the adoption of one of a different class is forbidden. Therefore the passage in its obvious sense only is correct.

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35. The prayers denominated 'Vyáhriti,' &c.] These are three prayers in the Vedas, distinguished, by pre-eminence, by this term: and when recited consecutively, they are denominated, Mahá Vyáhriti, or great Vyáhriti. This term, in its original sense, signifies enunciation.

38. But the author of the Kalpataru, &c.] A variety of reading and interpretations of the passage of Vasishṭha, here referred to, occur. The passage as read by Nanda, is thus: 'adura-bandhavam-bandhu-sannikrishtam-eva pratigrihniyat:' which is rendered, should take an unremote kinsman, or the near relation of a kinsman—The variation of reading, in the Kalpataru noticed, is the substitution of 'asannikrishtam' for 'bandhu-sannikrishtam'; and the passage is accordingly differently explained in that work: the variety in the reading and interpretation of this passage, is fully noticed by Mr. Colebrooke, in a note subjoined to chap. I. sect. XI. § 13. of his translation of the Mitákshará on inheritance.

* V. Supra Sect. 2 § 16.

40. After the adoption of a son given, should a real legitimate son be born, the author (Vasishṭha) propounds a special provision with respect to the division of the heritage ;—" when, &c." The meaning is: this son given, being adopted, if a real legitimate son be born, then the son given, receives a quarter-share: not an entire share (*a*.)

The part "when, &c." implies a special rule.

41. It is to be considered, whether this form [for adoption] in question, is to be applied, [generally] to the son bought, and the rest, or its application be determined by the distinction in the part, which preceded; —" to give, sell, or abandon their son."

It is a topic for consideration, to what sons the form prescribed, for adoption applies.

42. Baudhayana, propounds a particular rule, for those following the Taittiri portion of the Vedas;—" We are about to explain the mode, for the adoption of a son"—(here follows the same, as in the quotation from Vasishṭha, from " Man produced, &c." down to, " unless with the assent of her husband.") " One about to adopt, produces two pieces of cloth, a pair of ear-rings, a ring, and a priest, thoroughly read in the Vedas, a bunch of sixty-four stems of the kuça grass, and fuel of the 'purna' tree.* Then having invited kinsmen, into the middle of the dwelling, and having made a representation to the king: having sat down by the direction of a Bráhmaṇa,† in the assembly, or in the middle of his house: having caused to be exclaimed, auspicious day! benediction! prosperity!: having performed rites, commencing with the recitation of the prayer 'Yaddevâyajana,' down to the placing the vessels for water: having advanced before the giver, let him thus beg 'give me this son.' The other replies 'I give.' He receives the child [and says] 'I received thee, for the sake of religious duty. I adopt thee, for offspring.' Then having adorned him, with cloths and ear-rings and ring: having performed the investiture, and other ceremonials, down to the kindling, a flame of fire: having dressed the oblations, he offers a burnt offering. After

Baudhayana propounds a particular rule in respect to those following the Taittiri portion of the Vedas.

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41. It is to be considered, &c.] It is subsequently determined, that the form is applicable to the sons made, and self-given, as well as the three sons, indicated by the terms,—" to give, sell, or abandon" viz. the sons given, bought, and deserted. (v. infra § 49, 50, and 51.)

The Taittiri portion of the Vedas] This is included in the Yajur Veda, and takes its name from 'tittiri' a partridge—" The text of this Veda being disgorged by Yájñyavalkya, in a tangible form, and picked up by the rest of Vaisampáyaná's disciples, who for the purpose assumed the shape of partridges—" (Wilson in his Dictionary on the word—taittiriya.)

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* Butea frondosa.

† The reading in copies of original gives " having presented Bráhmaṇas with prepared food" but this appearing erroneous and inconsistent with practice, the translator has adopted the reading in the Dattaka Chaudriká.

(*a*) See 1 Mad. H. C, Rep. 49 : 1 Morl. Dig. 306.

having recited the incantation in the first chapter of the [Yajur] Veda, commencing '(Yas-tvá-hridákírinámanyamána)' with recitation of the sacrificial prayer "Yasmai-tvan-sukritejáta-vede, &c." he offers a burnt offering—Next, having performed the burnt sacraments, where the prayers denominated 'vyáhriti' are recited: [and] that designated 'svishṭa-krit'* with other ceremonials, being completed, down to the bestowing an excellent cow, he presents the fee [saying, 'yours are] these two cloths, the ear-rings, and the ring likewise.' But subsequently, if a real legitimate son is born, he [the adopted son] succeeds to a fourth share; so says Baudhayana."

A text of Vriddha Gautama, intimating an equal partition between the adopted and legitimate sons, refers to where, the first possesses, and the latter is destitute of good qualities.

43. As for the text of Vṛiddha Gautama, "A given son abounding in good qualities (yatha-játe) existing: should a legitimate son, be born at any time: let both be equal sharers of the father's whole estate." That must be construed, as supposing the former possessed of good qualities, and the legitimate son, destitute of the same: on account of the epithet 'yatha-játa' ('abounding in good qualities'). He, in whom there is a 'játa,' that is an assemblage (samuha) of good qualities, (implied by 'yatha') is 'yatha-játa,'—one abounding in good qualities. This is the meaning; for, the term "yatha" is significant of similitude, depending on quality.

This construction, supported by a text of Manu. Conclusion as to its accuracy.

44. Accordingly, by this text, ("of the man, to whom a son has been given, adorned with every virtue, he even, shall take the heritage, though duly brought from a different family,") Manu hath declared on defect of the real legitimate son, the succession [of the son given,] to the whole heritage. Therefore, his participation of a moiety, a legitimate son [not possessing good qualities] existing, is even proper.

The same author provides against an informal adoption.

45. The same author propounds a special rule, should the due form for adoption, not be observed: "He, who adopts a son, without observing the rules ordained, should make him a participator of the rites of marriage: not a sharer of the wealth."

Exposition of his text.

46 The meaning is; the marriage only, of one adopted, without the form for adoption, is to be performed; no wealth is to be bestowed on him: on the contrary, in such case, the wife and the rest even succeed to the estate: for, without observance of form, his filial relation is not produced.

The necessity of observance of form, to constitute the filial relation

47. Accordingly Vṛiddha Gautama. "The sons given, purchased, and the rest, who are adopted from those of his own general family, by observance of form acquire the state of lineage [to the adopter]; but the relation of sapiṇḍa, is not included." Here, there is this restric-

* This sacrament is so called from the prayer, read on the occasion.

of the adopted, declared by Vriddha Gautama.

tive rule: 'by observance of form only, acquired the state of lineage;' for, the forms for gift, and so forth, from being comprehended in the descriptions of the son given and the rest, [are necessary to] complete the peculiar nature of each. For instance, [in Manu's description of the son given], it is said: "give as a son in a time of distress confirming, the gift with water"; here the mention of water is illustrative of the whole form necessary for the gift [of a son]; and hence the form for adoption also is implied: for a text of Manu expresses,—" Though duly brought from a different family." The meaning is 'obtained legally,—according to form.'

48. "Purchased and the rest." By the word 'rest' the sons made, deserted and self-given, are included. For, by the expression "as specified" in the text subjoined, it is declared by Manu, that those only, who are qualified by the form, indicated in their respective descriptions, are substitutes for sons. "The sages declare these eleven sons, (the son of the wife, and the rest) as specified, to be substitutes for the real legitimate son; for, the obsequies would fail." Accordingly in the description of the son made,—" whom being equal in class a man affiliates (prakuryát,) &c."—by the preposition 'pra' [which has a perfective import],—in the description of the son deserted " whom a man receives (pari-grihniyat) as his own son &c."—by the preposition 'pari' [implying thoroughly],—and in the description of the son self-given,—" who offers (sparsayet) himself &c."—by the verb 'offer' synonymous with 'give,' reception in adoption (parigraha) with the observance of form, is declared.

are denoted by the word 'rest' used by Vriddha Gautama.

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48. By the word 'rest' the sons made, &c.] The reasoning of the author, in restricting the word 'rest' occurring in Vriddha Gautama's text, as denoting only the sons made, deserted and self-given, is not obvious. It should be observed, that, this text refers to sons, who may be adopted by an overt act of reception, from amongst those of the same family, whose filial relation is declared to be produced by the observance of form only, (of course the form applicable to such adoption); and whose relation, as sapinda (meaning here by blood) is barred. The author restricts the sons alluded to in this text, whom the terms 'the rest' denote to the three mentioned, by referring to Manu, who declares that, the sons only, as previously described by him, are substitutes for the real son; or in other words, possessing filial relation. But of the descriptions which preceded, in those only of the sons made, deserted and self-given (besides, the son given and bought,) is adoption, by an overt act of reception, and with the observance of the form proper for the same, indicated. Thus, in the descriptions of the sons made and deserted, the species of adoption, in question, with the observance of the proper form is implied by the verbs 'pra-kuryát' and 'parigrihniyát' meaning literally, 'completely makes' and 'thoroughly receives.' The son self-given, described as one who 'offers (sparsayet) himself, &c.' and the author explains this verb as synonymous with, —to give: but the gift cannot be completed without an overt act of reception on the adopter's part perfected by the observance of the proper form. The same may be observed, in the case of the sons given and bought. On the other hand, the other six sons cannot be referred to in Vriddha Gautama's text, as in their descriptions by Manu, adoption with an overt act of reception, and observance of form for such adoption, is not implied; and besides these are connected by blood, as containing portions of either of the adoptive father, or his wife, and those who on that account were before declared, to be adoptive sons of right (v. Sect. 1 § 34 and 35.)

49. Intending the same, after having premised,—"therefore father and mother have power to give, sell or abandon their son," by Vasishṭha also is the form for adoption declared. "A person being about to adopt a son, &c." Now from the expression 'adopt' (parigraha), this form is to be applied to the adoption likewise of the sons made, a self-given: for the same is implied by Manu by each preposition respectively [in their several descriptions.]

form propounded by Vasishṭha is applicable to the five sons, in question.

50. Therefore the filial relation of these five sons proceeds from adoption only with observance of the form of either Vasishṭha or Çaunakha; not otherwise.

Conclusion that their filial relation is produced by the observance of a form only.

51. As has been determined in the case of the son of the wife by Manu and Yájñavalkya: for, [the necessity of] observing form, is declared affirmatively and negatively in these and other texts—"Even the son of a wife duly authorized not begotten according to law is unworthy of the paternal estate. For he was procreated by an outcaste."* "Either brother appointed for this purpose who deviates from the strict rule and acts from carnal desire shall be degraded, &c."†

In the same manner, as in the case of the son of the wife, as declared by Manu. Yájñavalkya.

52. As for what is declared in the Subodhiní, a commentary on the Mitákshará,—"And the elders regard that property as temporal; like the filial relation and so forth:" that must be rejected, as contradicted; since it is repugnant to authorities cited: and because from the adoption only of a holy saint (árṣha) (that is,—one propounded by a holy saint) the relation as son is declared to proceed by Paiṭhinasi in this text; "Now these sons given, purchased and made, and the son of the appointed daughter who are in this case affiliated through the adoption of a holy saint by another are not sons of two fathers [being] unconnected to those of the family, (asangata-kulínádvyámushyáyaṇá.)"

An inference to the contrary, which might be drawn, from a passage of the Subodhiní, inadmissible. Being at variance with authorities cited; and a text of Paiṭhinasi.

53. Such, to whom those of the family (that is the family of the natural father) are not connected, [are asangata-kulína; and] persons not sons of two fathers and the same, [are asangata-kulínádvyámushyáyaṇá. The meaning is,—those who are adopted according to the form of a holy saint are not

Explanation of the text.

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49. Now from the expression 'adopt' (parigraha)]. Literally completely receiving.

53. Persons sons of two fathers and the same.] The author analyzes Paiṭhinasi's phrase 'asangata-kulinádvyámushyáyaṇá.' He begins by explaining the first member of this complex expression 'asangata-kulina' which is itself a compound and then indicates the class of compound to which the whole is to be referred. Thus the sentence 'persons sons of two fathers, &c.' shews that the complex phrase in question is a karmadháru samáça, or compound of nouns, designating the same person; and not

* Manu 9, 146. †

allied to those of the family of the natural father: therefore they are not sons of two fathers.

Another reading noticed as admissible.

54. Or the reading 'Dvyámushyáyaṇá' (sons of two fathers) may be admitted. For it will be declared in the sequel,* that where, both the natural and adoptive fathers perform the different ceremonies, the state as son of two fathers ensues.

Passages of Medhátithi indicate that filial relation only proceeds from the observance of ceremonies.

55. "Although it may be used like the word Indra and so forth; still, since the prevailing sense proceeds from popular recognition and the production of [a son] is ordained in holy writ, the general acceptation of 'son,' like the general acceptation of 'wife' and the like, must be understood." By the purport of this and other passages, Medhátithi also declares the filial relation in adopted sons to be occasioned only by the proper ceremonies.

56. It is therefore established that the filial relation of adopted sons is occasioned only by the [proper] ceremonies. Of gift, acceptance, a burnt sacrament, and so forth should either be wanting, the filial relation even fails.

SECTION VI.

Rule for Succession where the real son and one formally adopted; and where one formally and one informally adopted may co-exist—Relation in respect to family and so forth of the absolutely adopted son—of the Dvyámushyáyaṇá—who is described.

Çaunakha provides for the cases were a real son and an adopted son, and one formally and one informally adopted may co-exist.

1. Next should the real legitimate son and son given and son adopted, without observance of form be co-existent; the same author propounds the succession to the estate. "Him, existing,—a son being created: and a son given, existing,—one being adopted informally: that estate is his only who is justly master of the father's wealth."

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a dvandva samáça, or conjunct compound of nouns indicating distinct persons, but having a common government.

54. Or the reading, &c.] The variation in the reading noticed consists in 'Dvyámushyávaṇá' being read without the privative *a*, instead of with it, as in that preferred by Nanda. If that now noticed be adopted, sangata-kulina (connected, &c.) must be construed as contained in the text instead of asangata-kulina (unconnected, &c.) For by the rules of orthography, whether '*té*' (which occurs in Paithinasi's text) be followed by sangata or asangata in coalition, the same form 'te-sangata' is exhibited, though it is usual to insert a diacritical mark equivalent to our apostrophe to denote the presence of the vowel *a*.

55. Like the word Indra and so forth.] The word Indra is figuratively used, to express a person of great wealth: the word son may in the same manner be used in a figurative sense.

* V. Infra Sect. 6 § 11.

Interpretation of the part of his text providing for the first case.

2. "Him,"—the real legitimate son existing; whatever son is created by adoption and so forth; of these to him only, who is master of the father's wealth 'justly,' that is—by obvious inherent right,—does that estate belong: not to another. The meaning is that if a real legitimate son exist, the adopted son is not a sharer of the wealth: for in the affiliation of a son, the non-existence even of real legitimate issue is an essential condition.

Of that providing for the second case.

3. Thus a son given, that is one adopted according to form existing, should a son be made without observance of law: of these likewise the son-given only is participant of the estate, not the one adopted without observance of law. Such is the meaning: for, ordained form alone produces the filial relation.

A son adopted previous to the birth of a real son has no right of primogeniture as shewn by another text of Çaunakha.

4. Should a son-given, and the real legitimate son exist together, the son-given does not receive the share of an elder brother. This, the same author propounds,—"Subsequent to the adoption of a son-given, other sons being born,—should the father divide his estate; let him not be the partaker of the share of an elder brother."

Text explained.

5. The meaning is this,—after the adoption of a son-given, a legitimate son also being born: the son-given does not receive the share of an elder brother.

A rule propounded by Manu.

6. Manu next propounds another rule. "A given-son must never claim the family and estate of his natural father. *(a)* The funeral cake follows the family and estate; but of him who has given away his son, the obsequies fail."

Explanation.

7. The son-given must never claim his natural father's family and estate. Thus, 'the obsequies'—that is, the funeral repast [which would have been] performed by the son-given fails of him who has given away his son.

Explanation in the Chandriká.

8. The author of the Chandriká thus explains, "By this it is declared that by the the act alone, creating the filial relation, property of the son-given in the estate of his adopter is established, and connection to him as belonging to the same family ensues: But through extinction of the filial relation from the mere gift, the property of the son-given in the estate of the giver is extinguished; and connection to the family of the giver annulled."*

Vide Smrti Chandriká, Sec. 11. § 19. where this quotation in part occurs.

(a) See 1 Mad. H. C. Rep. 182.

9. But although by the text of Manu, connection to the family of the natural parent is annulled: what proof is there as to the connection to the family of the adopter being established? on this point Vṛhat Manu declares,—"sons given, purchased and the rest retain relation of sapiṇḍa to the natural father as extending to the fifth and seventh degrees; like this general family, [which is] also that of their adopter."

A text of Vṛhat Manu conclusive, that filial relation to the adopted father is established.

10. The relation as sapiṇḍa of sons given, purchased and the rest to the natural parent continues: by gift, and so forth even that does not fail; for by reason of consisting in connection through containing portions [of the natural father], it is not possibly to be removed while the body lasts. By this it is declared that the relation of sapiṇḍa in question is the consanguineal connection only and not connection by the 'piṇḍa' or funeral cake; for that this latter is barred is shewn by this passage,—"Of him who has given away his son the obsequies fail." Anticipating a question as to the extent of this relation as sapiṇḍa, the author adds,—"Extending to the fifth and to the seventh degree, &c." The meaning is this: 'Extending to the fifth decree'—completing five, that is—embracing,—five degrees. So of the expression 'to the seventh degree.'

Explantion of the text.

11. Gautama also, "With the kinsmen on the side of the father (viz. of the procreator (vîjî) beyond the seventh degree; and with those on the mother's side beyond the fifth, &c."

A text of Gautama confirmatory.

12. Here the word 'vîjî' (the procreator) is used for the sake of comprehending every one even, the natural father of a son given and so forth; not merely the natural father of the son of the wife only: for a text of Manu expresses, "As for these, denominated from the context sons though produced from the seed (vîja) of others: they are [sons] of that person from whose seed they severally sprang; and of no other.*

The word 'vîjî' occurring denotes generally the natural father of any description of adoptive son, as proved by a text of Manu.

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10. By this it is declared, &c.] The word 'pinḍa' signifies either the 'body' or a 'cake' or ball of food presented to the manes of the deceased: the word 'sapiṇḍa' therefore, may denote either one consanguineally related, or one connected, through an oblation of such funeral cake.

12. Here the word 'vîjî' is used, &c.] This word signifying literally the owner of the seed, is more particularly used, to devote the person appointed to raise issue on the wife of another: in contradistinction to the husband of such woman, technically called the 'kshetrí,' or owner of the soil. The author accordingly deems it necessary to explain that the word as used by Gautama has not such particular and limited sense: this he supports by referring to a text of Manu, where the word 'vîja' or seed is used, in respect to the natural father of any subsidiary son.

* Manu 9, 181.

Of whose text the sentence 'they are sons,&c.' is to declare the connection of sapiṇḍa

And the expression 'no other' to denote the adopter.

13. 'They are sons of that person.' This declaration that they are sons is for the sake of propounding the connection of sapiṇḍa [by the body]; and not to establish filial relation. For that would be at variance with the declaration of filial relation [to the adoptive father] contained in this and other texts,—"Of these twelve sons of men, &c."*—'Of no other'] not of the adopter.

Objection that the relation as sapiṇḍa, may subsist to both fathers, refuted by a text of Vriddha Gautama-

14. But analogous to the case of the daughter may not the relation of 'sapiṇḍa' to both [the giver and the receiver] be admitted: for like the state of lineage, the relation of sapiṇḍa is established by the adoption.—Should this be objected it is wrong; for it would be at variance with the text of Vriddha Gautama.—"The sons given, purchased and the rest who are adopted from those of his own general family by observance of form acquire the state of lineage [to the adopter]. But the relation of sapiṇḍa is not included."

Explanation of his text.

15. Those sons given and the rest who are adopted 'from those of his own general family'—from among his general family acquire by the observance of form 'the state of lineage'—the state of offspring. But in respect to these the relation of sapiṇḍa 'is not included' by the form,—meaning—is not established.

Which, *à fortiori*, bars the relation of sapiṇḍa, in the case of one of a different general family.

16. If the relation of sapiṇḍa be not established in those even of the same general family, it is declared a *fortiori*, that such relation is not produced in the case of one of a different general family.

Argument in favour of the general position, as to the consanguineal relation of sapiṇḍa to the adopter, not existing in the adopted.

17. And this is proper. As [in the case of the daughter] by reason of her proceeding from the father and producing in concert with the husband, the same body [their issue] the relation of sapiṇḍa [by the body] to both is established: in the same manner in the case of the son given it is not established; for though he proceed from the natural father, the producing in concert with the adopter a common body is wanting.

Which is confirmed by a text of Devala.

18. Accordingly, Devala in the text subjoined (since the family name, a share on the funeral cake are specified,) by the term 'merely,' bars the relation even of sapiṇḍa.—"For the sake of religious merit [being adopted] like

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14. But analogous to the case of a daughter.] A damsel retains the relation of sapiṇḍa to her father who gives and acquires the same to her husband who receives her in marriage.

18. Devala in the text subjoined.] In the Vyavahára Mayūkha, this text is cited as attributed to Nárada and alleged to be unauthentic.

* Manu 9, 158.

the real son under the family name of each respectively,' (tat-tat-gotrena) sons [who are] reared: for such merely participation in a share, and [the oblation of] the funeral cake is declared."

Opponent's objection that Devala's text regards a particular son for religious merit.

19. But is not this irrelevant to the subject proposed: for it regards the son for religious merit. Thus:—in those sons who like the real son are reared for the sake of religious merit 'under the family name of each respectively,' (that is under the family name severally of each only,) does the mere participation alone in a share and the funeral cake vest: not, (for such is the intent,) the relation of sapiṇḍa to the adopter. Hence the text imports the want of connection of sapiṇḍa of that son only to the adoptive father: not of the son-given.

Refuted.

20. This objection if made, is denied.—For a son for religious merit (dharma-putra) is not admitted, as [such admission] would be at variance with the enumeration in this text,—"Of the twelve sons of men whom Manu sprung from the self-existent has named &c.";—or even were such son admitted as he is not classed in the series of heirs, (the wife and the rest,) he could not participate in a share: and the connection of sapiṇḍa, not being possibly implied to forbid it would be unmeaning. Therefore, that text regards only the son: since it propounds participation in a share.

Explanation of Devala's text.

21. Now of the text in question this is the meaning. 'For the sake of religious merit',—(that is, for the sake of acquiring religious merit obviating the exclusion of the man himself from heaven,) after being adopted 'like the real son,'—(that is as substitutes for the same;) by the adopter, 'under the family name of each respectively',—(that is, even under a family name, different with reference to the natural father,) sons who are reared: in these merely participation alone in the heritage and [the oblation of] the funeral cake of the adopter vests: not connection as sapiṇḍa. Therefore, it is established that in the text in question the connection of the son given as sapiṇḍa to the adopter is not declared; but on the contrary his connection as such extending to the seventh degree inclusive to the family alone of the natural father.

Opponent's argument, that sons are alluded to by the pronoun in Devala's text.

22. But does it not follow on account of proximity, that sons mentioned in the plural number required by the repetition of 'tat,' are designated by that pronoun, not on account of remoteness, the adopting party becoming possessed of male issue; for,—it would be improper to apply to such, whose plurality is dubious, the repetition:—the pronoun, 'tat' designating (as it were) a person not

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22. Required by the repetition of 'tat.'] This pronoun is repeated to denote that the reference to the object is made distributively it follows, therefore that the object must be in the plural.

immediately obvious, cannot bear an import in the sense of 'atma' (self):—and the possessive pronoun 'sva' (own) denoting the person immediately obvious, only would have been proper.

Refuted.

23. Should this be alleged: we assert the contrary. According to the maxim,—"The application of pronouns is to the object presented to the mind,"—the adopting party is indicated by the pronoun 'tat' ('of each, &c.'). For the being the object presented to the mind, depends on being principal: and the being principal, proceeds from being the object to be perfected, or from relation to the effect. Now the father is principal by reason of being the object to whom accrues the effect consisting of heaven, which in virtue of such text as,—"by a son he conquers worlds, &c."—is to be produced by an act, the instrument of which is a son: and because by thoroughly considering this and other texts,—"the rites for the father consisting of oblations of food, and libations of water to be performed by the son, &c"—it appears the father is the object to be perfected as such by rites of oblation of food and so forth, the agent of which is the son.

And analogous reasoning from the Mímánsá cited.

24. Thus. "He mixes coagulated milk (dadhi) in boiled milk: that is a curd of two-milk whey (ámikshá), an oblation for the Vaiçvadeva set of divinities." It being settled, that the curd here alluded to by reason of being formed of mingled coagulated milk and milk, is an altered mode of what was intended to be offered: should it be alleged by the opponent that the coagulated milk is what is altered; since that alone designated by the pronoun 'that,' (for, the coagulated milk mentioned in the accusative case, is principal by reason of the milk mentioned in the locative being secondary,) refers to the divinities:—it is thus demonstrated by the supporter of the right opinion, that the milk is what is altered. As the milk is pervaded by the coagulated milk, although the object [of the verb 'mixes'], by reason of this consequent result of the import of the passage,—('he perfects

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Not on account of remoteness, the adopting party.] In Devala's text, though not expressed, the adopting party is understood as the agent to the verb in immediate construction with 'are reared,' in the passive voice: and is consequently more remote than 'sons,' from the phrase 'tat-tat-gotreṇa.'

To such whose plurality is dubious.] The agent of the verb 'rear' not being expressed: its plurality or otherwise is not certain.

24. He mixes coagulated milk (dadh) in boiled milk.] The author alludes to and enlarges on a portion of the 9th topic of the 1st section of the 4th book of Jaimini's Mímánsá. In the Vedas, this passage occurs. "He mixes coagulated milk, (dadhi) in boiled milk, that is a curd of two-milk whey (ámikshá), an oblation for the Vaiçvadeva set of divinities, and whey for horses [on particular ceremonies."] In the part of the Mímánsá specified, it is proposed for a discussion whether the curd and whey, viz. the grumous and serous parts of this compound are collectively the object of the act or only the curd. Since both are equally produced by the act of admixing the coagulated milk. The first supposition might be inferred: it is however thus demonstrated, that the curd, formed as mentioned is the object proposed by the act, and that the whey is incidentally or subordinately produced. The curd it is urged is no other than the

milk by coagulated milk,') the milk alone is principal. Therefore, this only designated by the pronoun 'that,' relates to the divinities. Analogous to this, in the case in point also, it is correct to say, that since the father is principal, by being the object to be perfected, he only is designated by the pronoun 'tat.'

Argument against the position, that the adopted is not related as sapiṇḍa to the adopter, refuted.

25. But should it be objected, if the son given, bear not the relation of sapiṇḍa to the family of the adoptive father; why should not his marriage take place therein? Excellent! we reply,—on account of his belonging to the same general family.

Further objection of opponent.

26. Then his marriage might take place with the offspring of the adopter's sister and so forth, for connection by identity of family and that of sapiṇḍa are wanting: nor do we at present find any text prohibitory of this. On the contrary, there are passages in favour of it such as, "Let not any one marry the daughter of that person, who taught him the sávitrí incantation: but marriage in the general or also in the peculiar family of that person, does not however occasion an offence." Yet, this is not an intended consequence: for, it is at variance with the universal practice of good persons, uninfringed, and by holy writ unforbidden. Therefore, what reason is there against marriage in such instance.

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itself to which the coagulated milk is admixed, as is argued,—1st, from the use of the pronoun 'that' which indicates the boiled milk, for that is principal,—2d, from the import of a preceding portion of the Vedas referring to the oblation of curd produced by the process in question, which recites, "consume this milk,"—3d, from the analogy of taste, the curd and milk both being sweet: whereas the whey is sour.

26. 'Sávitrí' incantation.] This (otherwise called the Gáyatrí,) is a verse of the Vedas, the mental recitation of which is an essential part of the daily observances enjoined the Bráhman to whom, when invested with the characteristic thread, it is taught with an injunction of secrecy.—For the insertion here of this mystical verse, the curious reader is indebted to Rám Mohan Ráy, an enlightened Hindú distinguished by learning, but still more by the liberality of his sentiments, well evinced in the different publications which have emanated from his pen.—The text of the Sávitrí runs thus:

Om! Bhur-bhavah-svah!

Tat-savitur-varenyam bhargo devasya dhímahi dhiyo yo nah prachodayat.

This may be translated,—"Glory to the Almighty in his triple character of the preserver, the destroyer and creator:—to the earth, sky and heavens—We contemplate that desirable light of the resplendent sun, who directs our intellects."

On this Rám Mohan Ráy, makes the following comment founded on interpretative passages from the Vedas, Manu and Yájñavalkya,—"Om! This mystical word is composed of the letters *a*, *u* and *m*, and is the emblem of God the author (as respectively intimated by those three letters) of preservation, destruction and creation.—Those letters likewise express that with respect to sentient beings, he rules the states of waking, dreaming and sound sleeping.—This word is called the Pranava or high praise.—'Bhur-bhavaḥ-svaḥ'—These words signify the earth, sky and heavens.—This is called the vyahriti, or universe, or all comprehending.—These (the pranava and vyahriti) are prefixed to the Gáyatrí, to make it complete. The three combined imply that,—we contemplate God, the author of preservation, creation and destruction,—the support of sentient beings, in the states of waking, dreaming and sleeping,—who comprehends the universe,—and is that desirable inherent light of the resplendent sun; that, as our internal light directs our understandings towards righteousness,—or in short, that God is all in all."

A reply to which by a certain author, is recited.

27. On this subject, it is replied by a certain author. "She who is not connected, as sapiṇḍa, to his mother and father, (pitus) and not belonging to the general family of either, is approved amongst twice-born men, for espousal and connubial intercourse."* As for the mentioning a female not connected as sapiṇḍa to the father, in this text of Manu, in which [if the son of the body were regarded,] it should have been expressed,—' not connected as sapiṇḍa to himself'—that is only, to declare, that the marriage of an adopted son, must not take place with a woman connected, as sapiṇḍa, to the adoptive father: otherwise, the marriage of a bridegroom, the eighth in descent from the common ancestor, (his kindred being through his father) with a bride, the sixth from such ancestor, (her descent being through her mother) might not take place: for being related as sapiṇḍa, to the father of the bridegroom, her non-connection as such is wanting. But what was required, would not thus result: for, it would be at variance with the practice of good persons, and texts of every code of law; such as: "Beyond the fifth and seventh degrees, on the mother's side, and the father's side, respectively, (matṛitaḥ-pitṛitas-tatha) [the relation of sapiṇḍa, ceases]." Nor can it be alleged, that this objection is equally applicable to the adopted son also; since it follows, such son, the eighth, and a damsel, the sixth, in degree, by reason of her being related, as sapiṇḍa, to his

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27. Otherwise]. That is supposing that the real legitimate son were referred to, and not the adopted son.

Her descent being through her mother]. A restriction to this effect, was necessary: for, if a female did not intervene between the proposed bride and ancestor common to her, and the bridegroom, they would belong to the same general family, and their marriage consequently illegal, as will appear from the following note.

Such as: "Beyond the fifth, &c.] The passage here cited is from Yájñavalkya. The following is a translation of, the text where it occurs, and those immediately preceding and following. "Having given a present to his preceptor, he should perform the ablution [prescribed for the conclusion of studentship]: Having completed a Veda, or the acts of merit, called 'vrata:' or both; persevering in holiness, let him marry a perfect woman: one not previously married or deflowered: beautiful: unrelated to him as sapiṇḍa: his junior: free from disease: having a brother: born in a family not following the same Rishis (or patriarchal saints). Beyond the fifth and seventh degrees, on the mother's side, and the father's side, respectively, [the relation of sapiṇḍa ceases]. From an illustrious race of Bráhmaṇas well versed in holy writ, of which ten ancestors are known, [the bride must be taken], but not from one affected by an infectious disorder, though free from reproach." In the Mitákshará the following comment on the quoted part of these stanzas occurs. "'On the mother's side (matritaḥ),' —that is,—in the line of the mother, after the fifth degree. 'On the father's side'—that is,—in the line of the father, after the seventh degree,—'the relation of sapiṇḍa, ceases' as is understood; and this term 'sapiṇḍa', though on the force of kindred, applying to every degree, refers only to those restricted: analogous to the words, 'nirmathya' 'pankuja' and the like.† Accordingly, there are six sapiṇḍas in ascent, the father, and the rest: and six in descent, the son, and the rest, and the man himself, is

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* Manu 3, 5.

† Of these words, the first is used to denote fire produced by friction on the actual occasion of being required for a sacrifice: the second, to signify the lotos: they do not, as might be supposed from their etymology, signify respectively any fire kindled by friction, and any aquatic plant, (v. Mímánsá of Jaimini) 1. 4. 10.

father, may not intermarry. For, under this text, subsequently recited "the relation of sapiṇḍas ceases with the seventh person,* &c. &c.") the father of the adopted son, the seventh in descent, not being related as sapiṇḍa, to the common ancestor,—by reason of the bride, the sixth in descent, consequently not being so connected to him,—such bride, the sixth, and the father of the bridegroom, the seventh, are not mutually connected as sapiṇḍas: as has been already declared. Therefore, there is no inconsistency in alleging that this text even is decisive of the relation of the adopted son as sapiṇḍa [to the daughter of his adoptive father's sister and so forth]."

28. This is very erroneously stated: for, either of these alternatives, [one of which under the foregoing construction must be assumed] is admissible. Accordingly, is the text in question decisive of the relation of sapiṇḍa, of an adopted son only; or, of both the adopted son, and the real legitimate son? The first proposition is not correct: the text may, in two ways relate to the son-given; either from such son being the subject treated on, or the text having the same meaning with a special text conclusive of the adopted son's relation as sapiṇḍa. Now, in this case, there is not either of these two causes, since they do not appear. Besides, did the text in question intend the adopted son, the term 'father' by a secondary import, would mean the adopting father; and that is not intended; for, it would be at variance with the rule of logic, "In a precept, the sense of a term is not secondary." Nor, also is the second position accurate, since it is forbidden to attach both senses to the word 'father.' Nor is there as in this instance,—"There are fish and a cow-house in the Ganges"—any proof, arguing the implied intent of a secondary sense. Therefore the text in question is relative alone to the son of the body: for conception and so forth are the subjects treated on, and it is declaratory of the same effect, as this and other texts: "Beyond the fifth and seventh degree, &c."

This reply refuted as very erroneous.

29. Neither can the objection specified be alleged,—viz. that, if the text regard the real legitimate son, it would follow, that a bridegroom the eighth, from the common ancestor, and a bride the sixth, might not intermarry, on account of her non-connection to his father, as sapiṇḍa being wanting. For, that is no real objection from its being founded in a mistake of the ablative case, (pituḥ) for the genitive [inflected the same.]

The argument also in the reply, that the text of Manu cited does not refer to the legitimate son, is founded in a mistake.

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the seventh. Should the line diverge, the enumeration should be made until the seventh degree, commencing from whence the direction of the line varies. This is apto every case."

28. As in this instance,—"there are fish and a cow-house in the Ganges."] Here the word 'Ganges' in its primary sense obviously signifies the river, so called, in which the fish exist, and in a secondary sense, the bank, on which the cow-house stands.

29. The ablative case is rendered certain by this text of Gautama]. The word 'bandhubhyaḥ' occurring in the phrases 'pitri-bandhubhyaḥ,' and 'mátri-bandhubhyaḥ' can only be the fifth or ablative case.

Yájñavalkya, cited. Gautama. Accordingly, in this sentence "mátṛitaḥ pitṛitas-tatha" ('on the mother's side, and father's side, respectively')—the grammatical affix 'tasil' conclusive of the case the ablative, is used by the chief of saints. Should a doubt arise this affix also, being used as the inflection of every [oblique] ca the ablative is rendered certain by this text of Gautama,—"With kinsmen on the side of the father, (pitṛi-bandhubhyaḥ) (viz. of the procreator) beyond the seventh degree, and with those on the mother's side (mátṛi-bandhubhyaḥ) beyond the fifth, &c. Thus, that noticed is not any satisfactory reply, another must be declared.

Another reply propounded. 30. This others have propounded—"Sages declare these eleven sons (the son of the wife and the rest,) as specified to be substitutes for a son; for, the obsequies would fail."* Since in this text, the son of the wife and the rest, are declared to be substitutes for the real son: by the maxim of logic,—'the substitute possesses his virtue,—the whole virtue of the legitimate son being inferred in them, the exception [from marriage with them] of a female sapiṇḍa of the adoptive father must follow.'

And refuted. 31. This is not accurate: for, as the representation of the relation of sapiṇḍa forbidden by this passage—"the relation of sapiṇḍa is not included"—would be impossible: that not being obtained the exception of such female could not take place. Hence it is disproved that the exception [from marriage] of the female sapiṇḍa of the adoptive father is established from the representation of the virtue of the real legitimate son [existing in the substitute] by reason of the name of 'son'. For, analogous to the case exemplified in the passage,—"an animal being the object he performs not these two [rites."],—the representation of the relation of sapiṇḍa which is forbidden being impossible, the exception could not subsist.

Correct solution of the question in 26. 32. Therefore, not being otherwise inferrible, the relation of 'sapiṇḍa' in the peculiar family (kula) of the adopter as founded only on express texts of law must be admitted. This is declared. Relation of sapiṇḍa is

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31. "An animal, &c. &c."] Allusion seems to be made to the 2nd topic of the 1st chapter of the 12th book of Jaimini's Mímánsá, or perhaps to the 2d topic, 8th chapter of the 10th book of the same work.—Whatever may be the object to be offered, generally speaking, in sacrifices the same rules are observed, and essentials necessary. It is however provided in the Vedas by the sentence quoted, that where an animal is the offering, the two 'ájya-bhága' sacraments are not to be performed, this term denotes a rite, where clarified butter (ájya) is presented, and is applied more particularly to two ceremonials of a sacrifice where that article is presented, with recitation of two prescribed mantras or incantations. By the passage in question, the performance of these two ceremonials, in the case of the oblation of an animal being interdicted in alluding to such a sacrifice, there would be no occasion to except the ceremonials in question; for, in such case their non-performance being especially provided for, there woud be no ground for inferring their observance.

* Manu, 9, 10.

The relation as sapiṇḍa of the adopted to the adopter's family is founded only on express texts.

Hemádri propounds it as extending only to three degrees.

of two descriptions ;—through consanguinity nection by a funeral oblation. Of these the relation as sapiṇḍa arising from consanguinity, being obviously barred in the case of the adopted son,—Hemádri, (after having declared that relation as arising alone from connection by a funeral oblation, and consanguinity) has determined the relation of sapiṇḍa of sons given, and the rest in the family of the adoptive father as extending only to the third degree.

33. And also Kárshṇájini—"As many as there may be degrees of forefathers : with so many their own forefathers, let sons given and the rest associate the deceased : in order their sons with two forefathers, their grandsons with one. This is general : the fourth decree is excluded : therefore this is [a relation of sapiṇḍa] extending to three degrees."

also Kárshṇ-

34. This is the meaning of the text.—According as the deceased adoptive fathers may be sons legitimate, adopted absolutely or of two fathers ; as many as there may be degrees of forefathers,—three or six ;—(that is, in the first of these cases, three,—viz. the natural father, grandfather and great-grandfather [of the deceased],—in the second, three—viz., the adoptive father, grandfather and great-grandfather,—in the third three ;—the adoptive father and other two,—and three,—the natural father and other two,—) with so many not exceeding six, [as the case may be,] let sons given, and the rest associate their acquired fathers.

Exposition of his text: of the first part.

35. The epithet "their own" is used for the purpose of suggesting that all these as many as three or six, (as the case may be) who are forefathers of the adoptive father are divine objects, contemplated in the ceremony of 'sapiṇḍi-karaṇa', performed for the adopted son, by his own son. And hence it being deduced, that the forefathers of the adopter are in fact divine objects in the ceremony of 'sapiṇḍi-karaṇa' performed for the adopted son : the author propounds a distinction ; "In order their sons with two [forefathers]"—that is with two of three, and four of six.—

Force of the epithet 'their own,' and reason of subjoining the part commencing "In order their sons, &c."

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35. All these, &c. &c.] The great-grandfather of the adopter, in the line of his natural father, and (if he be son of two fathers,) his great-grandfather in the line of his adoptive father would not be included in a set of three ancestors, to each of whom, at the sapiṇḍi-karaṇa for the adopted son, to be performed by his son, an oblation of food and so forth, (as specified in the preceding note) is to be consecrated ; unless any of the nearer ancestors survived such adopted son. But either of these great-grandfathers would be contemplated amongst the remoter ancestors, denominated 'lepa-bhák,' to whom are offered the wipings of the oblations of food.

The ceremony of 'sapiṇḍi-karaṇa'] or rite of associating the deceased with the manes of departed ancestors : it should strictly take place on the anniversary of the day of death, but is more usually performed at the funeral repast of the 13th day from the decease : previous to its performance the deceased is not denominated a 'pitri' or departed ancestor. This rite consists in the following ceremonials. Four vessels called each of two leaves are prepared. These are filled with water for the

On this principle let the grandsons of the adopted son perform the 'sapiṇḍi-karaṇa' for their own father, with one (the father of th
ter, from amongst three forefathers of the adopter of their own
father: or in the case of [such adopter] being sons of two fathers,
both grandfathers of their own grandfathers. The author points out this rule in respect to the adopted son and his issue likewise.

Import of the ntence 'this is

36. 'This is general:'—that is, this ceremony of 'sapiṇḍi-karaṇa,' where the adopted son, and his son also are sons of two fathers must be equally performed [by their descendants] with both sets of forefathers.

The sentence 'the fourth degree is excluded' why subjoned.

37. But, if this is the case: the 'sapiṇḍi-karaṇa' for his own father, the grandson of the adopted son being performed by the great-grandson of that person, with these three,—the son of the adopted, the adopted, and the adopter,—no alliance by a funeral oblation with the three forefathers of the adopter would exist; as not one of them even is included. Accordingly, the author adds,—"the fourth degree is excluded." The meaning is,—when any person may perform for his own father, the 'sapiṇḍi-karaṇa,' he should do it with three, the father and other two ancestors of deceased, not with the fourth.

...e reason for subjoining, and the import of the concluding part 'therefore this &c.'

38. But in the instance of the real legitimate son is not thus the performance of the sapiṇḍi-karaṇa [for his father] with three forefathers only, established by holy writ? Being established then by this alone, for what purpose is the inconvenience of introducing another express text [to declare it]? Anticipating this objection the author subjoins: "Therefore this," of adopted sons is a relation of sapiṇḍas extending only to the third degree being productive of uncleanness and disability of marriage, and consisting in connection by funeral oblations. It is not such relation including the seventh degree, declared in the subjoined passage from the Matsya-puráṇa: for this being of a general nature is excepted by the special rule [in the case in point]—"The fourth in degree, and the rest are partakers of the wipings [of the oblations]. The father and the rest

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scented wood, flowers, sessamum seed, and consecrated severally to the deceased, and three nearest departed ancestors on the father's side. The contents of that consecrated to the deceased with the exception of a small part is poured out in equal portions into the other three, with recitation of the two prayers commencing "Ye samánya, &c." Then the observances of the ekodishṭa and párvana rites, with the variations necessary take place, the same prayers being recited:—that is,—those of the former rite are performed in honour of the deceased, and those of the latter in honour of the three ancestors abovementioned. Of the four funeral cakes which would be thus offered severally to the deceased, and the three ancestors in question, that consecrated to the deceased is divided into three parts, one of which is admixed with each of the other three cakes. It is from this that the ceremony takes its name. The portion of the contents of the 'puṭi' consecrated to the deceased, which is reserved, is for the purpose of being presented to deceased, amongst the other articles, the oblation of which is part of ekodishṭa rite required to be performed in his honor. For a description of the and párvana rites, v. supra. note to § 72 of Sect. IV.

are participant of the oblation. The seventh in descent is the giver of the oblation. Of these the relation of sapiṇḍa extends to the seventh degree."

39. Intending merely this, it is said by the author of the Sangraha. "The relation as sapiṇḍa of adopted sons, extends to three degrees in the family of the natural father: and like that, in the family of the adopter. This is a rule of law." The mention here of relation as sapiṇḍa in both families, is with reference to the son of two fathers, for, it has been shewn that the ceremony 'sapiṇḍi-karaṇa' for such son, is performed with two sets of three forefathers. Of the absotutely adopted son, the relation of sapiṇḍa in the family of the adopter, consisting in connection by funeral adoptions extends to three degrees: in the family of the natural father, arising only from consanguinity, it extends to seven degrees. To enlarge would be useless.

The author of the Sangraha confirms.

40. "Like this, the general family"]. 'Like this,'—analogous to the relationship as sapiṇḍa the general family likewise [of sons given and the rest,] is that of the natural father who contributes the seed; not only of the natural father however, but also of the adopter. The general family of sons given and the rest, is that of him also, who is the adopter of such son given and so forth. By this the relation of sapiṇḍa is shewn to vary from the general family. Thus, that relationship is in the line of the natural father only, not so the general family; on the contrary, this is that of both [fathers] even. This likewise does not apply to the general adopted son: but is relative to the son of two fathers, a particular adopted son.

Explanation of a part of Vṛihat Manu's text, cited in § 9, appositely introduced.

41. Accordingly sons given and the rest, [who are sons of two fathers] are of two descriptions: Those absolutely sons of two fathers, and those incompletely so. Of these, those are named absolute 'dvyámushyáyaṇas' who are given in adoption with this stipulation,—'this is son of us two' (the natural father and adopter). The incomplete 'dvyámushyáyaṇas' are those who are initiated by their natural father, in ceremonies ending with that of tonsure, and by the adoptive father in those commencing with the investiture of the characteristic thread, since they are initiated under the family names of both even, they are sons of two fathers but incompletely so. Should a child directly on being born be adopted; as his initiation under both family names would be wanting, he would partake only of the family of the adopter.

Dvyámushyáyanas are of two descriptions, such as are absolutely so and otherwise.

42. Intending all this, Satyáshádha says,—"of absolute 'dvyámushyáyaṇas' of both &c." By this compendious rule, having declared the connection of absolute dvyámushyáyaṇas to the patriarchal saints in both families, the author by another aphorism commencing,—"Of sons given and the rest like the dvyámushyáyaṇa, &c."—ordains the same connection with respect to those incompletely dvyámushyáyaṇas. Now this is thus explained by Savarasvámí. "Treating

Satyáshádha intends the same—Explanation of an aphorism of his by Savarasvámí.

on dvyámushyáyaṇas, the author mentions those incompletely so, "Of sons given, &c." Unto those only not to issue beyond, [does the connection to both families extend.] By the first only the initiatory rites [ending with tonsure are performed.] If by the adopter [the family of the adopted] is that of the latter: on account of priority. From this alone [the same is the case] in respect to a descendant beyond. So also those, who are affiliated by a descendant of the same general family, (as for instance a nephew, by an uncle,) are of the adopter's family only.

Exposition of the meaning of this explanatory passage.

43. The meaning of this explanatory passage is this.—He only is connected to both families, who has been initiated under both family names; not descendants beyond. In reply to the question, as to the cause of connection to the family of the natural father, the author says "By the first &c." 'The first';—that is, the natural father: [the cause is,—] on account of the initiatory rites, being performed by him only.—Now the initiatory rites, [alluded to,] are those ending with tonsure: on account of this passage from the Kálika-puráṇa.* "Oh Lord of the earth, a son having been regularly initiated under the family name, of his [natural] father, unto the ceremony of tonsure inclusive, does not become the son of another man." This has been already before explained. He does not become exclusively, the son of another: but, is a dvyámushyáyaṇa, or son of two fathers.

The same continued.

44. Anticipating a question, as to what would be the case, were the initiation performed by the first; the author adds,—"If by the adopter &c." If every initiatory rite from that on birth, or even those commencing with tonsure, be performed by the adopter only, the family [of the adopted] is of the latter,—that is,—of the adopter only. For this, a reason is subjoined:—"on account of priority"—meaning,—from precedence in the performance of initiation.

The same continued.

45. The author declares the family (required to be known,) in the instance of the issue of the dvyámushyáyaṇa, and that of the [absolutely] adopted son:—"from this alone"—from the initiation taking place under the family name only of the adopter in both instances even his, is the family of the descendants beyond.

The same concluded.

46. The author alludes to the adoption of one belonging to the same general family,—"so also, &c." That is,—if the natural and adoptive fathers belong even to the same general family, the distinctive appellations are fixed by the adopter only for the adoption, and initiation are performed by him.

* V. Supra Sect. IV. § 22.

47. The text, ("A given son must never claim the family estate of his natural father, &c.*) must be considered applicable to the case where every initiatory rite, from that of birth is performed by the adopter only: but the son given, and the rest who are absolute dvyámushyáyaṇas, belongs to both families; on account of this passage of Parijáta ;—"Sons given, purchased and the rest who are sons of two fathers, may not marry in either family even : as was the case of Sringa and Saisira."† 'In either family'—in the family of the natural father, and in that of adopter.

A text of Manu, barring the relation of the son given to the family of the natural father does not refer to the son of two fathers, on account of a text of Parijáta.

48. With respect to the sons given, and the rest being sons of two fathers, this text and that of Satyashádha, commencing (" of absolute" " dvyámushyáyaṇas") are authority. With the same intent it is declared also in the Pravara-manjari :" " For the most part sons given purchased and made the son of the appointed daughter and so forth belong to both general families with connection to the patriarchal saints of each." From this alone on the occasion of the marriage of those, appertaining to two families both families with each of which their connection to the patriarchal saints, is involved must be avoided.

Whose text, that in § 42, and the one here noticed, prove that adopted sons may be sons of two fathers.

49. The çákhá or peculiar branch of the Vedas is that of the adopter only. Vasishṭha declares so : —" Sprung from one following a different 'çákhá' (or branch of the Vedas) the given son even when invested with the characteristic thread, under the family name of [the man] himself, according to the form prescribed by his peculiar " çákhá" becomes participant of the duties of such çákhá ; (sva-çákhá-bhák"). That duty in which his peculiar, (that is the adopter's) çákhá prevails, is a duty of such çákhá ; in this he shares or is " participant &c." Such rite only which is prescribed by the çákhá, of the adopter must be performed by him. This is the meaning.

The 'çákhá' is that of the adopter : as shewn by Vasishṭha,

Explanation of his expression 'svá-çákhá-bhák.

50. The forefathers of the adoptive mother only are also the maternal grandsires of sons given, and the rest : for, the rule regarding the paternal, is equally applicable to the maternal grandsires [of adopted sons].

The maternal grandsires of adopted sons are in the line of their adoptive mothers.

51. As for what is said by Hemádri that the precept enjoining the performance of a funeral repast in honor of the maternal grand-father, refers to the natural maternal grandfather ; that is inaccurate : for it is at variance with the passage—" of him who has given away his son, the obsequies fail."‡ Nor is the capacity of the maternal grandsires as givers wanting : for by reason of their affording their assent to the gift (as appears from this passage—" having convened his kin-

A passage of Hemádri to the contrary effect, refuted.

* 9142. † V. supra note to Sect. 1 § 31. ‡ 9, 142

dred, &c.")—they also are parties to the same. Besides, by this passage—"the funeral cake follows the family and estate"*—the family and estate are declared to be the cause of performing the funeral repast; and the estate of the maternal grandfather also like that of the father lapses from the son given. His incapacity to perform a funeral repast in honor of his original maternal grandfather is properly declared.

Hemádri too has elsewhere advanced the other position.

52. Accordingly, Hemádri himself, from not being satisfied with that [just stated], has advanced the other position: "In the same manner as for the secondary father, a funeral repast must be performed in honor of the scondari maternal grandfather and the rest."

Which is shewn to be accurate by several arguments.

53. And this even is proper. The adopted son as substitute for the real legitimate son, being the agent of rites performed by a legitimate son, it follows that he is the performer of funeral repasts, the objects of which are the manes in honor of whom a legitimate son performs such repasts. For:—without difference, relation to the father and other sires of the adopter obtains; in the same manner as relation to the general family the çákhá, the family-deity and family-rules of that person:—the term 'son' is used without restriction in these and other passages;—"Fathers desire sons." "The son who shall go to Gaya, &c.":—and further: if the adoptive mother be espoused according to the forms of marriage of the Ásuras, and the rest, by reason of the father only of such acquired mother, being the maternal grandfather to be contemplated in the ceremony of sapiṇḍa-karaṇa propounded in texts similar to the subjoined; it is proper that his manes should be consecrated in a separate funeral repast. "At the close of the year by sons, the father must be associated with the paternal grandfather: the mother must be associated with the maternal grandfather. Thus saith the illustrious Yama."

And thus the adopted son does not incur the offence of parivedana as declared by Gautama.

54. Accordingly sons given and the rest do not incur the guilt of a 'parivitri' and the like: for a text of Gautama recites;—"By marriage and the establishing a consecrated fire, the offence of 'parivedana' does not attach to a half brother, a son given and the son of a paternal uncle likewise."

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53. Of the Asuras and the rest.] That is,—of the Gandharvas: of the Rákshasas; and of the Pisáchas. Where she espoused, in either of the four superior forms of marriage,—viz. those of—Bráhma,—the Devas,—the Rishis—and the Prajápatis—at the ceremony of Sapiṇḍa-karaṇa performed for her, she would be associated with the paternal grandmother and so forth, and not with the maternal grandfather and the rest.

54. The guilt of a parivitri] or offence of parivedana; this consists in a younger brother marrying before his elder, or establishing a consecrated fire, while the elder may not have done the same.

55. 'To a half brother.] On the marriage and so forth of either of two brothers by different mothers, the offence denominated 'parivedana' is not incurred. This is the meaning. 'A son given'] It is meant,—that although there be an elder brother in the family of the natural father, the adopted son is not (should he marry and so forth,) a 'parivitri;' nor also by such previous marriage and the like of the younger, is the elder a parivitta or person passively implicated in the criminal acts alluded to. 'The son of a paternal uncle.'] On the marriage and so forth of the 'kshetraja,' son of a brother begotten [on his wife] by her brother-in-law or on the same of the legitimate son of such brother-in-law, the guilt of being a parivitta parivitri and the like, is not incurred by such son of the brother-in-law or such 'kshetraja' son respectively. This is the meaning.

Exposition of his text.

56. 'The son of a paternal uncle' in the general sense of the terms is not meant: for one adopted is suggested by the expression 'a son-given;' and by reason of there being no grounds for supposing an unadopted [nephew to be referred to] (as the prohibition [against previous marriage, and so forth,] does not apply to him,) there can be no rule for exempting him from the same.

Expression 'the son of a paternal uncle,' does not refer to the mere nephew.

57. Nor must it be argued that from the particular authority in question, the filial relation of a brother's son though unadopted is established; for this is obviated by the several objections before stated:* viz. by, where of ten brothers five were without male issue, and five had each ten sons, it would result that the brothers destitute of male offspring would severally have fifty sons; and it would follow that the fifty sons would each have ten fathers. Therefore the interpretation given only is accurate.†

Objection refuted.

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57. Nor must it be argued, &c.] The offence of parivedana, is incurred by those bearing a mutual fraternal relation. The text of Gautama exempts those specified from the operation of this rule. If his expression 'son of the paternal uncle,' be considered to refer to the mere nephew, there would be room to suppose that a nephew though unadopted bore filial relation to his uncle.

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* V. Supra, Sect. 2 § 63.

† In this place the following passage is contained as part of the text, in some MSS. though omitted in most: "Also the articles presented at the funeral repast, in honor of a kinsman of the adopter, are not to be given to the adopted, nor the articles presented at a funeral repast for a kinsman of the adoptive, or natural father, to the son of two fathers: on account of this text, cited by Hemádri and Parijata;—"He should not cause to be given to a near or distant kinsman, the oblation at a funeral repast: in the same manner he should not present with food at the funeral repast of his father, one having the same set of patriarchal saints." The 'oblation at a funeral repast' is what is offered on that occasion."—This passage may accurately belong to this section treating on the rules relative to the adoptive son.

SECTION VII.

legitimate daughter, there may be the different substitutes, responding with those for the son.

For the legitimate daughter, there may be substitutes as for the legitimate son.

Reason.

1. As on defect of the legitimate son, so on defect of a legitimate daughter likewise, daughters of the wife and the rest are substitutes on account of the rule of logic, "on defect of the principal a substitute, &c." Now she is principal by reason of her being the means of completion in the precept enjoying gift and so forth. And a daughter produced according to the precept directing conjugal intercourse at due season is such means; in the same manner as rice and so forth acquired according to the rules of acquisition are the completive means of a sacrifice.

Issue, indifferently male or female is the object proposed to be produced, under the rule regarding connubial intercourse.

2. Accordingly it appears from the argument exemplified in the instance of the sacrifice at night, that progeny (prajá) only deduced from revealed law and indifferently male or female is liable to be produced under the positive precept regarding connubial intercourse at due season contained in such passages as this commencing—"Let him approach in due season, &c."—and inferred from these and other confirmatory passages;—"We (women) obtain progeny from the approach of [our husbands] at due season."—"They obtain progeny from approach at due season."—For the etymology being thus; prajá, (progeny) from 'prajanayati' (one who procreates), by the word prajá a male or female being only possessing generative powers is intended; not one of the neuter gender: for such being produced from equality of the male and female seed is a monstrous production.

From not having issue a person sinks into hell.

3. Therefore should no issue (santati) such as is contemplated in the passage following, be produced, descent to a region of horror is ordained.—"Not having read the Vedas: not having produced issue: and not having performed the various sacrifices, a regenerate man desiring absorption falls to a region of horror."

Etymological import of 'santati' (issue) and 'apatyam' (offspring) occurring in the passage subjoined from which it appears these words intend a child of either sex.

4. What prolongs lineage, is 'santati' (issue) a synonyme of 'prajá' (offspring); for a passage of the kosha or vocabulary of Amara expresses: "prajá stands for 'santati' (issue) and 'jana' (people)." Thus is explained the word 'apatya' (offspring) occurring in the passage subjoined: on account of,—a text of Yaska which expresses,—"'apatyam' (offspring) that is, from whom there is exemption from falling into hell (apatana): or through whom one falls not (patati) into hell;"—and this passage of the kosha—"The synonymes signifying 'son' are

—atmajastanayaḥ-sunuḥ-sutaḥ-putraḥ: all these terms in the feminine signify a daughter. The terms 'apatyam' and 'tokam' apply to the two sexes."

Passage cited in which 'apatyam' occurs.

5. "For the sake of offspring (apatya) were women created: woman is the soil; men, the sowers of the seed: to one possessed of seed must the soil be given; but one destitute thereof deserves not the soil."

From a passage of Yaska, it appears the word 'puman' usually used in the sense of male may signify a person possessed of generative power, male or female.

6. "Here 'pumán (male) is 'purumán' (comprehending much): or its etymon, is the root puns (to cover, daub, &c.)."—Although by this passage from Yaska, the word pun (male) signifies one knowing much;—still from this part of his passage in question—" or its etymon, is the root puns (to cover &c.)"—it must be interpreted as signifying persons both male and female possessing the procreative faculty.

And in the same manner 'putra' signifies a child, male or female.

7. Accordingly Yaska has shewn by the following passage that the term 'putra' there occurring signifies children of both sexes (mithuna). "That children male and female (mithuna) are heirs is declared by these two stanzas.—" From my several limbs, thou art distilled; from my heart, thou art produced. Thou art indeed self, but denominated son (putra): mayst thou live an hundred years.*"—Manu descendant from the self-existent hath declared at the commencement of the world,—without distinction that wealth is that of children (putra) male and female (mithuna)."

Objection obviated.

8. It must not be alleged that the term 'mithuna'† in the above passage intends the son and daughter-in-law; for the text—" From my several limbs thou art distilled &c."—would be impertinent; and the exclusion of the daughter from inheritance according to the doctrine of some mentioned in this passage would be incongruous. "Not daughters:—thus some. [But by me] the male is recognized as an heir: the female as an heiress."

The term 'putra' used in different passages cited, shewn to mean a child of either sex.

9. As for the term 'putra' (son) used in this and similar texts: "Heaven awaits not one destitute of a son (putra);" that also even signifies both sexes. For it is declared by Pánini in the following rule to be a complex expression (formed by the rejection of one term and retention of the other) denoting son and daughter. "The expressions bhratṛi (brother) and 'putra' (son) are severally inclusive

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8. And the exclusion of the daughter from inheritance.] If Manu, by the term 'mithuna' did not intend children male and female; but the son, and his wife, why in a corresponding passage of another Muni here subjoined, should mention be made of the exclusion of daughters, from inheritance according to the doctrine of some?

* Of the Vedas. † Literally a couple, a pair.

of sister and daughter."* By this, is explained the term 'putra' (son) in such texts also as,—"By one destitute of a son, must a substitute for the same always be made, &c."

Examples will be cited indicating the adoption of

10. And, as conforming with this doctrine, the indication of the affiliation of a daughter, will be sub- declared.†

Passages cited shewing the equality and analogy between sons and daughters.

11. Accordingly it is said,—"Equal to him, is the putrika-suta or daughter appointed to be son ‡"—"as a son, so does the daughter of a man, proceed from his several limbs," §—and,—"If by the inauspiciousness of destiny, a daughter should not be born; then that must be propitiated by the observance of rites, such as repasts in honour of the deceased, on the first day of the dark fortnight; in the same manner as the destiny for a son, by funeral repasts, and the like, on the fourth day of the same."

A passage seemingly conflicting, explained consistently.

12. "Thus approaching let him beget a son." As for what is suggested by this, that a son only is the object proposed to be produced in an act, the only means for completing which is the approaching: that is a recital of 'son,' intended to shew the commencing act of one desirous of male issue; the author having first determined a son,—one of the male and female children alluded to by the term progeny (prajá), —to be the fruit of the essentials (guṇa) mentioned in the same passage.

Essentials causing the production of male offspring, as specified by different authors.

13. And these essentials in this and other texts, ("thus, &c.") are explained by the holy saint Manu and the rest to be, —on a night whose date is an even number, predominance of the virile seed; and passiveness of the woman: —the moon being in an auspicious mansion:—the ceremony, 'punsavana,'—destiny and so forth.

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13. In this and other texts ('thus &c.,) The text of Yájñavalkya alluded to, is the following. "Thus approaching a passive woman, he should avoid the Magha and Mula constellations. The moon being in an auspicious mansion, let the man beget at once, a son, eminent in qualities."

The ceremony 'punsavana'] A description of this ceremony and that denominated Simántonnayana occurs in the following note subjoined by Mr. Colebrooke, in § 28 chap. IX of his translation of Jimūta Váhana. "The first of the ceremonies here named [viz. the Punsavana] is celebrated at the close of the third month of pregnancy. It consists of the following prayer, recited by the husband addressing his pregnant wife, "Male are Mitra and Váruṇa (the sun and the regent of sea:) male are the twin sons of Asvini. Male are fire and air: may the child in thy womb prove male." The recital of this prayer is preceded by burnt offerings of clarified butter. The other ceremony mentioned should be performed in the fourth, sixth or eighth month of the pregnancy. The husband decorates his wife's head with minium, ornaments, and other articles: reciting divers prayers for a fortunate gestation."

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* Pánini, 1. 2. 68. † V. infra § 30 &c. ‡ Yájñavalkya. § Vṛihaspati.

Asvaláyana specifies essentials severally, conducive to the birth of male and female issue res-

It is explicitly propounded by Asvaláyana also, that in marriage, a son and daughter are the fruit of particular essentials.—" Let the man take the thumb of the woman repeating the portion of the Vedas—' I take your hand for your prosperity '—should he thus desire —' may my children be born males only ;'—[let him take] the fingers alone : if his desire be for female issue, the hand in the middle : if both be desired, the hand in the middle, including the thumb."

His text illustrates a passage of Manu.

15. By this is explained the passage—" On the odd nights, daughters, &c."*

Conclusion.

16. Therefore, in the same manner as the son by reason of being the means of procuring heaven as the agent in the performance of the funeral repast and so forth, is principal ; the daughter also being the same by reason of her being the means of accomplishing the precept enjoying gift, the funeral repast, and so forth ; on defect of her a substitute is proper.

Yaska and other authorities cited, shewing benefit to be derived from a daughter through her son.

17. " ' Duhitá' (daughter)—that is—' duro-hitá' or ' dure-hitá' one remotely benefiting ; [derived] like ' dogdhá' (a milker)." By this analysis, Yaska shews that the daughter benefits her father by means of her son also —Manu likewise. " Now between the sons of his son and of his daughter, there subsists in this world no difference : for even the son of a daughter delivers him in the next like the son of his son." And in the Mahábhárata this speech of Gandhari. " This one daughter born after one hundred sons shall be mature. Hence I shall obtain words acquired by a daughter's son.—This is my persuasion."—In another authority also : Are daughters also real legitimate children of their father and mother ? Formerly one falling, being upheld by a daughter's sons did ascend to heaven." —' By a daughter's sons,'—by the sons of Mágchadhi of the description denominated ' kánina' through funeral rites performed on the eighth lunar day and the like.

From which it is to be concluded that on defect of the real, a substi-

18. Consequently on failure of the real legitimate daughter, for the sake of obtaining the heaven procured by the daughter's son, the constituting the kshetraja and other adoptive daughters even substitutes is

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17. [Derived] like dogdhá (a milker)] Duhítá and dogdhá are equally derived from the root ' duh' (to milk,) by the subjunction of the affix ' trich' of which the ' ch' is servile.—To form the first of these terms, the augment ' it' is interposed, by the option allowed by a special rule : and in forming the second, such augment not being used by other special rules, certain permutations are undergone, by which the term dogdhá, is produced.

* Manu 3. 48.

tute daughter is to be adopted. Objection obviated.

established. Nor is there any express passage of law as to there being a substitute for rice, [that it should be objected, that there is no express passage authorizing a substitute daughter.]

The inference that the sister-in-law might thus be substituted for the wife as the brother-in-law is for the husband.

19. If this is the case; then in the same manner as on the death of the husband, the brother-in-law is a substitute; on the death of the wife the sister-in-law would be the same on account of her exact resemblance in point of consanguineal relation to the father-in-law, viz. her own father.]

Obviated.

20. This objection if made is inaccurate. The designation of 'Wife' is not in consequence of 'consanguineal relation to the father-in-law,' but from being the lawfully wedded spouse of the husband. Now, the sister-in-law is not such: where such essential exists in younger wives, in that case one [according to the order of age] may be the substitute for the eldest. Accordingly the chief of saints hath negatively declared this. "Another wife of equal class [with himself] existing, he should not cause a religious act to be performed [by one of inferior class]; amongst several wives equal in class except the eldest, no other officiates in a sacred rite."

Of the five subsidiary daughters, who bear relation by blood to one parent, Manu propounds the production of the Kshetraja, description; as appears from explanation of his text.

21. Therefore it is established by reasoning even that these [the kshetraja and other secondary daughters], may be substitutes. Of these from amongst the following five subsidiary daughters, viz., the daughter of the wife that of hidden origin, the damsel's daughter, and that of the twice-married woman, Manu himself has propounded the production of the daughter of the wife;—"on failure of issue [by the husband] the desired offspring may be procreated either by his brother or some other sapiṇḍa on the wife who has been duly authorized."—It is meant by this that on failure of issue of both sexes, as offspring male or female is the object desired [that begotten by a kinsman] is a substitute for either as the case may be.

An express rule for the rest unnecessary.

22. As to the other four subsidiary daughters in question there is no necessity for an express rule for their production: for their existence proceeds from the inclination of individuals.

Their names correspond with those of the sons.

23. The names of these [subsidiary daughters], are only those adduced (v. § 21) corresponding with those of the sons: for the cause from which they proceed is the same even in respect to both.

These particular descriptions are substitutes for daughters by analogy.

24. And their being substitutes for the legitimate daughter is established from analogy even from their originating partially from portions [of the husband and wife]; in the same manner as wild rice (nivara), is shewn to be a substitute on defect of the cultivated rice which ripens in the rains (vríhi). Now, such portions are

partial, because the connection being through portions of the wife only, relation through portions of the husband is wanting.

Objection that a daughter given, and the rest cannot be substitutes as no analogy applies to them.

25. Allowing however that by force of analogy the daughter of the wife and other four secondary daughters are substitutes for the legitimate daughter, —How are a daughter given, one purchased, a daughter made, one self-given and a deserted daughter, (no analogy applying) substitutes ?

Over-ruled ; an argument of analogy existing applicable to them.

26. This objection is invalid.—To these descriptions of daughters also analogy even does extend : since an exact resemblance exists through equality of tribe and so forth as intimated by the saint—" this law is propounded by me in regard to sons (tanayeshu) equal by class" ;—and this passage was before explained* in treating on the substitute for a son.

Objection that the subsidiary daughters being equally from analogy, substitutes the order for succession, as provided for in the case of sons, could not be applied.

27. But admitting that the daughter of the wife and other four daughters from relation as containing portions of the mother—and the daughter and the other four from equality of class—are substitutes ; still since there is no difference in their resemblance, how is the order [of succession] as provided for [in the case of sons] by this passage (" on failure of the preceding the next in order is heir &c."†) to be applied ?

Over-ruled.

28. This objection is wrong : we reply,—by the greater worthiness of each successively. This Vishṇu declares—" among these the preceding successively is the more worthy." —Now worthiness is distinguished into what is temporal (dṛishṭa) and what is spiritual (adṛishṭa). That which is temporal proceeds from relationship through consanguinity and the like : that which is spiritual from being purified and so forth. And the text in question intends a restrictive rule: in the same manner as such texts, as—" Should he not procure the ' Soma' creeper let him even admit the ' putika' plant &c."

Reference, to the author's commentary on Vishṇu.

29. Further particulars may be consulted in the Kesava-Vaijayanti, my commentary on Vishṇu.

Indication in [illegible] of a

30. Instances indicating the substitute for a daughter are found in the Puráṇas—Amongst these the recital to Dasaratha by Sumantra of the prophecy foretold by Sanat-kumara in the Bálá-kanda of the Rámáyana is an indication of a daughtér given.—" In the race of Ishvákú one very meritorious shall be born : by name the warrior Dasaratha : illustrious and constant in truth.—Great friendship shall subsist between him and the magnanimous king of Anga; and he shall possess a daughter of exalted destiny of the name of Sántá. But the king of Anga (called Lomápada) will be destitute of issue.—That monarch shall

* Supra. Sect. 11. § 23, &c. † Yájñavalkya 2 133.

intreat the king Dasaratha thus:—"I am destitute of offspring; "Oh! versed in morality, let this girl Sántá of excessive beauty, with open heart be given me, for the sake of offspring."—Then, that Rájá Dasaratha deliberating in his mind shall give the girl Sántá to the sovereign of Anga. That king, having taken the damsel, (his desires being fulfilled,) with gladness of heart will quickly go to his capital—That potentate shall bestow the damsel on Rishya-sringa, &c." There also is this address of Dasaratha to Lomapáda, "Let your daughter Sántá, Oh! warrior king go with her husband to my city—an affair of importance has arisen." There is likewise the address of Lomapáda to Rishya-sringa;—"This king Dasartha is my amiable beloved friend. For the sake of offspring for me, this beautiful girl was given by him to me who demanded her: O Bráhmaṇa, Sántá is most dear to me; as myself, Oh! sage he, this king is thy father-in-law."

Illustration.

31. In these quotations from the expressions,—"let be given"—"shall be given"—"having taken"—and 'given'—a rule for the gift is manifest. So it being premised, [that the king of Anga will be] destitute of issue, it follows, from the conclusion of his prayer ("for the sake of offspring") that the daughter given, resembling the legitimate daughter, is a substitute for issue.

Indication in scripture of a daughter purchased.

32. An indication of the daughter purchased, is found in Hemádri from the Skanda-puráṇa. "One even of a different family, having through gold, made the daughter of another, his own, is capable of bestowing her [in marriage,] according to legal form"—Also in the Linga-puráṇa—"After having conferred with the parents, having made his own a damsel, perfect and free from every defect: by the gift of great wealth, having brought her [to his house]: having presented her with new clothes of good quality: having adorned her with ornaments, let him honor her with scented necklaces.—He is first well to consider causes, their respective families, constellations and so forth: he is to study their respective dispositions and after having liberally gratified both, she is to be given by him to a Bráhmaṇa only, who is conversant in scripture, a practiser of devotion, one who hath notoriously read the Vedas, and a student of theology."

Illustration.

33. In these quotations, from the expressions—"having through gold made his own"—"by the gift of wealth, &c."—authority for the purchase, [of a daughter] is manifest.

Indication of a daughter made.

34. An indication of the daughter made, is found in the Haribança* where the offspring of Sura is enumerated. [The author] having thus premised,—"Ten males were begotten by Sura on the chief queen, the daughter of Bhoja viz.—first Vasudeva the long-armed surnamed Ánaka-Dundabhi &c."†—then continuing,—"Next to him Deva-Bhága was born

* Or chapter of the Mahá-bharata, on the lineage of kings.

† It is related that at the birth of Vasudeva, the drums of Indra, spontaneously played, whence the name A´naka-dundabhi, these words signify: in order, a small and large kettledrum.

then Deva-Sravaḥ then Anavṛishti, Kanavaka and Vatsavána : after these Grinjoma, Syama, Samíka, Gandúsha—and of him were five daughters ;"—and having thus enumerated the five—" Pṛithu-kírtti Pṛithá, and also Srutadevá, Sruta-sravá, Rajádhideví, likewise. These five were mothers of warriors,"—subjoins—" Kunti made Pṛithá his daughter : Páṇdá married her : on whom was procreated by the god of justice the king Yudhishtíra well versed in morality."

Illustration.

35. In this quotation since by the verb ' made,' the act of an agent even shewn : the female [the object] is a daughter made [kṛitrimá].

Another indication of the daughter made.

36. Also in the Padma-puráṇa, in the part treating on the Bhauma-vrata, or fast in honor of the planet Mars. " Formerly there was Sunandika, a Bráhmaṇa thoroughly read in the Vedas : his wife Sunandiká was barren ; but extremely anxious [for issue]. No offspring was born to him : from continuing barren, [premature] old age came on. Himself having taken her [in adoption],—Suçílá who was the child of another, beautiful in form and born in the family of a Bráhmaṇa was educated by him : and that Bráhmaṇí, also cherished her in her house as her daughter : and she was given in marriage to the Bráhmaṇa Someçvara who then according to the form declared in the Vedas married her, &c. &c."

37. Here the specification of—" himself having taken"—indicates an instance of a daughter made : and the construtionn —was educated " by himself"—is not accurate : for as the agent to the verbs ' taking' and ' educating' is the same—as shewn by the past participle ' having taken'—it is established that the act of educating is by himself.

A daughter self given indicated in other Puráṇas : one of the daughter deserted adduced.

38. An indication of the daughter self-given must be searched for in the other Puráṇas : One the daughter deserted occurs in this passage from, the first Parban of the Mahá-bhárata, reciting the conversation between Dushmanta and Çakuntala. That hermit begot Çakuntalá on Menuká. Menuká having deserted that infant born on the bank of the Máliní river, on the delightful table-land of Himavat after having performed the necessary rites at that river repaired thence quickly to the assembly of Indra. The birds having seen that infant sleeping in the forest uninhabited by men and abounding in lions and tigers surrounded it on all sides with a view that the voracious devourers of flesh might not hurt the child. The birds then guarded on all sides there, the daughter of Menuká ;

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And the construction,—'was educated by himself.'—] The original recites,—'tena-anya-syasuta-jata-Suçílá.....grihitvá-poshita-svayam.'—The author, wishes to shew that the extract quoted exhibits an instance of an adoptive daughter, of the description technically called,—" made by the man himself."—For this purpose, he construes 'svayam' (himself) with the past participle ' grihitvá' (having taken) : not directly with ' poshitá' (educated); which latter construction, is in fact less accurate, as the agent to ' poshitá' (educated) must be the same, as that to the past participle 'grihitvá.'

and I (going to sip water) saw her sleeping surrounded in the ful uninhabited forest by birds. Having brought her thence I adopted her as my daughter. The maker of the body, the bestower of life, and he whose food is eaten these three in order are declared to be fathers in holy ordinance—Since she was surrounded in the desert forest by birds her name also was in consequence fixed by me Çakuntalá.* Thus recognize, oh ! Bráhmaṇa my daughter Çakuntalé"—Being asked this he declared to the great saint to be my birth. Do you oh Lord of men regard me as the daughter of Kanva, I consider Kanva as my father : I know not my real father."

Illustration. And conclusion.

39. Here, from the use of the expression—" having deserted"—authority for the deserted or discarded daughter is obvious. Hence, it is easy to establish authority for each, by instances appropriate to each respectively. It is useless to enlarge.

SECTION VIII.

On the mourning, and so forth, of, or for, the adopted son.

There is no reciprocity of uncleanness in the case of the adopted son, in the family of the natural father, on account of a text of Manu.

1. Next uncleanness [on occasions of birth, and death] in respect to the adopted son, is determined. That is not reciprocal, in the family of the natural father, on account of the text of Manu. "A given son, must never claim the family and the estate of his natural father. The funeral oblation follows the family and estate : but of him, who has given away his son, the obsequies fail."

In which the terms 'funeral oblation,' and 'obsequies,' denote uncleanness and every other observance.

2. The terms 'funeral oblation' and 'obsequies' in this text are inclusive of every observance in honour of manes, uncleanness and so forth ; for the exclusion of the family and estate, which are the cause of presenting the funeral oblation and so forth is mentioned : and it is a restrictive condition that uncleanness which is spiritual, precede the presenting the funeral oblation, and so forth, in honour of the dead.

Authorities, shewing the concomitancy of uncleanness, and the funeral oblation, cited.

Conclusion.

3. And hence, the funeral oblation being barred, the exclusion of uncleanness is even implied ; for by well considering such passages as the following the concomitancy of the funeral oblation and uncleanness appears.—" Whether one of the same family, or one not belonging to the family ; whether a male or female ; whoever, on the first day, presents the funeral cake, should complete the rites, till the tenth : and so also, it is not well for those who previously receive any thing from the performer

* Formed from 'Çakuntá a bird, and the root 'la' take

Whilst the uncleanness lasts, a libation of water, and one funeral cake."†—therefore, there is no reciprocal uncleanness, and the like, between the adopted son and his natural father, and the rest.

any conclusion, from a passage cited, that uncleanness mutually obtains between the adopted son and his natural father, and the rest, obviated.

for the text,—"Impurity (aghan) arising from seminal connection, also continues three days"‡—that is overruled by this passage; "But of him who has given away his son, the obsequies fail:" for, it applies to instances other than that of the adopted son. Besides, since it appears that family and alliance by oblation of food are collectively the cause of impurity, the libation of water, and so forth; should one of these essentials be wanting, impurity and the rest, occasioned (partly) by it, does not exist.

A text of Sankha and Likhita confirmatory.

5. Accordingly Sankha and Likhita. "The connection as sapiṇḍa from family, must be recognized, as extending to the seventh degree: and the funeral cake, and the gift of water, purity and impurity, are consequent to it."

uncleanness of the adopter, lasts three days as shewn by. Vṛhaspati

6. On the death of the son given, and the rest, the uncleanness of the adoptive father, and others, endures for three nights. This Vṛhaspati declares:—"Wives, having taken to other men, and children by the wife of another, being dead: the best of the regenerate, having bathed, are purified."—And this rule for uncleanness, applies to him only, to whom, the relation of wife or son, refers.

Márichi propounds the impurity of the kinsmen of the father.

7. Márichi separately propounds [the uncleanness] of sapiṇḍas of the father, connected within the third degree. "On occasions of birth and death likewise, [the period of impurity,] for the first and second [husband,] is three nights: where the impurity of the father, endures three nights, that of the Sapiṇḍas lasts one day."

Impurity from birth propounded.

8. Although, no impurity of the adopter, by acceptance of sons given and the rest, (who are already born,) as arising from their birth obtains: still, uncleanness is incurred from the birth of their offspring.—But, on account of the birth of the son of the twice married woman, in his own house, uncleanness on that occasion is fit.—Thus, is impurity from birth shewn.

Uncleanness, place where is of class, as shewn by a passage of the Bráhma-puráṇa.

9. This however regards sons of equal class only—Accordingly the Bráhma-puráṇa;—"Excepting the legitimate son, on the death and birth of the son of the wife, and the rest, always in every tribe, the impurity of those equal by class, endures three nights.—This is a settled point."

* Gṛihya-parisishṭa. † Vishṇu.

Explanation of 'always' therein

10. 'Always'—that is,—every time subsequent to investiture of the characteristic thread.

A text confirmatory cited.

11. [Prajapati also] "Wives having taken to another, and children by the wife of another, [being dead:] those of the same general family, are purified by ablution: after three days at least, one versed in the divine truth.

The uncleanness of the disciple for ten days on the death of his 'Guru' is propounded by Márichi.

12. Although, [it may be alleged, that] on the death of the adopter, the uncleanness of the adopted son, for ten days, is not fit, since the [general] relation of sapiṇḍa and connection by identity of family, associated together, are wanting [in him]; and no special rule in that respect, is at present found: still, by the following passage of Márichi, uncleanness for ten days is propounded, for the purpose of the disciple's performing the necessary rites, in honour of his deceased 'Guru.' "The disciple of a deceased 'Guru,' performing uninterruptedly for ten days, with food for manes, the obsequies for a father, is purified."

Whose term 'Guru' is illustrative of the adopter.

Consequent conclusion.

13. Here the term 'Guru' represents the preceptor, and other superior; and such venerable superiority, obtains in the individual in question [the adopter], on account of his performing the rite of investiture, and so forth.—Therefore, in case of the adopter having performed the initiatory rites of the adopted, the impurity of the latter endures for ten days; if this be not the case, for three nights only: on account of the text before cited.—(§ 9).

His uncleanness for a sapiṇḍa of the adopter.

14. So on the death of a sapiṇḍa of the adopter, related within the third degree, the uncleanness of the adopted son, is for one day: for, the text in question of Márichi recites, —"that of the sapiṇḍas for one day."

For a distant kinsman.

15. On the death of one connected by an oblation of water, and one belonging to the same general family, ablution only is necessary; on account of the text of Prajapati, before cited (v. § ii.) "Wives having taken to another, and children by the wife of another, being dead, those of the same general family are purified by ablution, &c."

SECTION IX.

On the funeral obsequies to be performed by the adopted son.

1. Next the funeral rites, performed by the adopted son, are described. On this subject, Játúkarṇa says:—"Annually let the son of the wife, and legitimate son perform [obsequies] according to the parvana form: the other ten sons, should perform the rite dedicated to a single ancestor."*

Játúkarṇa cited, on the subject of the obsequies, to be performed by the adopted son.

2. 'Annually'—from this general mode of expression, although the monthly (amavásya) and other periodical funeral repasts † be inferrible; that only on the anniversary of the day of death is meant. For, the terms—"the anniversary of the day of death"—are expressly used in this text of Paráçara. "[A funeral repast,] by the legitimate son, for a father, who has departed this life, on all occasions is in honour of three ancestors, that by those of a different general family (aneka-gotra), is the rite consecrated to a single person, on the anniversary of the day of death."

The term 'anu-sed by ..., means the funeral repast on the anniversary of the day of death, as appears from a text of Paráçara.

3. The expression—'those of a different general family' (aneka-gotra)—in this text does not intend the maternal grand-father, and the rest: for, its construction as intending a secondary son, as contrasted with the legitimate son, is proper,—from its proximity in the same sentence with the terms 'father' and 'legitimate son': for, otherwise [no contradistinction between the legitimate and secondary sons being meant,] if the meaning intended, be conveyed by merely declaring that, [a funeral repast,] in honour of three ancestors, must be performed by the son, on the anniversary of the day of the father's death, it would follow, that the specification of the term legitimate were impertinent.—Nor is there any restrictive rule that on the anniversary of the day of death, merely the rite consecrated to a single person takes place for the maternal grandfather and the rest.

The term 'aneka-gotra,' used by whom, refers to the secondary sons, and not to kinsmen on the mother's side: for whom a single rite is not restricted.

ANNOTATIONS.

3. Nor is there any restrictive rule] If it is contended, that the term "aneka-gotra" (which occurs in Paráçara's text in the genitive case plural,) intends the maternal kinsmen this expression must be construed as designating the object and not the agent of the ceremony—Accordingly the translation will be "that, for those &c." and not,—"that, by those, &c."

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* For explanation of the rites referred to V. Supra, Section IV. § 72.

† V. Note to the same.

As appears from Márichi.

Accordingly Márichi says.—"Commencing with the father of the mother, three are considered maternal grand-sires —Let the sons of daughters perform for these, funeral oblations, as for the father."

Whose text, expressly provides for a parvana rite, in honor of maternal grand-sires.

5. By ordaining, in this text, funeral oblations in honour of three maternal grand-sires, the parvaṇa or double rite only, is inferred.—From the expression—"as for the father," —an option of performing, for the maternal grand-sires also, obsequies in the form of parvaṇa, or ekodishṭa, is not obtained; for, the sentence in question, is meant to enjoin, the absolute necessity for the performance of obsequies, in honour of the maternal grandfather.

An opponent's argument anticipated.

6. Besides, why should not also the term 'yearly' in the following text, like the word 'annually' [in Játúkarṇa's text (§ 1.)—supposing this word, there occurring, to have such import,] intend the magha, and other periodical funeral repasts, "Excepting the first sixteen funeral repasts, with rites performed with fire included,—and the yearly obsequies,—at the remaining funeral repasts, let six cakes be presented: this is a settled rule."

And refuted.

7. Should it be objected, that this would be an intended consequence; it is wrong. for it would follow, that the son given and the rest, at the different periodical funeral repasts would perform an ekodishṭa rite. Now this is not meant by any one. For, if the term comprehend any funeral repasts in general, other funeral repasts, (as must be understood from the term 'remaining') not existing, any exception would be impossible.

Conclusion.

8. Therefore this is the accurate exposition of the law,—that, on the anniversary of the day of death, in honour of the father and mother, a párvaṇa funeral repast only should be performed by the legitimate son: by the others (the son given and the rest), merely one consecrated to a single ancestor. To enlarge would be useless.

SECTION X.

On the succession of the adopted son.

1. The inheritance of the adopted son is now propounded.—On that subject, Vasishṭha says :—" When a son has been adopted, if a legitimate son, be afterwards born, the given son shares a fourth part."—On the default of him he is entitled to the whole.

Vasishṭha propounds the succession of the adopted son.

2. Thus is the Dattaka-Mímánsá, compiled by the fortunate Nanda Paṇḍita, the son of the fortunate Ráma Paṇḍita, lord of virtue, completed.

ANNOTATIONS.

1. Shares a fourth part.] "A quarter-share, not an entire share" v. Supra, Sect. v. para. 40.

DATTAKA-CHANDRIKÁ.

A TREATISE ON ADOPTION,

BY DEVANDA-BHATTA.

SECTION I.

Reason of adoption—Who may adopt—What description of How to be selected—Preference to be given to a brother's son—The gift by whom to be made.

Title of the work.

1. By the favour of Chandrikalá,* the Dattaka-Chandriká the dispeller of the doubt arising from what was not propounded in the Chandriká,† is compiled.

subject, tion.

2. Every rule relative to the adopted son, ordained for the kali age, which was not discussed by me, in the Chandriká, in treating on the eighteen topics of litigation, propounded in the texts of Manu, and other saints, is fully and specially expounded here.

On which are cited texts of Manu.

Atri.

3. On this subject Manu says: "A son of any description must be anxiously adopted, by a man destitute of male issue, for the sake of the funeral cake, water and solemn rites; and for the celebrity of his name."—Atri. "By a man destitute of male issue only, must the substitute for a son of some one description, always be anxiously adopted: for the sake of the funeral cake, water and solemn ri

Explanation of "destitute of male issue:"

4. "By a man destitute of male issue:" that is,—by one to whom no son may have been born: or whose son may have died; for, a text of Çaunaka, expresses: "One destitute of a son, or one whose son may have died, having fasted for male issue."

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* Çiva.

† Smriti-Chandriká, a celebrated treatise on judicature.

(*a*) See 3 Moo. I. A. Ca.

5. Therefore, although by the production of a son, the exemption from debt, deduced from the text of Manu subjoined, may have taken place; still on the death of such son, for the sake of funeral rites the affiliation of another son is indispensable. "By the eldest, at the moment of birth a man becomes father of male issue, and absolved also from debt to his progenitors. He therefore is entitled to take the estate."*

Conclusion, therefrom.

6. The term 'male issue,' (putra) here used, is illustrative of the grandson, and great-grandson; for these equally present oblations of food, and preserve the line. Otherwise, it would follow that the adoption of a son, by one whose son had died, notwithstanding the existence of a grandson, were without reason. It therefore results that one only destitute of a grandson and great-grandson may adopt.

'Male issue' is inclusive of grandson and great-grandson

7. It must not be argued, that from the qualities of being male and singular, being attributed to the adopting party, by the expression "a man destitute of male issue," something definite is meant: therefore the same person must not be adopted by two individuals nor any son by women. For the adoption of the Dvyámushyáyana or son of two fathers by two persons will be presently declared; [and] women with the sanction of their husbands are competent to adopt: as Vasishṭha shews: "Let not a woman either give or receive a son in adoption: unless with the assent of her husband."

Nothing definite is meant, by the mention of the adopting party in the singular number, and masculine gender.

8. "A substitute." Now such is of eleven descriptions, the son of the wife and the rest. Thus Manu [ordains]: "Sages declare these eleven sons (the son of the wife and the rest) as specified to be substitutes for the real legitimate son; for the sake of preventing a failure of obsequies." Vṛihaspati also. "Of the thirteen sons who have been enumerated, by Manu in their order, the legitimate son and appointed daughter are the cause of lineage. As oil is substituted by the virtuous for liquid butter: so are eleven sons by adoption substituted for the legitimate son and appointed daughter."

There are eleven descriptions of substitutes for a son, as is shewn by Manu. Vṛihaspati.

9. Of these however in the present age, all are not recognized. For a text recites;—"Sons of many descriptions who were made by ancient saints cannot now be adopted by men,—by reason of their deficiency of power;"† and against those other than the son given, being substitutes, there is a prohibition in a passsge of law wherein after having

The given son in the present age however only can be adopted.

ANNOTATIONS.

9. In a passage of law.] This passage which is frequently cited, is attributed to the Á'dityá-purana, and in its complete state is thus—"The adoption, as sons of those, other than the legitimate son, and son given;—the procreation of issue by a brother-in-law;—the assuming the state of an anchoret;—these rules sages pronounce to

* Manu 9. 106. † Vṛihaspati.

been premised,—"The adoption, as sons of those other than the legitimate son and son given,"—it is subjoined,— "These rules sages pronounce to be avoided in the kali age."

Rules relative in the selection of the adopted son laid down by Çaunaka.

10. The rules relative to the adopted son are now propounded. On this subject Çaunaka ordains,—"The adoption of a son by any Bráhmaṇa must be made from amongst sapiṇdas, or kinsmen connected by an oblation of food: or on failure of these, an 'asapiṇda' or one not so connected; otherwise let him not adopt."

Who intimates that he may be of the same, or a different general family.

But a 'sapiṇda' of the same general family is more eligible.

A passage from Çákala is confirmatory.

11. Here since it is mentioned generally, from amongst 'sapiṇdas,' it is meant from such both of the same or a different general family; and, accordingly on default of a 'sapiṇda' kinsman, one belonging to the same general family and failing this latter, a person even of a different general family are to be adopted. Çákala declares this. "Let one of a regenerate tribe destitute of male issue on that account adopt as a son the offspring of of a 'sapiṇda' relation particularly: or also next to him one born in the same general family. If such exist not, let him adopt one born in another family: except a daughter's son, and a sister's son, and the son of the mother's sister."

Close of the passage of Çákala shews that the adopted son must be of the same class; as is declared by Manu.

12. "Otherwise let him not adopt." By this, a given son being—other than a Bráhmaṇa,—a Kshatriya and so forth—in short of a different class is excluded. This Manu declares. "He is called a son given, whom his father, or mother affectionately give as a son, being alike and in a time of distress, confirming the gift with water."

Term used by Manu explained.

13. "In a time of distress."] The adopter being destitute of male issue.—"Alike"] belonging to the same class.

14. "Alike not by tribe, but by qualities suitable to the family. Accordingly, a Kshatriya, or a person of any other inferior class may be the given son of a Bráhmaṇa." As for this interpretation by Medhátiṭhi; it is thus reconciled. Where, there may be no real legitimate son, although as being inferior in class, the Kshatriya and the rest are not entitled to present the oblation of food and water; still their filial relation may be legally established by reason of their being beneficial in perpetuating the name and the like; but as they are beneficial in a small degree, they only receive maintenance.

A conflicting gloss by Medhátiṭhi, reconciled.

15. Kátyáyana declares this: "If they be of a different class, they are entitled to food and raiment only."—Çaunaka also. "If one of a different class should however in any case have been adopted as a son, he should not

Kátyáyana confirms. Çaunaka also.

Yájñavalkya. Yáska.

make him the participator of a share: this is the doctrine of Çaunaka also."—By Yájñavalkya also it is declared that one of the same class presents the funeral cake and participates in a share: but the filial relation of one of a different class is not denied;—and Yáska explicitly declares this: "A person of the same class must be adopted as a son. Such a son performs the oblations and takes the estate; on default of him, one different in class, who is regarded merely as prolonging the line. He receives food and raiment only from the person succeeding to the estate."

16. In fact, the construction of the word 'alike' (sadriça) in Manu's text (§ 12), as signifying,—of the same class—is only proper; for elsewhere the participating as an heir of such adopted son is shewn: and the participating in the inheritance of one unequal in class is impossible.

Conclusion.

17. "Except a daughter's son and a sister's son." This prohibition against the daughter's son and sister's son refers to those other than Çúdras. Accordingly Çaunaka. "Of Kshatriyas in their own class positively, and [on default of a sapinda kinsman] even in the general family, following the same primitive spiritual guide (Guru). Of Vaiçyas, from amongst those of the Vaiçya class: of Çúdras from amongst those of the Çúdra class: of all and the tribes likewise in [their own] classes only and not otherwise. But a daughter's son and a sister's son are affiliated by Çúdras. For the three superior tribes, a sister's son is no where [mentioned as] a son."

The exception from adoption of the sons of a sister, and a daughter in § 29, refers to the superior tribes, as is shewn by Çaunaka.

18. "Even in the general family, following the same primitive spiritual guide." Since there are no distinct and peculiar general families of [primitive] Kshatriyas, the general family following the same primitive spiritual guide is specified; for it is declared in the passage subjoined, that one of the tribe in question participates in such general family. "He specifies the general families of Kshatriyas, and Vaiçyas, as distinguished by following the same primitive spiritual guide."*

"In the general family following, &c;" why introduced by Çaunaka.

19. "In [their own] classes only not otherwise." This is a restriction intended to forbid the adoption of one of a different tribe; otherwise the text of Kátyáyana before cited would be contradicted.

Import of the phrase, "in [their own] classes only, &c."

20. In respect however to this subject [it is to be observed, that] where a brother's son may exist amongst near kinsmen, he only is to be adopted. This Manu ordains. "If one among brothers of the whole blood be possessed of male issue, Manu pronounces that they all are fathers of the same by means of that son." Vrishaspati [also] "If there are several brothers, the sons of one man by the same mother, on a son being born to one even of

A brother's son if capable of being adopted, must be first selected in preference to other kinsmen; as declared by Manu. Vrihaspati.

* V. notes to sect. II. § 76 and 79. D. M.

them, all of them are declared to be fathers of male issue." Under these two texts, if a brother's son is in any manner capable of being a substitute, it is inferred that another is not to be adopted.

Argument that though unadopted, a nephew, would bear filial relation to his uncle.

21. "Offspring must be produced: this precept is peremptory: in some manner or another it must be complied with."* Since the representation of the filial relation here [contemplated] obtains in the brother's son; the effects thereof, viz., the oblation of the funeral cake, libation of water and the like, and exemption from exclusion from heaven would be accomplished [by his existence]: hence there can be no occasion to proceed in the re-attainment of the same; consequently a brother's son though unadopted is filially related; in conformity with this text of Vṛihat Paráçara. "Let the nephew of a paternal uncle destitute of male issue be his son; he only should perform his obsequies of the funeral repast and of oblations of food and of water." Hence, a brother's son existing, no affiliation [of him or another,] as a son given, and so forth takes place."

Refuted.

22. This is not to be argued: for although, by reason of the nephew's possessing the representation of the filial relation, he may be the means of procuring exemption from exclusion from heaven and so forth: still, as the celebration of name and the due perpetuation of lineage would not be attained,—for the sake of the same, the constituting him [an adopted son,] is indispensable. Besides the two texts in question do not prohibit, where a brother's son may exist, the constituting [him or another] a son given and so forth: but indicate [as inherent in a nephew] the virtue of a son consisting in the capacity to perform the funeral repast and so forth.—For otherwise a contradiction of the rule for the production of a kshetraja son, notwithstanding a brother's son may exist would follow; and since by the text subjoined, the resemblance of a son's son obtains in a daughter's son, according to the reasoning recited, the non-adoption of a son given, and the rest where a daughter's son also might exist would result. "By that male child, whom a daughter whether formally appointed or not, shall produce from a husband of a equal class, the maternal grandfather becomes the grandsire of a son's son: let that son give the funeral oblation, and possess the inheritance."†

ANNOTATIONS.

22. Besides the two texts in question do not prohibit, &c.] If the texts of Manu and Vṛihaspati cited in § 19 were prohibitory of the affiliation of an adopted son where a nephew existed, it would be inferrible that such nephew without adoption bore filial relation to his uncle.—The author does not mean to imply that, the nephew has not a preferable right to be adopted, supposing his affiliation not barred by any legal impediment.

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* This passage is assumed to be a quotation. It is almost identical with a portion of a passage from Medhátithi, cited in sect. I. § 60. D. M.

† Manu 9. 136.

23. But, if where even a brother's son may exist, the [him or another] a son given then, though in the texts subjoined, the of the virtue of a son is shewn to obtain in the son of a rival wife, where even such son existed, the tion of a son given and so forth by the might take place.—Vṛihaspati.—"The same rule is also ordained in respect to many wives, of the same person." Manu, "If among all "the wives of the same husband, one bring forth a male child, Manu has declared them all by means of that son to be mothers of male issue."

[illegible] the that then by analogy, of a rival [illegible] to his childless step-mother, without adoption.

24. Should this be objected, it is wrong. In the same as where the curd,—which is the object person proceeding to produce the substance alluded to in the passage of the Vedas subjoin wanting, it is that substance which causes the individual to proceed therein and not the whey or serous part [incidentally produced]; for that not being the object is of no use.—"He mixes coagulated milk (dadhi) in boiled milk; that is a curd of two milk whey (ámikshá),—an oblation to the Vaisvadeva set of divinities, and whey for horses."—Or—in the same manner, as on the anniversary of the decease of a father, [who died during the first half of Açvina denominated pitṛipaksha], the ceremonials of a párvaṇa rite having been completed in honor of the father and other two paternal ancestors in ascent above him,—a párvaṇa rite is not recommenced on account of the funeral repast in honour of the maternal grandfather and other two male ancestors [on the mother's side]; for the commencement of the same depends on the funeral repast in honour of the paternal

Controverted.

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24. In the same manner as where the curd, &c. &c. Reference is here made the 9th topic of the first Chapter, 4th Book of the Mímánsá of Jaimini. This is detailed in a note to § 24. sect. VI. D. M.—By mixing coagulated in boiled milk, the curd denominated 'ámikshá' and whey are produced: where on the occasion of any sacrament, such curd is wanting, that is the object intended to be produced and causing the act of admixture; not the whey, which is incidentally produced. In the same manner the object and motive of any adoption by the wife, (which must be sanctioned by the husband,) are to create male issue to her husband, destitute of the same and not to herself; though the filial relation of the adopted to her is incidentally produced: consequently, where the husband has male issue, as the primary object of the act does not exist, the wife cannot adopt.

in the same manner, as on the anniversary of the decease, of a father, &c. &c. The nature of a Párvana rite here alluded to is explained in a note to § 72, IV. D. M. During the first half, the month Asvina, (denominated in consequence pitri-paksha,) Párvana rites are celebrated; whereas the same solemnities observed in honour of paternal ancestors are observed in honour of maternal—But it is ordained, where the father may have died during this fortnight on the anniversary of the day his death, instead of the usual eko-dishṭa or rite dedicated to him alone, the same rituals of a Párvana rite shall be performed as would have been celebrated in honour of the father, and his own ancestors,—had the anniversary of his decease not fallen within this fortnight: but a Párvana rite shall not be commenced for the sake of the solemnities which, on this supposition would have been observed in honour of the three maternal ancestors: for the commencement of these is held to be subordinate to,

[which in this instance would have been already completed] :—So also in the case in question, the affiliation of a son by woman proceeding legally, with the sanction of her husband, to constitute for him male issue, only takes place where no son of that person may exist. But, if he have any, although she may be destitute of the same, such adoption does not obtain ; for to proceed therein would e of the object.

25. In that case she would not be exempted, from

bjection ob- from heaven. In anticipation of this objection, the two texts of Manu, and Vṛihaspati, by propounding the existence of filial relation, in the son of a rival wife, [to his step-mother,] provide for her exemption, from exclusion heaven, and the performance for her funeral obsequies ; except the offspring of her husband, she can have no other.

26. Since, [a wife] can have no other offspring, but the issue of her husband, the son in question even preserves her lineage. Therefore, where, the son of a rival wife exists ; as the whole benefit even of a son is attained, no affiliation, [by the step-mother, of him or another,] as a son given and so forth, takes place.—But as the capacity of prolonging lineage, does not obtain in a brother's son, although such son may exist ; [he, or if any impediment exist, another,] must be affiliated,

General conclusion, that a son of a rival wife, unadopted, is filially related to his step-mother : but not so, a nephew to his uncle.

as a son given and so forth : there is in this respect a material

Objection, that the gift in adoption, of an only son, being forbidden, the adoption of a nephew, who is an only son, could not take place.

27. But if, a brother's son existing, the affiliation of him only is indispensable ; where there may be only one brother's son, in that case the adoption cannot take place; on account of the text of Vasishṭha, which recites,—"An only son let no man give, or accept.—For he is destined to prolong the line of his

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and to depend on the same solemnities in honour of the paternal ancestors, which would have already been especially performed. Or, in other words, the main object of performing a real Párvaṇa rite, is the celebration of solemnities in honour of the paternal ancestors : in the case propounded, these whould have already been performed : therefore the main object being wanting, a Párvaṇa rite is not commenced on account of the soleminities which, (had a real Párvaṇa rite taken place) would have been observed in honour of the maternal ancestors. In the same manner, the main object of any adoption by a wife, is to create male issue, to her husband having none ; but where he may have such issue, although she may have no son, she cannot adopt ; for the primary object and motive would be wanting.—The translator has deemed it incumbent on him attempt illustrations of the analogy alleged by the author to exist between the cases cited, and the one proposed : this has been done in this and the preceding note. The analogy however is far from being obvious from the terms of the text.

28. Should this be alleged, it is not accurate. For, the text in question, is applicable to a case, other than that of the Dvyámushyáyaṇa, or son of two fathers.—In the case of the Dvyámushyáyaṇa, the extinction of lineage, contemplated in the clause of the text, containing the reason, would not take place; and an indication found in the Puráṇas, as to the affiliation, by Vetála, of the son as [his brother] Bhairava. Thus—" Accordingly he, (Bhairava) at some time copulated with Urvasí, a celestial nymph, and procreated on her a son named Suvesa. Vetála also affiliated him, as his son; and in consequence by means of this son, both attained heavenly salvation."*

Over-ruled, as the prohibition does not refer to the son of two fathers.

29. In answer to the question—by whom is a son to be given? Çaunaka declares. " By no man, having an only son is the gift of a son to be ever made. By a man having several sons, such gift is to be anxiously made."

A man only having several sons, may give one, as is declared by Çaunaka.

30. The author apprehending an extinction of lineage in case of the gift of a son by one even having two sons says; " by one having several sons."

Whose expression 'several' bars, the gift by one having only two sons.

31. But by a woman, the gift may be made with her husband's sanction if he be alive; or even without it if he be dead, have emigrated or entered a religious order.—Accordingly Vasishṭha. " Let not a woman either give or receive a son unless with the assent of her husband."

With the sanction of her husband, a woman may give her son, without if it he be dead, &c.
Vasishṭha.

32. Now, if there be no prohibition even there is assent: on account of the maxim; " The intention of an other, not prohibited, is sanctioned."—Yájñavalkya suggests, the independency of the woman. " He whom his father or mother gives is a son given." —Also, in another place; " deserted by his father and mother or either of them."

This assent of the husband is implied by his silence, and the independence of the woman is indeed suggested by Yájñavalkya.

* V. D. M. sect. II. § 45. et notes.

SECTION II.

The form for adoption—The most eligible period for selection—Rules under certdin circumstances—The adopted son may be son of two fathers.

1. Next Çaunaka propounds the form for the adoption of a son.

The form for adoption. Çaunaka.

" I, Çaunaka, now declare the best adoption : One having no male issue or whose male issue has died, having fasted for a son ;—"

2. Adoption.] The form for adoption—Having fasted.] Having observed a fast on the day preceding the adoption.—

Explanation.

Vṛiddha Gautama has—" The impotent man or also one whose offspring has died."

3. " Having given two pieces of cloth, a pair of ear-rings, a ban, a ring for the fore-finger to a priest religiously disposed, a follower of Vishṇu, and thoroughly read in the Vedas. Having venerated the king and virtuous Bráhmaṇas by a madhuparkha (or prepared food consisting of honey, liquid butter and curds.)"

Çaunaka continued.

4. If the king be at a distance, [he should thus venerate] the chief of the village ; for a text recites : having invited all kinsmen, and the chief of the village also,"* Bráhmaṇas.] The plurality meant by this word, is restricted to three on account of the argument, exemplified in the instance of the white partridges.—The venerating Bráhmaṇas is with a view to their asking [the child in adoption.]

Explanation.

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4. The argument exemplified by the instance of the white partridges.] Allusion is here made to the 8th topic of the 1st chapter (páda) of the 11th Book (adhyaya) of the Mímánsá of Jaimini. A passage in the Vedas to this effect occurs. " On the occasion of the sacrifice of a horse, he should kill white partridges, for Vasanta (the god of spring)." In the part of the Mímánsá mentioned, it is proposed, as a subject for disquisition, whether, by the term 'partridges' in the plural, any indefinite number exceeding two, is meant, or three only—The opponent affirms, that any indefinite number, is meant ; since plurality, is common to every number, exceeding two. The supporter of the correct opinion, however, alleges :—1st. That, the ordinance of law in question, is fulfilled by three.—2dly. The number three, must necessarily be included, in every plural number ; but four, or other superior number, is not included in three.—3dly. The number three, is the first in order of all plural numbers.—4thly. The selection of that number, is more convenient.—5thly. The intent of the law, being accomplished by three, in destroying more than that number, an offence would be incurred.—he argues, that three only, are meant by the plural term, used in the ordinance

* Gautama.

5. "Both a bunch of sixty-four stem, entirely of the kuça grass, and fuel of the palâça tree,—also having collected these articles: having earnestly invited kinsmen and relations: having entertained the kinsmen with food, and especially Bráhmaṇas: having performed the rites, commencing with that of placing the consecrated fire, and ending with that of purifying the liquid butter: having advanced before the giver let him cause to be asked thus; 'give the boy.'—The giver being capable of the gift [should give] to him with recitation of the five prayers, the initial words of the first of which are ye-yajñyena, &c."

Çaunaka continued.

6. 'Should give' is understood—'kinsmen' [the kinsmen of the father and mother. 'Relations'] sapiṇḍas. The inviting these is for the sake of witnessing.—Having entertained invited kinsmen, and Bráhmaṇas previously appointed, and (on account of the conjunction 'and') invited relations.—This is the meaning.

Explanation.

7. The same author continues.—"Having taken him by both hands with the recitation of the prayer, commencing,—"Devasya-tva, &c;" having inaudibly repeated the mystical invocation,—'angadange, &c.;' having kissed the forehead of the child; having adorned with clothes, and so forth, the boy bearing the reflection of a son."

Çaunaka continued.

8. 'Reflection of a son.'—The resemblance of a son,—or in other words,—the capability to have been begotten, by the adopter, through appointment, and so forth.

Commentary.

9. The text continues.—"Accompanied with dancing songs and benedictory words, having seated him in the middle of the house; having according to ordinance, offered a burnt offering of milk and curds (to each incantation,) with recitation of the mystical invocation 'yas-tvá-hṛida'—the portion of the rik veda, commencing, 'tubhyam-agne',—and the five prayers of which the initial words of the first are 'Somo-dadat.'"

Text continued.

10. Vṛiddha Gautama.—"Let him then cause, to be offered, as burnt offerings, an hundred oblations of milk, with liquid butter, contemplating in his mind, as the object, the lord of created beings, with recitation of the 'prája-pate-na-tva-detam.'"

11. Vasishṭha.—"A person being about to adopt a son should take an unremote kinsman or the near relation of a kinsman; having convened his kinsmen, and announc- his intention to the king and having offered a burnt offering with of the prayers denominated 'Vyáhṛiti,' in the middle of his [illegible] him set apart like a Çúdra one whose kindred are remote. For it is declared in the Vedas; are saved by one.' When a son has been adopted, if a legitimate son be afterwards born, the given son shares a fourth part."

12. 'Dwelling'] house—'A doubt.'] If from the great difference of the country and language of one whose kinsmen are remote a doubt arise as to his lineage, disposition and so forth; this being the case till the ascertainment of these particulars let him not initiate such person.—On this point, a reason is assigned,—"many are saved, &c." 'Many'] The father and other ancestors."

Commentary.

Form must be observed.

13. One of these forms is indispensable.

14. In continuation Çaunaka says. "Let the best of the regenerate, to the extent of his ability bestow a gratuity on the officiating priest; a king half even of his dominion; next in order a Vaiçya three hundred pieces; a Çúdra the whole even of his property: if indigent, to the extent of his means."

Text of Çaunaka continued.

15. 'Half his dominion.'] The produce for one year of half his dominion; for a text of Vṛiddha Gautama recites; "Let him proffer the profits arising from half his dominion received in one year."—According as he may be in a superior, middling or inferior condition [let a Vaiçya give] three hundred pieces of gold, silver or copper respectively: on account of the text of Vṛiddha Gautama. "Let him proffer three hundred pieces in gold or in silver or in copper according as his condition may be superior or otherwise." 'His whole property'] that is the acquisition by hire for one year.

Commentary.

16. Baudháyana propounds a special rule for the followers of the Tittiri Veda.—"We are about to explain the mode for the adoption of a son. One about to adopt produces two pieces of cloth, a pair of ear-rings, a ring and a priest thoroughly read in the Vedas, a bunch of sixty-four stems of the kuça grass and fuel of the 'purna' tree.* Then having invited kinsmen into the middle of the dwelling: and having made a representation to the king: having sat down by the direction of a Bráhmana in the assembly: having caused to be exclaimed auspicious day! benediction! prosperity! having performed rites commencing with the recitation of the prayer—'yad-devay-jana',—down to the placing the vessels for water: having advanced before the giver, let him thus beg; 'Give me this son'—The other replies 'I give'—He receives the child [and says;] 'I receive thee for the sake of religious duty: I adopt thee for offspring'—Then having adorned him with the cloths, the ear-rings and ring: having performed the investiture and other ceremonials down to the kindling a flame of fire; having dressed the oblations, he offers a burnt offering after having recited the incantation in the first chapter of the [Yajur] Veda commencing—"yas-tvá-hridá-tirinámanymána"—with recitation of the sacrificial prayer—"yasyai'-ram-sukṛite-játa-veda, &c."—he offers a burnt offering. Next having performed the burnt sacraments, where the prayers denominated vyahriti are recited: and that designated 'svishṭi-kṛit' with other ceremonials, being completed, down to the bestowing an excellent cow

Baudháyana propounds a special rule.

* Butea Frondosa.

he presents the fee [saying; 'yours are] these two cloths, the ear-rings, the ring likewise." But subsequently, if a real legitimate son is he [the adopted son]' succeeds to a fourth share—so says Raud-

The right of one adopted without form, will be declared in the sequel.

17. In case, no form as propounded, should observed, it will be declared, that the adopted son is entitled to assets, sufficient for his marriage.*

a pro- that the of the son to the of his father ceases.

18. On the subject [of adoption,] Manu says, "A given son must never claim the family and estate of his natural father. The funeral cake follows, the family and estate: but of him who has given away his son, the obsequies fail."

His text explained.

19. It is declared by this, that through the extinction of his filial relation from gift alone, the property of the son given in the estate of the giver ceases; and his relation to the family of that person is annulled.

The initiatory rites unperformed, at the time of adoption, are to be completed by the adopter; but not those performed.

20. And accordingly, since extinction of relation to the family [of the natural father,] and so forth is shewn, and as a text recites,—"let the father initiate his own sons,"—the initiatory rites even of the adoption, which are yet to be completed subsequent to adoption, are to be performed by the adopter; but those already performed by the natural father are not to be cancelled. For, any argument in respect to the renewal of these is wanting; since the removal of the taint of the seed and so forth, and the acquisition of priesthood, as suggested in the following texts have already taken place. "Thus the sin produced by the seed, and "womb acquires expiation, &c." "As a picture is produced gradually by many lines, priesthood in the same manner proceeds by the observance of form."

Objections would otherwise exist.

21. Otherwise, it would follow from the text subjoined, that he would have to perform also the rites of Punsavana and Símantonnayana.† "Let the father himself perform the eight initiatory rites, (or on his default some other) in their order." Now, this would be improper; for, it would not be consistent with approved practice: besides, as his authority to perform initiatory rites is from his relation of father subsequent only doption, the incompetency of the adopter in respect to rites which place previous thereto, [no reason of extreme necessity operating] follows; for, the appropriate time of performance no exists.

ANNOTATIONS.

20. But those already performed.....are not to be cancelled, &c.] This has reference to the principal adoption taking place within the primary season prescribed for of the rite of investiture, which, in the case of a Bráhmaṇa is ordinarily

* V. infra, sect, VI. § 3.

† V. note to § 23, sect. IV. D. M.

but were not performed by the natural father, may be so by the adopter on account of necessity.

But, if however, the initiatory rites which should have taken place previously have not been performed by the natural father; they are in that case completed by the adopter even, no account indispensable necessity of removing the taint of the seed and womb; and for the sake of preserving the order prescribed for the performance of the rites in question.

In that case the performance by the natural father of the rite of investiture merely, establishes the filial relation of the adopted.

Vasishṭha.

23. And accordingly if the rite of investiture merely be performed [by the adopter, the previous rites having been performed by the natural father,] the filiation of the son given, as son of the adopter is completed; in conformity with the text of Vasishṭha subjoined. But this must be understood in respect to an adoption taking place within the primary season for the rite in question which extends to the eighth year; otherwise, [in the case of an adoption after the expiration of such season,] the capacity of having been able to perform that rite, during the principal season being wanting, as there would be no ability for the same at a secondary season, the rite would remain unperformed, [unless as required in such inferior adoption the rite of tonsure; preceded by a sacrifice for male issue were renewed.] Text—"Sprung from one following a different Çákhá, (or branch of the Vedas,) the given son even when invested with the characteristic thread under the family name of the man himself, according to the form prescribed by his peculiar Çákhá becomes participant of the duties of such

The relation to both families by special agreement will be declared.

24. And relative to the subject in question, [it is to be observed, that] should an agreement subsist stipulating that the son adopted should be son of the natural father and adopter likewise, a special rule for his participating in the family of both by reason of being a Dvyámushyáyaṇa will be declared.*

ANNOTATIONS.

23. But this must be understood in respect to an adoption, &c.] The doctrine of the author appears to be that adoption may take place at any age;† though the more preferable adoption is that of a child for the performance of whose rite of investiture the principal season has not expired. In this case the author holds that he becomes filially related by the mere observance of the rite of investiture, the other previous rites of tonsure, and those preceding the same having been performed by the natural father.

As there would be no ability, &c.] The author supposes the case of adoption of a child for whose investiture the principal season has passed, where the adopter may omit the performance of the sacrifice for male issue, as prescribed for this inferior adoption. On the performance of this sacrifice, the adopter must perform for the child in question, the rites of tonsure and the rest, whereby filial relation is produced, (v § 27, 30, 32.)

* V. infra, section V. § 33.

† V. infra. § 33.

25. "Oh! lord of the earth, a son having been regularly initiated under the family name of his [natural] father, unto the ceremony of tonsure, does not become the son of another man. When indeed, the ceremony of tonsure and other rites of initiation (chúḍádyá sanskárá) are performed [by the adopter] under his own family name, [then only] can sons given, and the rest be considered as issue: else they are termed slaves.—Whether he be one, whose initiation has been completed, or one whose pupilage (çaiçava) has passed on adoption after the fifth year, the adopter should first perform the sacrifice for male issue." As for what they thus read as from the Puráṇas, that is unauthentic.

Passage on the subject of adoption attributed to the Puráṇas is not authentic.

26. Were it even authentic, still the interpretations given by some that,—"One initiated in ceremonies down to that of tonsure under the family name of the natural father bears no filial relation to the adopter; but such relation obtains, where the ceremonies commencing with that of tonsure are performed by the adopter only"—and—"if a child, whose tonsure has been completed [by the natural father], or one past five years of age be adopted, in that case, his filial relation does not accrue"—are inaccurate. For, a repetition [of the same position in two sentences of the same passage] would follow;—the generally received rule, as recognized by all good persons in respect to the filial relation previous to the investiture of the characteristic thread, of one also adopted under five years of age, [if uninitiated in tonsure by the natural father] would be invalidated;—and the adopter dying at that juncture, [of the adopted] to perform his obsequies would result.

Or if authentic, it cannot be construed as barring the filial relation of a child whose tonsure may have been performed by his natural father: or, who may be older than five years.

27. On the contrary, this is the meaning of the passage.—relation [to the adopter] of one initiated down to tonsure, under the family name of his natural father being first barred,—on the repetition of that ceremony and the rest, such relation is exempted from the prohibition: and accordingly, since previous to the performance of tonsure and the other rites by the adopter, the servile state of one initiated [by his natural father unto that ceremony,] and of him who has passed his fifth year is intimated: after the performance of that ceremony and the rest [by the adopter,] filial relation to him is established. In respect to one whose initiation has not been performed [by his natural father,] and a child who is under five years of age, this relation is obtained by law alone, and this is notorious.

The correct construction shewn.

ANNOTATIONS.

That is previous to the performance of the rite of
of the characteristic thread, for which the eighth year is prescribed as the principal

Or, there may be this interpretation;—'a son [if adopted,] his natural

may be

is not a son [to such father]':—the author having thus premised such son not to be filially [to his natural father],—the sentence 'an putratám yáti' (meaning 'and he acquires filial relation to ____ is subjoined as a reason: and thus the objection that one term 'putrah' (son) and the particle 'cha' are unmeaning is obviated.

29. And thus, on account of uniformity of import with the of Vasishṭha before cited, (v § 23.) by the compound epithet 'chúḍádya in the quality conveyed by which the term 'chúḍá' is not included, rites commencing with that of investiture for persons of a regenerate tribe would be suggested; but for Çúdras and so forth implie

Under which chūḍádya occurring in the text intend rites ded by tonsure.

30. "After the fifth year." This regards a Bráhmaṇa, the fruit of holiness resulting from the study of scripture.* For since the fifth year only is the principal season for the investiture of the characteristic thread of one desirous of such holiness, as is shewn by this text,—"For a Bráhmaṇa desirous of holiness, resulting from the study of scripture, the fifth year, &c."—the passage in question has the same foundation. But for one not so desirous,—"after the eighth year, the adopter,

Import of the clause commencing "after the fifth year, &c." which occurs in the supposed extract, cited in § 25.

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28. Or there may be this interpretation, &c.] In the original, the two first verses the supposed extract from the Puránas, cited in § 25, run thus—'pitur-gotren-y putrah sanskritah prithivi-pat. * * á-chūḍ antamna putra so putratum-yáti chányatah.—The translation given, conforms with the commentary in the Dattaka-Mímánsá: but a more literal version of these two verses would be thus.—"Oh! lord of earth, the son who (yah putrah) has been initiated under the family name of his natural father unto the ceremony of tonsure,—that son does not acquire filial relation, to another (na putrah sa putratam-yátichányatah.)" Against this construction, the author objects justly, that one of the terms putrah (son), which occurs twice, and the conjunction 'cha', (which signifies 'and,') become redundant and unmeaning: were, as he suggests, the phrase 'na putrah' construed as the predicate of the position, which preceded; and what follows, as containing a reason, for this position; this objection would not apply.—According to the mode of construction adopted, in the translation, the part commencing from 'na putrah' to the end of these verses is received as the predicate of the position contained in what preceded.

29. By the compound epithet chúḍádya in the quality, &c. &c. &c.] This compound term might either signify, commencing with tonsure or following tonsure: if the latter construction be adopted, the compound would be denominated 'atad-guna' that is the term chūḍá, would be merely segregative and not enter into the quality conveyed by the epithet.

30. "After the fifth year," &c.] In the extract cited in § 25, attributed by some to the Puránas, it is stated that a sacrifice for male issue must be performed where a child exceeding five years of age is adopted.—This implies that the fifth year limits the more appropriate season for adoption, during which the filial relation is produced without any special rite as here alluded to.—The author here shews that the mention

31. [In adoption] respect should be shewn to the several principal seasons, for the performance of the upanayana rites of the Kshatriya and the Vaiçya respectively. For he only, to whom authority, produced in the principal season might have attached, is capable to perform such initiatory rite at a secondary season [if not qualified by the renewal of the ceremony of tonsure, preceded by a sacrifice for male issue.] This was before declared (v. § 23).—But in regard to tonsure, attention to the secondary season may be observed on account only of express passages of law.

In the adoption of a Kshatriya or Vaiçya, respect must be had to the principal season for their upanayana.

It is otherwise in regard to tonsure.

32. 'Sacrifice for male issue.' Since, a person of the three first tribes only is competent to perform this by such person, the filial relation must be completed through the rites of tonsure and the rest, preceded by a sacrifice for male issue. But by a Çúdra, the same even [is produced,] through the rite of marriage alone—Thus the whole is unimpeachable.

Those of the three first tribes only, can perform the sacrifice for male issue.

33. And thus, the practice of all the ancients even in respect to the adoption of a son unlimited to any particular time is upheld. For, the construction suggested [by us of the supposed extract from the puráṇas] is self evident.*

The ancient practice of adoption unrestricted to any period is upheld under the construction in § 27 and 30.

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of the fifth year as the limit of this season has reference to a Bráhmaṇa, who is intended for the study of theology, for whose investiture, (a rite which precedes the acquisition of letters,) that year is prescribed.—He accordingly argues that in respect to others not so destined it is meant that the eight year, which is the primary time for the performance of that rite, limits the more appropriate season for the adoption of such persons: that is, that a sacrifice for male issue must be performed, where one who has passed his eighth year is adopted.—The author, though he does not admit the authenticity of the passage attributed by some to the Puránas, yet construes it so as to conform with his own doctrine; viz., that by the observance of a sacrifice for male issue, and the subsequent renewal of initiatory rites, one, though adopted after the principal season for the performance of the rite of investiture of the characteristic cord may acquire filial relation.

31. Respect should be shewn to the several principal seasons, &c.] Different seasons are prescribed for the performance of the upanayana, or rite of investiture of the characteristic cord, and other peculiar marks, on a Bráhmaṇa, Kshatriya and Vaiçya, respectively.—These seasons are indicated in the following text of Yájñyavalkya, translated according to the commentary in the Mitákshará. The upanayana rite of a Bráhmaṇa takes place in the eighth year from conception or the eighth year of his age: of Kshatriyas in the eleventh; or Vaiçyas in the twelfth year [from their conception or birth respectively.] Some hold according [to the custom] of the peculiar family [of the individual.]" Author text of the same another relative to the extent of the period for the performance of this rite occurs.—" The period for the performance of this upanayana rite of a Bráhmaṇa, Kshatriya, and Vaiçya respectively, extends to the sixteenth, twenty-second and twenty-fourth years. Subsequent thereto should the rite be unperformed, they become outcastes and uninitiated persons, excluded from participation in religious rites, and incapable of being taught the Sávitrí; except on the performance of a sacrament denominated Vrátyastoma."

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* V. supra. 27. 30.

Or, under the construction in § 28, the passage may be consistently explained as importing the common relation to both fathers of one adopted after tonsure.

Also in the same manner under the second interpretation, (§28) the exclusive filial relation to the natural father, of the adopted son, whose tonsure has been completed, having been first barred by the conjunction 'and' in the sentence,—"and he acquires filial relation to another" —a common relation to the natural and adoptive fathers is obtained; on account of both even having performed initiatory rites: and this must be understood where there may be a stipulation to this effect between the two,—"This is son to us both," and such only is called a Dvyámushyáyaṇa having two fathers, and belonging to two families.

Objection, that the son of two fathers can only be the son of the wife technically so called.

35. But is it not seen that the Kshetraja or son of the wife only is son of two fathers? Accordingly Hárita,—["The husband] living, [at the time of the "appointment] they call [the offspring of the same] the son of the wife: for [the natural father] has no controul over him. Were he dead [at such time,] they call Dvyámushyáyana: for there can be no doubt as to who was the natural father." Manu says, "But the owners of the seed and of the soil may be considered in this world as joint owners of the crop, which they agree by special compact, in consideration of the seed to divide between them.—The special compact proposed is a stipulation between the owners of the seed and soil, both destitute of male issue, to this effect,—"Mine is the soil, thine the seed: the offspring produced shall belong to both." Conformably, there is this text,—"A son begotten by one who has no male issue on the wife of another man, under the legal appointment, is lawfully heir and giver of funeral oblations to both families."*—But this relationship in question does not appear to apply to the son given; on the contrary, the following passage of Manu before cited is conclusive even of an opposite meaning. "A given son must never claim the family and estate of his natural father."

Over-ruled; the general adopted son may be son of two fathers.

36. Should this be contended, it is wrong; the relation to both fathers of the son given also is established: since by referring to this text of Baudháyana,—"What is declared in respect to one even of many, regulated by the same law, let him perform that, for the whole even. They are considered of the same description,"—the rules regarding the son of the wife are obtained in respect to the son given and the rest likewise:—and the following text has a general application in the Pravarádhyáya of Sankhyáyana,—"He should perform two funeral repasts, or at one, contemplating them separately, he should designate at each oblation, both the adoptive and natural fathers; together with the two ancestors in immediate ascent above each."

37. Accordingly Satya-shádha by the compendious rule,—"of absolute Dvyámushyáyaṇas of both, &c."—having propounded a relation to both families (including the patriarchal saints) of absolute Dvyámushyáyaṇas, who are sons of the soil, applies by analogy, the rule regarding these [to sons given and the rest,] by another aphorism, commencing,—"of sons given and the rest, like the Dvyámushyáyana, &c."—and this is explained by the commentator :*—"Treating on absolute Dvyámushyáyaṇas, the author mentions those incompletely so,—"Of sons given and the rest, &c." unto these only, not to issue beyond, [does the connection to both families extend.] If the initiatory rites are performed by the first only [the family is his :] but if by the adopter, that of the latter on account of priority. Through him only in the case of descendants beyond, [the family is determined.']

Confirmed by Satya-shádha. The comment on whose text is cited.

38. The intent of this explanatory passage is this.—As in the case of the son of the wife,—should there be an agreement between the two, the adopted son participates in the family of both: otherwise where the whole of the initiatory rites have been performed by the natural father only, he shares the family of such father; but in the case of the initiation being performed by the adopter, in that of the latter,—that is the adopter, on account of 'priority,'—meaning superiority. 'Through him only, in the case of descendants beyond, the family is determined.

And explained.

39. Accordingly Paiṭhinísi. Those sons given, purchased, made, and the son of an appointed daughter, who are in such case affiliated through the adoption of a holy saint by another, are sons of two fathers."

Paiṭhinísi confirms.

40. The meaning is. Where a mutual agreement between the natural father and adopter exists; [those affiliated] through the adoption of a holy saint, that is, one propounded by a holy saint, are Dvyámushyáyaṇas.—This is clearly declared [in the prayoga-parijata.] "Sons given, purchased, and the rest are sons of two fathers: their marriage may not take place in either family even, as was the case of Sringa Çaiçira."

Explanation of his text which

The state of a son given as Dvyámushyáyaṇa, cannot obtain since, the property of the natural father in such son not being extinguished, the rule for the gift propounded in the text,—"Whom the father or mother may give, &c."—would be unmeaning.

Objection, that son given cannot be a Dvyáyaṇa.

42. This must not be affirmed. From gift, preceded by an agreement, such [as that premised,] in the case in question even, the common relation [to both fathers,] of such given son, is established; like the property of the owner, (since he

Over-ruled.

* Savarasvámí.

himself is one of the objects,) in water made common, (as a river, and so forth,) by a relinquishment, alluded to in such passages, as that subjoined,) the object of which, is every creature: and which extinguishes the peculiar property of the individual himself. "This water is relinquished by me as common to all beings, let all creatures enjoy it by bathing, drinking, and immersion." Enough has been said.

SECTION III.

Funeral rites performed by the absolutely adopted son,—by the Dvyámushyáyaṇa—Relation of Sapiṇḍa, in the families of the adoptive and natural fathers respectively.

An adopted son, and the real legitimate son, being co-existent, the latter performs the exequial rites.

1. Next, the funeral rites performed by a son given are determined. In respect to these, although the son given be first adopted, yet the legitimate son existing, he is not competent to officiate in the sixteen funeral repasts, ending with the Sapiṇḍikaraṇa; for his superiority in rank is barred by Devala [who says,] "A real legitimate son being subsequently born, superiority of rank from age does not vest in them." And a text of Yájñavalkya recites; "Amongst these, the next in order is heir and presents funeral oblations, on failure of the preceding. Otherwise the adopted son in every respect resembles the real legitimate one."

2. A special distinction obtains at the funeral repast, on the anniversary of the day of death. Accordingly Játa-
on karna. "Annually (pratyabda) let the son of the wife and legitimate son perform [obsequies] according to the Párvana form: the other ten sons should perform a rite dedicated to a single ancestor."*

Explanation. 3. 'The other ten,'—the son given, and the rest.

4. Parásara likewise.—"[A funeral repast,] by the legitimate son
Parásara, confirms. for a father, who has departed this life, on all occasions is in honor of three ancestors: that, by those belonging to more than one family, (aneka-gotra) is consecrated to a single ancestor, on the anniversary of the day of death."

Explanation. 5. "By those belonging to more than one
Meaning those belonging to two families.

* V. D. M. Sect. IV. § 72 et note.

6. The legitimate son, and the son of the wife also, if they preserve a consecrated fire, are competent to perform a Párvana, or double rite. For, the text of Jávala,—"By one preserving a consecrated fire, the funeral repast is to be performed always after the Párvana form"—corresponds with the Matsya-Puráṇa. "By those, other than the real legitimate son, and the son of the wife indifferently, whether they do or do not preserve a consecrated fire, a rite in honour of a single ancestor is to be performed. This is an established rule."

According to authorities quoted, the legitimate son, and son of the wife, if they preserve a consecrated fire, perform a Párvana rite, and the adopted son, under all circumstances, a single rite in honor of a deceased father.

7. An aphorism of Sankhyáyana propounds a distinction in respect to the observances prescribed for the Dvyámushyáyaṇa. "Having duly performed the preparatory ceremonial called avanejana, where there may be a diversity of fathers, both at each oblation."

A distinct ceremonial, is prescribed for the Dwyámushyáyaṇa by Sankhyáyana.

8. Where there may be a diversity of fathers at each oblation, both the natural father and the adopter, —"let him celebrate" as is understood.

His text plained.

9. In the Pravarádhyáya also. "Those, who are begotten by a paternal uncle, for the obsequies of a single person, are the sons of the adoptive father only. Then, if there be no issue begotten on their [the natural fathers'] wives, let [the sons begotten on the wives of others,] take the estate and offer in their honor oblations, consecrated to three ancestors, if however, there should be [such issue,] still, such sons should present funeral cakes to both even. According to the text of a venerable saint, [the adopted son] should perform two funeral repasts, or at one, contemplating them separately, he should designate at each oblation, both the adoptive and natural fathers; together with the two ancestors in immediate ascent above each."

The kshetraja, or son of the wife, according to a passage in the Pravarádhya under all circumstances, performs certain obsequies, for his natural father, and where such person has no other son, is his heir, and performs his funeral rites.

10. The meaning is;—where there may be no express agreement on the part of the adoptive father [that the adopted sons shall belong to both] and [the natural may not have other offspring: and where there may be such agreement by that person, and such offspring may exist, relation to both fathers obtains. In the passage cited, an option in respect to performing distinct funeral repasts or otherwise is contained.

Explanation.

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7. **Ceremonial called avanejana.**] This must precede the presenting of the funeral cake, and consists in pouring from a vessel on the kuça grass on which [illegible] is offered water white flowers and sandal wood previously mixed.

11. Nor does this [merely] refer to the son of the wife; for by the compendious rule of Satya-shádha,—"of sons given and the rest like the Dvyámushyáyaṇa, &c."—the rules regarding such son are shewn to be applicable, also to the general adopted son who may be son to two fathers.

The rule in question is general.

12. Accordingly Hárita. "Of these, in the first place, the tutelary saints of the natural father [are those of the adopted son]. He should perform two several sets of funeral oblations, each consisting of two; or designate both in each (eka) oblation [of one set;] his son—in his second, his grandson, in his third [should do the same]. Some hold three to be partakers of the wipings; others, that they extend to the seventh degree."

of

13. 'Of these'—That is from amongst these fathers, in the first place the set of tutelary saints of the natural father—in the second that of the husband of the wife [are those of the adopted son who] has thus two sets of tutelary saints.—"In each (eka) oblation"]—a repetition [of the word 'eka'] is understood on account of the text of Apastamba. "If son to both fathers, "he should designate both at each several oblation."—'[In his second'] at his oblation to his grandfather, the son of the Dvyámushyáyaṇa. 'In his third.'] That is,—at his oblation to his great-grandfather, the grandson of the Dvyámushyáyaṇa.

His text examined.

14. But, if the adoptive father died first, [the son] should present the oblation [first] to him; if the natural father then to the natural father; should both have died [at once,] then let him present first to the natural father and last to the adoptive. Márichi declares this. "He who may be procreated on a widow by a kinsman or one unrelated should first present the oblations to and perform the observances of the funeral repast in honour of the adoptive father, and after this to the natural father. If in any instance the adoptive father should survive [the natural one,] let the issue present [the oblations] first to the natural father: but the same must be given [to him] last [should he survive; the adoptive father] being dead. If both may have died [together, the oblation must be given,] first to the natural father: after him the son should present the same to the adoptive father. Should it not be first offered to the natural father, it does not endure."

Rules as to the order in which the son of two fathers is to perform the funeral rites of his fathers respectively shewn by Márichi.

15. By this, the performance of a párvana rite, by the son of both fathers, on the death of either even is shewn.

Whose text intimates that the son of two fathers is to perform a párvana rite on the death of either.

The same rule applies to the maternal sires, (by either mother,) of the son of two fathers.

In the same manner, by parity of reason, where there may be a diversity of mothers, the sires of the natural mothers, are first designated by a son, who is son to two fathers, at the funeral repast, (suggested by the passage subjoined) in honour of the maternal grandsires: subsequently, the sires of her, who is the adoptive mother —"Where the paternal sires are honoured, there certainly are the maternal."

But not so in the case of the absolute adopted son.

17. But the absolutely adopted son presents oblations to the father and the other ancestors of his adoptive mother only; for he is capable of performing the funeral rites of that mother only: and thus, in conformity with the spirit of the sentence, "He is [destined] to continue the line of his ancestors,"—which is subjoined as the reason, [in the text of Vasishṭha], the prohibition [therein],—"let not a man give an only son," refers to an adopted son, other than the Dvyámushyáyaṇa, or son of both fathers; for [where the adopted son is such,] no extinction of lineage ensues, as has already been declared.*

The relation as sapiṇḍa, extends to three degrees in either family.

18. The relation as sapiṇḍa, is next considered. This extends to three degrees; in the family of the natural father, by reason of consanguinity: and in that of the adopter, through connection by the funeral cake.

Kárshnájini shews this.

19. This Kárshnájini declares.—"As many as there may be degrees of fore-fathers: with so many, their own fore-fathers, let sons given and the rest associate, the deceased. In order, their sons with two fore-fathers, their grandsons with (samam) one [should do] the same.—The fourth degree is excluded. This [relation of sapiṇḍa] extends to three degrees."

Explanation.

20. This is the meaning of the text, according as the deceased adoptive fathers, may be sons legitimate, adopted [absolutely], or of two fathers: as many as there may be degrees of fore-fathers, three or six, with so many, let sons given, and the rest associate them;—that is—connect by admixture of funeral cakes.—Of the cases in question, where the adoptive fathers are real legitimate sons [the fore-fathers, with whom their association is to be made,] are three, viz., the father, paternal grandfather and great-grandfather; where sons adopted absolutely, three, viz., their adoptive father, grandfather and great-grandfather; and where sons of two fathers, six, viz., their natural father and the other two, and their adoptive father, and the other two.

on.

21. And thus it is intimated, that those who are the revered objects, contemplated at a párvana rite, performed by the adopted son himself are the same at the sapiṇḍi-karaṇa ceremony also celebrated for the adopted son by his own son: and the sons of an adopted son should perform his sapiṇḍi-karaṇa with

*

his adopter, and two out of the three fore-fathers of this latter.—And in the same manner the grand sons of the adopted son should perform the same—that is, the association of their own fathers, by admixture of funeral cakes with—(for 'sama' is used by Kárshnájini in the sense of this preposition,) the adopted son, the adopter, and one out of three fore-fathers of that person; viz., the father of the adopter.

Explanation continued.

22. 'The fourth degree is excluded.'] [illegible]atever person, at any time, performs the ceremony of sapiṇḍi-karaṇa for any one does the same with three fore-fathers only of that individual;—by this, [which is the meaning of what preceded the passage cited] the exclusion of the fourth degree is established. The propounding the same position, [by the passage in question,] in conformity with the rule of logic,—"a position having been established, its re-introduction, is for the sake of a peremptory rule"—is meant to bar the relation as sapiṇḍa [to the adopted son], of those, who (in the case of a real legitimate son,) would have partaken of the wipings of the oblations; by reason of their being precluded therefrom [in the present case]. The author declares this very position [in subjoining] 'this:' that is 'this relation of sapiṇḍa, &c.'

The general relation of sapiṇḍa extending to the seventh degree is thus barred.

23. And thus, the general relation of sapiṇḍa, extending to the seventh degree, which is propounded in the Matsya-puráṇa, in the text subjoined, is barred by the special rule in question.—"The fourth and the rest in ascent are the partakers of wipings, the father and the others participate in oblations of food, the seventh presents the same.—The relation by oblations of food, of these, extends to the seventh degree." Consequently, the contrary doctrine suggested by Hárita, in this passage,—They propound the partakers of the wipings to be three, or according to some, they extend to the seventh degree"—is consistent, [as the opinion of the opposer of the correct doctrine.]

The same position is propounded in another authority.

24. This very position is elsewhere compactly declared.—"But of adopted sons, the relation of sapiṇḍa extends to three degrees, in the family of the natural father; and in like manner in that of the adopter, this is a fixed rule."

This relation of sapinda however, in both families only applies to the son of two fathers.

25. This relation of sapiṇḍa extending to three degrees in both famlies, is propounded in respect to the son of two fathers: for his performing the ceremony of association by admixture of funeral cakes, with two sets of three ancestors is declared [by Kárshnájini.] But the connection by funeral oblations of the absolutely adopted son obtains in the family of the adoptive father only: on account of the extinction of the funeral oblation of him, who hath given away his son, intimated in the following text of Manu, before cited—"A given son must never claim the family and estate of the natural father; the funeral cake follows the family and estate: but of him, who has given away his son, the obsequies fail."

The sons given, purchased, and the rest who are adopted
his own general family by observance of form acquire in-
the family [of the adopter].—But the relation
not included." The meaning is—sons given and
adopted from those of his own general family by the
form only, participate in the family [of the adopter]. But the relation of sapiṇḍa is not established in them: and such relation not obtaining in those belonging to the same general family, of course, it can not subsist in those of a different general family. As for this text of Vṛiddha Gautama, it is prohibitory of the relation of sapiṇḍa extending to seven degrees, which might be inferred from analogy to the real legitimate son: or it bars the impurity for ten days and so forth, arising from the relation of sapiṇḍa.—But it does not prohibit totally such relation on account of the several texts before cited.

SECTION IV.

The impurity of the adopted son on occasions of birth and death—His marriage.

In the case of the absolute adopted son, reciprocal impurity in the family of the natural father, does not obtain.

But in both families, in the case of the Dvyámushyáyaṇa.

1. Next the impurity and so forth of the adopted son [on occasions of birth and death,] is determined. In respect to this topic, [it is to be observed, that] there is no reciprocal impurity of the absolute adopted son in the family of the natural father; for relation to his family and the presenting in his honour, funeral oblations being barred, the extinction of uncleanness is an obvious consequence. But the impurity of the Dvyámushyáyaṇa, is in both families.

In the Brahma-puráṇa the impurity is declared to last three days.

2. In the Brahma-puráṇa [it is written,] "the son given, the son self given, the son made, as well also the son purchased, and the deserted son, who are always to be cherished, belong to a different family present distinct oblations, and perpetuate a different lineage, and on occasions of birth and death, become impure for three days."

Parasára confirms.

3. Parasára. "On occasions of birth and death, impurity for three days is ordained for him, who, whether of a different or of the same general family by the will [of the adopter] is initiated and adopted."

passage of the Brahma-puráṇa.

"So also, excepting the legitimate son on the death and birth of the son of the wife and the rest, a general impurity, lasting three nights, always take
e in every tribe.—This is a settled

5. 'Always'—subsequent even to the investiture of the characteristic thread. As the relation of one, though of the same general family, to the family of his adoptive father is attained through the observance of form, after the previous extinction of relation to the family of his natural father; there is no distinction between an adopted son of a different general family, [and one of the same.] Therefore, the uncleanness for three days propounded in the text in question [indifferently for either] is even proper.

'Always' occurring in which is explained, and the general position argued to be correct.

6. Thus, where the adopted son may be unmarried, the offence of parivedana* is not incurred by the marriage of a legitimate son subsequently born: nor is there any objection against an adopted son marrying before his elder whole brother.

The offence of parivedana cannot be incurred.

7. But, since the extinction of his relation by oblations of food in the family of the natural father is shewn, the marriage of an absolutely adopted son, might take place therein: and the marriage of a Dvyámushyáyaṇa with the issue of a female removed in relation more than three degrees would be proper.

But the adopted might marry female of the family of his real father, and the Dvyámushyáyaṇa, one removed more than three degrees.

8. It is not so; for in the text of Manu, subjoined of which (on account of the conjunctive particle 'and') the construction is—'who is not connected as Sapiṇḍa, to his father [as well as mother;]'—the term 'father' is used to exclude [from marriage,] a female related as Sapiṇḍa to and belonging to the general family of the natural father also of an adopted son, although exclusively belonging to the family of his adoptive father.—"She who is not connected as "Sapiṇḍa to his mother and "father, and not belonging to the general family of either, is approved "amongst twice born men for espousal and connubial intercourse."

This objection over-ruled.

9. Nor must it be argued that, still, where the father of the adopted son might himself be an adopted son, there would be no reason barring the marriage with a female removed in relation to such father beyond the third degree; since her relation as Sapiṇḍa to, and being of, the general family of the father are wanting. Because, the relation of Sapiṇḍa

A further objection refuted.

ANNOTATIONS.

5. Subsequent events, &c.] Three days are the period prescribed for the uncleanness of a person, previous to investiture of the characteristic thread on occasions of death and birth.—The author obviates an inference, that the period in question fixed for the adopted son is so merely in case of his investiture not having taken place.

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* See D. M. Note to Sect. VI. § 54.

in question does not apply to marriage: but is an universal relation of that denomination, predefined as extending to the seventh degree in the line of the father and to the fifth, in that of the maternal grandfather.—Thus there is no inconsistency. These several descriptions of relations of Sapiṇḍa will be enlarged on in their appropriate places respectively.

SECTION V.

The succession by inheritance of adopted sons lineally and collaterally—in the case of Çúdras—of the Dvyámushyáyaṇa.

Vrihaspati cited, on the subject of the succession of the adopted son.

1. The inheritance of the adopted son is next propounded. On this subject Vṛihaspati says,—"the "real legitimate son alone is master of the paternal "estate: for the sake of affection, let him allow sub-"sistence to the rest."

Explained.

2. 'The rest.'] Those who are excluded from participating in the estate—'Affection.'—Love.—'Subsistence.'—Alimony.

on the

3. Yama also.—"Sons are pronounced by intelligent saints to "be twelve: of these, six are kinsmen and heirs; and "six kinsmen but not heirs. Those versed in the "distinctions of class declare that the first is the one "begotten by the man himself: the second, the son of the wife; the "third, the son of the appointed daughter; the fourth, the son of the "twice-married woman; the son of the unmarried daughter is con-"sidered the fifth: and [the sixth,] the son secretly born in the man's "house. These six present funeral oblations—The son deserted, and "the one received with a pregnant bride, the son given, and the son "made, and fifthly, the son purchased, and the son presented by him-"self; These six, whose filial relation proceeds from an overt act of "acceptance are kinsmen but not heirs."

Nárada on the same subject.

4. Nárada. "The real legitimate son; the son of the wife "by appointment; the son of an appointed daughter; "the son of an unmarried daughter; the son received "with a pregnant bride; the son of hidden origin;

six whose filial relation, &c.] The terms of the original are ____ This expression disjoined may be construed as containing, or not before saṅgaṁa a privative *a*. According to either mode of construction, ____ itself of rendering the compound epithet of *etc* (these) so as to apply to the six sons alluded to, and not be applicable to the other six.—The Sanscrit reader will perceive that a translation has been adopted, which it cannot be pretended, is uggested obviously by the terms of the text.

" the son of a twice-married woman ; the deserted son ;
" the son purchased ; the son made also ; and the one given by himself ;
" these are declared to be the twelve descriptions of sons. Of these,
" six are heirs to kinsmen and six not heirs to kinsmen.
" cording to priority in order is considered as superior ; and the
" successively as inferior. On the death of the father, according to
" their order they succeed to his estate. On defect of each preceding
" more worthy, let the next less worthy son obtain the estate."

Explanations.

5. The meaning is on default of each preceding, the next succeeding in order is entitled to the property.

Vishnu also.

6. After having previously enumerated as sons, the real legitimate son of the wife, the son of an appointed daughter, the son of a twice married woman, the son of the unmarried daughter, the son of hidden origin, the son received with a pregnant bride, the son given, the son purchased [the son made], the son self-given, the deserted son, and the son obtained in any whatsoever ; Vishṇu adds " of these, the first in order respectively " is the most worthy ; he only is entitled to the estate ; but he should " support the rest.

Yájñavalkya.

7. After having enumerated, the legitimate son, the son of the appointed daughter, the son of the wife, the son of hidden origin, the son of an unmarried daughter, the son of the twice married woman, the son given, the son purchased, the son made, the son self-given, the son received with a bride, and the deserted son, Yájñavalkya subjoins :—" Amongst these, the next in " order is heir, and presents funeral oblations on failure of the pre- " ceding."

Manu.

8. Manu,—" Not brothers nor parents ; but sons are heirs to the " deceased." And again, " On failure of the best and " of the next best, let the inferior in order take the " heritage ; but if there be many equal, let all be sharers of the estate."

Explanation.

9. ' Equal.'—In respect to virtue or quality as being the son of the soil or wife and so forth.—' Of the —that is of the legitimate son and the others.—' inferior in order,' the less worthy :—Meaning the son of the wife those following.

Another text of the same author. Hárita cited.

10. The same author.—" The son of the body and the son of the " wife may succeed to the paternal estate ; but the " ten other sons can only succeed in order to the fami- " ly duties and their share of the inheritance." Hárita. —" The son begotten by the man himself, the son of the wife, the son " of the twice married woman, the son of the appointed daughter " the son of hidden origin or kinsmen and heirs. The son

son purchased, the son deserted, the son received with a [illegible] bride, the son self-given, and the son any how obtained are heirs [illegible] kinsmen."

11. Manu.—"Of the twelve sons of men, whom [illegible] "from the self-existent has named, six are kinsmen heirs, but kinsmen. The son "begotten by a man himself, the son of the wife, the son given, the son "made, a son of concealed birth, and a son rejected, are the six kinsmen "and heirs.—The son of an unmarried daughter, the son of a pregnant "bride, the son bought, the son of a twice married woman, the son self-, and the son by a Çúdra are the six kinsmen but not heirs.

12. Baudháyana.—"He pronounces the real legitimate son, the
Baudhá-yana. "son of an appointed daughter, the wife's son, the "sons given and made, the son of concealed origin, "and the deserted son also participators in the estate,—the son of an "unmarried daughter, the son received with a pregnant bride, the son "bought, the son of a twice-married woman, also the son self-given, "and the Nisháda, or son of a Çúdra, he pronounces partakers of the "family.

13. This declaration, that the son of the unmarried daughter and
Explanation. the rest participate in the family only, is for the sake of barring their taking a share of the heritage, where, one even of the others before enumerated, viz. the real legitimate son and the rest may exist.

14. Vasishṭha having previously mentioned, the son received with
Vasishṭha. a pregnant bride, the son bought, the son self-given, the deserted son, and the son by a Çúdra woman: and alluding to the legitimate son, and the rest in another place says: "Where there may be no heir to a person of any of the tribes, let "these take the heritage."

15. Devala having recited the real legitimate son, the son of
Devala. an appointed daughter, the wife's son, the son of an unmarried woman, the son of secret origin, the deserted son, the son received with a pregnant bride, the son of a twice-married woman, the son given, the son self-given, the son made, the son purchased adds: "Those twelve are pronounced sons for the sake "of issue: some are sprung from himself: some from another also: "some acquired by [an overt act of adoption]: and others filially re-"lated independent thereof. Of these, the first six are kinsmen and "heirs [to collaterals], the rest are so merely to the father: and a special "rule obtains, according to the priority in rank of the sons: all these "sons are considered as heirs, to one having no real legitimate son; "but, should a son be subsequently born, no right of primogeniture to them. Of these, those who are equal in class take a in rank should live in subjection to one of equal rank receiving [illegible]"

16. Kátyáyana—" If a legitimate son be born, [illegible] rest are pronounced sharers of a third [illegible] pro-
" vided they belong to the same tribe : but if they [illegible] of a different
" class, they are entitled to food and raiment only. In some copies [illegible]
[illegible] pronounced sharers of a fourth part *(a)*."

—" When a son has been adopted, if a legitimate
" son be afterwards born, he shares a fourth part pro-
" vided [the estate] may not have been expended in
acts of merit."

Explanation.

18. ' He'] the adopted son. ' Provided' the whole estate (which is understood) may not have been expended by the legitimate son in acts of merit,—that is in sacrifice, and so forth.

The apparently conflicting authorities, cited, are reconciled.

19. For the sake of removing the conflicting contradictions of several varying texts of Manu and the rest, [illegible] ing interpretations are offered on these texts. [illegible] declaration in Vrihaspati's text, that the real [illegible] mate son succeeds exclusively to the estate, and that the rest are entitled merely to subsistence, regard such sons of the wife and the rest who are unequal in class, on account of uniformity with text of Kátyáyana and Devala. And the rule also in the texts of Nárada and the rest, for the succession of the son given and the rest to the estate, on default of the son of the wife, and the rest, regards their succession to the whole estate, and therefore the rule for the fourth of the share of the real legitimate son propounded by Vasishtha, where such son may be born subsequeut to the adoption of a son given must be understood as applying to a son given.

The rule for the third share propounded in §§ 15, 16, is relative to the given son, eminently endued.

20. So, also the rule for succeeding to a third share in the texts of Devala and Kátyáyana, must be alleged to refer to a son given, endued with eminent qualities, on account of uniformity with the following text of Manu.—" Of
" the man to whom a son has been given, adorned with every quality that son shall take the heritage, though brought from a different family"—' With every quality'] class, science, observance of duties.

Some construe it as referring to the son of the wife.

21 Others affirm it must apply to the son of the wife in formity with this passage in the Brahma Puráṇa : "
" the real legitimate son even, who is subsequently
" born enjoy the whole estate—the son of the wife
" takes a third share, the son of an adopted daughter
" a fourth."

ANNOTATIONS.

. Sharers of a third part.] In citing this [illegible] which gives a fourth part. " This reading (observes Mr. Cole- is followed in the Madana-parijáta, Viramitrodaya, &c. But the Kalpataru, and other compilations read ' a third part'—vide Jímúta-váhana C. 10 § 13."

In the same manner the doctrine of one holy saint that the son given is an heir to kinsmen,—and that of another, that he is not such heir,—are to be reconciled by referring to the distinction of his being endued with good qualities or otherwise. By reason of succeeding to the estate of sapiṇḍa kinsmen, as well as to that of the father, he is [argued by the one to be] heir to kinsmen; and on account of the particle 'only' in the phrase "of the father only" (occurring in the passage subjoined) from inheriting merely of the father, he is [argued by the other, not to be] such heir.—"'Of these, the first six are heirs to kinsmen: the other six of the father only."

...action of quality, also reconciles, the apparently conflicting doctrines of authors, that the adopted son is and is not heir to kinsmen.

23. And thus [the objection of] variation from the son given being enumerated higher and lower in the order of inheritance, and so forth, by different holy saints respectively, is obviated by the distinction as to his qualities good and bad.

And also the variation of rank assigned him by different authors in the series of heirs.

24. Therefore, by the same relationship of brother, and so forth, in virtue of which the real legitimate son would succeed to the estate of a brother or other kinsmen, where such son may not exist [the adopted son] takes the whole estate even.

...that the adopted son

25. Since it is a restrictive rule, that a grandson succeed to the appropriate share of his own father, the son given, where his adopter is the real legitimate son of the paternal grandfather, is entitled to an equal share even with a paternal uncle, who is also such description of son; therefore, a grandson, who is an adopted son may [in all cases,] inherit an equal share even with an uncle.—This must not be alleged, [as a general rule]. For, there would be this discrepancy: where the father of the grandson were an adopted son, he would receive a fourth share: but the grandson, if he were such son, [of him] would receive an equal share [with an uncle in the heritage of the grandfather]. And accordingly, whatever share may be established by law, for a father of the same description, as himself; to such appropriate share of his father, does the individual in question, [viz. the adopted son of one adopted] succeed. Thus what had been advanced, only is correct. The same rule is to be applied by inference to the great grandson also.

Objection, that the grandson being the adopted son of an adopted son would share equally with an ...in the heri...

Over-ruled.

26. But, although the son of the wife, the son given, and the rest may succeed to the general estate, their non-succession to empire is advanced.—Thus it is ordained in the Vedas.—"The legitimate son, the son of the wife, "the son given, the son made, the son of concealed "birth, and the son rejected, take shares of the heri-"tage. The son of an unmarried girl, the son of a

...ponent ... adopted not succeed to empire whatever be his right to the general estate: as

would appear from

" pregnant bride, the son bought, the son of a twice- the slave's
ible as sons: on failure
first in order respectively, let him invest the next with filial
But let him not appoint to the empire the son of a twice-
married woman, nor a son self-given, nor one born of a female slave"
" —In the same authority also—" Let not the king invest
" empire the wife's son and the rest: [nor] cause to be completed
" through such sons the solemnities for his fore-fathers, a legitimate
" son, existing.

His objection is obviated. The two passages are consistent, and such general position cannot be deducted.

27. It is replied—If another ordinance of law exist, a special rule for the sake of convenience [must be construed] as conveying even the same meaning. Therefore, the first passage cited, which is declaratory of the right to succession of the next in order, on failure preceding extends even to the whole empire, forming with the texts of Nárada and the rest mentioned: and the latter passage prohibits the equal participation of the son of the wife and the rest, if a legitimate son exist, or it refers to a son of the wife and the rest unequal in class: otherwise it would be vexatious were adverse meanings deduced from each passage. But if however this is admitted [and disregarded,] then [we allege] that by the passage in question, the appropriate shares of the son of the wife, the son given and the rest respectively are not forbidden if a real legitimate son exist; but the investing such son with empire is ordained [by that author] after having previously barred the same in respect to those sons, in case of the existence of a real legitimate son.

Conclusion.

28. Thus, the son of the wife, the son given, and the rest receive the share prescribed for them by the general law. For grounds for contracting the operation of the same are wanting: nor does the particular passage in question obstruct operation: for that relates to a different subject. Accordingly, right to inherit is clearly laid down in the preceding passage,—" take shares of the heritage." Nor can it be said they participate [merely] in the estate other than the empire. For the empire also is treated on in the passage in question. The exclusion of the son of the married woman and the rest from the empire, although each ing in order may have failed, is in virtue of a distinct provision i respect to them.

In the Çúdra tribe the partition for the adopted son is different.

29. The mode, however, of partition between son of the wife, the son given and the rest and the legitimate son, which has been propounded in what preceded does not apply to the

He shares the son during the father's

following texts of Manu and Yájñavalkya respectively, a share equal to son is prescribed for the of a man of the class in question; and the

th the daughter's son of such son only when having
the equal partition of the son

the father's death takes the moiety of the share of the [illegible] son as [illegible] by,

of the wife, the son given and the rest, with the real legitimate son whilst the father lives, and their succession to the moiety of the share of such son, where the father may be dead at the time of partition, follow a fortiori. —And otherwise there would be a great inconsistency if, where the son of the wife, the son given, and the rest took the fourth of the share of the legitimate son, the son by a female slave, whose title is infinitely inferior in respect to these, were to take an equal share, the legitimate son. Manu—"But a son, begot-
" ten by a man of the servile class, on his female slave or on the female
" slave of his male slave may, by permission, take a share of the heri-
" tage. Thus is the law established. Yájñavalkya: " Even a son, be-
" gotten by a Çúdra, on a female slave may take a share by the father's
" choice. But if the father be dead, the brethren should make him
" partaker of the moiety of a share; and one who has no brothers, may
" inherit the whole property, on default of daughter's sons."

31. If according to this authority, where there may be no son of the wife and the rest, but there may be a wife and daughters, the daughter's son be entitled to share [with the son by a female slave]; the rule for the succession of the daughter [or other proper heir] would be infringed; therefore, if any even in the series of heirs down to the daughter's son exist, the son by a female slave does not take the whole estate; but on the contrary shares equally with such heir.

The term 'daughter's son,' occurring in the text of Yájñavalkya, is merely illustrative.

32. Accordingly, the text subjoined must be construed as referring merely to Çúdras. "A son given being thus
" adopted, if by any chance, a legitimate son should
" be born, let them be equal partakers of the father's
" estate."* So also in the following text, the equal participation of all lawfully begotten Çúdras having been first propounded, the succession to equal shares, of the other sons likewise is subsequently declared by the sentence, ("if there be an hundred sons") occurring therein. "For a Çúdra is ordained a wife,
" of his own class and no other. Those begotten on her shall have
" equal shares; if there be an hundred sons [the same mode of partition

Other authorities cited refer to Çúdras, and support the doctrine advanced.

ANNOTATIONS.

31. If according to this authority.] The text of Yájñavalkya provides that the son by a female slave who has no brothers, shall not take the whole estate where there may be a daughter's son.—Thence, it is inferred that the daughter's son shares with him.—It is the object of the author to shew that the term 'daughter's son' is not restrictive in its sense, but includes any heir, enumerated in the series after the son down to the daughter's son; viz. the wife, the daughter, the daughter's son.

* Vriddha Gautama.

"shall obtain]."* If the sentence in question be referred to the real legitimate son only, the position contained in it being obtained from what preceded, its repetition would be unmeaning.

The right by inheritance of the Dvyámushyáyana, in the estates of his natural father and adoptive father respectively.

33. The son given, who is a Dvyámushyáyana, if both his adoptive and natural fathers have no other male issue, takes the whole estate [of both]: one adopted, where legitimate issue [of the adopted] existed does not participate [in the estate of the adopter]; but a legitimate son being born [to the natural father] subsequent to the adoption, [the adopted son] takes half of the share of a legitimate son. If [however such issue be subsequently born to the adopter, the adopted son in question] takes half of the share which is prescribed by law for an adopted son, exclusively related to his adoptive father, [where legitimate issue may be subsequently born to that person.]

Confirmed by passages cited.

34. The Pravarádhyaya declares this—"Should they have no "offspring begotten on their wives, [the adopted "sons] take the whole estate."—A text of Nárada "also [declares.] "Let those, being sons to both "fathers, present separately to each, oblations of food and water; "they take the half of a share in the estate of the contributor of "the seed and owner of the soil." It has been before said, that the terms contributor of the seed and owner of the soil are illustrative severally of the natural and adoptive fathers.

SECTION VI.

Exclusion from inheritance, in what cases.

The adopted son of a disqualified person can not inherit in, but takes alimony from the estate of his paternal grandfather.

1. As sons blind, lame, and so forth do not inherit—and since it is ordained that their legitimate son and son of the wife only participate in the estate of the paternal grandfather; a son given, or other description of son, adopted by such persons, have no right to the estate of the paternal grandfather; but to maintenance only. For alimony being provided for the wives of persons blind and so forth, maintenance for their adopted sons is inferred a fortiori.

1. And since it is ordained that their legitimate son, &c. &c.] The following is a text of Yájñavalkya.—"But their sons, whether legitimate, or the offspring of the "wife by a kinsman are entitled to allotments if free from similar defects." On this, the author of the Mitákshará thus comments—"The specific mention of "legitimate" issue and "offspring of the wife" is intended to forbid the adoption of other sons."

* Manu 9, 169.

A certain author shews this.

2. So also having previously declared sons blind, lame and so forth not to be heirs, an author adds—"Of these "the sons legitimate and sons of the wife, who are "free from defect participate in a share: the childless "wives of those, [who are blind, and so forth] are to be supported "if virtuous. Their daughters are to be maintained as long as un-"married."

One adopted, by a man having legitimate issue, and generally without observance of form does not inherit as appears from Manu.

3. In the same manner—since it is shewn that a son given participates with a real legitimate son born subsequent to his adoption—a son adopted, where a legitimate son exists does not take a share. Accordingly, an author declares the non-succession to a share of one adopted without observance of rule:—"Him existing, a son being created, and a son given, "existing, one being adopted informally; that estate "is his only, who is justly master of the father's "wealth"—Manu. "He, who adopts a son without observing the "rules ordained, should make him the participator of the rites of "marriage, not a sharer of the wealth."*

Nor can an adopted son of a different class inherit as is shewn by Çaunaka.

It is declared by an author in the following text, that a son given likewise, who is of a different class does not inherit. "If one of a different class, should however "in any instance have been adopted as a son, he "should not make him the participator of a share. "—This is the doctrine of Çaunaka." Something to this effect has been before declared.† Sufficient has been said.

Peroration.—This treatise, succinctly exhibiting the rules relative to the adopted son is excellent, and the heart-delighting preserver of law through the serious application of students. Thus is the Dattaka-Chandriká, compiled by the great preceptor, the fortunate Devaṇḍa-Bhaṭṭa, completed.‡

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* This text is not found in the institutes of Manu, v. D. M. Sect. V. § 45.

† Vide supra Sect. I. § 14.

‡ The printed copy, as well as manuscripts read Kuvera. As however the author avows himself to be the writer of the Smṛiti-Chandriká, which is known as the production of Devaṇḍa-Bhaṭṭa, this name in the translation has been substituted.

FINIS.

SYNOPSIS

OR

GENERAL SUMMARY

OF THE

HINDU LAW OF ADOPTION.

The Hindú Law of Adoption may be classified under the following Heads :

1st. The qualification and right to adopt.

2nd. The qualification and right to be adopted.

3rd. The form to be observed in adoption and the effect of its omission.

4th. The effects of adoption.

5th. Special rules.

It should be premised, that in the present age, amongst the various subsidiary sons* recognized in codes of law, according to the authority of writers, confirmed by practice, only those technically denominated, the son given (Dattaka or Dattrima) and son made, (Kṛitrima or Kṛita) are capable of being affiliated.† The author of the Dattaka or Chandrikā, indeed admits the son given alone.—In effect however, without any great latitude, a son self-given, and a son rejected, might perhaps be included‡ under the general denomination of the 'son made' the Kṛitrima or Kṛita putra (vulgarly called 'Karta puter') : and it should not be omitted, that in treatises of law, the term Dattaka or son given is sometimes used to denote an adopted son generally.

v. D. M. Section I. § 64,65.
v. D. Ch. Section I. § 9.

HEAD FIRST.

The qualification and right to adopt.

The primary reason for the affiliation of a son, being the obligatory necessity of providing for the performance of the exequial rites(*a*), celebrated by a son, for his deceased

D. M. Section I. § 3.

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* See these enumerated in a Note § 33. Sect. I. D. M.
† v. Notes I. and II. subjoined ‡ v. Note III. subjoined.
(*a*) See 4 Moore, I. A. Ca. 100.

D. Ch. Section I. § 3. D. M. Section I. § 6. D. M. Section I. § 13. D. Ch. Section I. § 6.

father, on which the salvation of a Hindú is supposed to depend, it is necessary that the person proceeding to adopt should be destitute of male issue capable of performing those rites. By the term issue, the son's son and grandson are included. It may be inferred, that if such male issue, although existing, were disqualified by any legal impediment, (such as loss of caste), from performing the rites in question, the affiliation of a son might legally take place.

D. Ch. Section V. I.

A doubt might be entertained* as to the validity of an adoption, by one not being in the order of the 'Grihí' (the house-holder or married man) or by a blind, impotent or other person disqualified from inheriting. The more correct opinion, however appears to be, that an adoption by any of the persons described would be valid : though it seems reasonable, that the affiliation of one excluded from inheritance, should confer no right of succession on the adopted, of which the adopter is debarred by law.

D. M. Sect. I § 15, 29. D. Ch. Sect. I. § 7. D. Ch. Sect. I. § 24. D M. Sect. I. § 15. et seq.

The same reason which imposes the necessity of adoption on a man not equally applying to a woman, the latter (at least such seems the more accurate and prevailing doctrine) is incapable in her own right of adoption†, though it is admitted that by his sanction‡ she may affiliate on the part of her husband a son who would necessarily be filially related to himself. Nanda Pandita denies generally the authority of a widow to adopt, assigning a reason by no means satisfactory, that the assent of her husband is impossible : but it is reasonable to admit, consistent with practice, and the opinion of other authors, the validity of an adoption made by a widow under the sanction of her husband written or formally expressed during his life time, and perhaps in some places under that of ki

HEAD SECOND.

The qualification and right to be adopted.

D. M. Sect. V. § 16. et seq. D. Ch. Sect. II. § 8.

The first and fundamental principle is that the person proposed to be adopted, be one who by a legal marriage with his mother might have been the legitimate son of the adopter. By the operation of this rule, a sister's son and offspring of other female, whom the adopter could not have espoused, and one of a different class are excluded from adoption. In the present age, marriage with one unequal in class is prohibited.

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* v. Note IV. subjoined.

† v. Note V. subjoined. ‡ v. Note VI. subjoined.

(a) So held in 2 Mad H. C. Rep. 206.

Pandita declares that a woman may not affiliate a son: if his opinion be correct, it might be consistently argued, that where a woman is proceeding to adopt with the sanction of her husband or kindred, she must not select generally one with whose father she could not have legally married.

D. M. Sect. II. 33. 34.

It is an obvious inference, that the person selected should be exempt from any disqualification, which might prevent him fulfilling the purpose of the adoption.—It has been intimated by writers on law,* that proximity of kindred ought to determine the choice of an adoptson. But though Nanda Pandita extends this principle with elaborate minuteness, it can not be regarded as a rigid maxim of law, vitiating the adoption of a remote, where a near kinsman, or of a stranger, where a relative may exist. The right however of a whole brother's son to be adopted in preference to any other person, where no legal impediment may obtain, seems to be generally admitted, and may be regarded as a received rule of law.

D. M. Sect. II. § 11. 12. et seq.
D. M. Sect. II. § 28. 37.
D. Ch. Sect. 1.
Mitákshará.†
Dvaita Nirnaya.

An only son‡ cannot become an absolutely adopted son (Sudha-Dattaka,) but he may be affiliated as a Dvyámushyáyana or son of two fathers. In this case, the reason of the prohibition, viz., extinction of lineage to the natural father would not apply. An only son of a whole brother accordingly, if no other nephew exist for selection must be adopted by his uncle, requiring male issue and is son of two fathers. The same person can not be adopted by more than one individual, except in the case of one nephew by several uncles, the whole brothers of his natural father. It may however be inferred, that a legal impediment would exist to the affiliation by an uncle of a nephew, whom his father had given away in adoption as a 'Sudha-Dattaka,' who retains no filial relation to his natural father.

D. M. Sect. IV. § 1. 3.
D. Ch. Sect. I. § 29.
D. Ch. Sect. III. § 17.
D. M. Sect. II. § 37. 38.
D. Ch. Sect. I 28.
D. M. Sect. I. § 30.
D. M. Sect. II. § 44.

To render the adoption valid and complete, it is necessary that the person adopted should assent, or being a minor, be given by a competent party.§ On the subject of the legal ability to give a son in adoption, some difficulty exists in extracting a consistent doctrine.‖ The more correct opinion appears to be—1st. That, the father may give away his minor son without the assent of the mother, though it is more laudable that he should consult her wishes.—2d. That the mother generally is incapable of such gift while the father lives.—3d. That she however on her husband's death may give in adoption her minor son, and even during the life of that person in case of

D. M. Sect. IV. § 9. et seq.
D. Ch. Sect. I. § 7. 31. 32.

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* Vasishtha, Çaunaka, &c.

† Trans. on Inh. Chap. I. Sect. XI. § 36.

‡ v. Note VII. subjoined.

§ v. Note VIII. subjoined.

‖ v. Note IX.

urgent distress and necessity. A man who had permanently ed entered a religious order or become an outcaste, being civilly dead would be regarded as virtually deceased.

Discrepancy of doctrine amongst some writers, and the silence of others have left doubtful the determination of these questions;—1st. Whether the adoption of one, who has attained any particular age is barred; —2d. Whether the performance, in the family of the natural father of any, and what particular initiatory rites constitutes an insuperable objection to being adopted.

On the subject of these questions, a passage attributed to the Kálika-puráṇa, (the authenticity and meaning of which are contested) is usually cited.* According to Jagannátha, the compiler of the Digest, this constitutes an absolute prohibition against any adoption whatsoever, of one, whose age exceeds five years, or on whom, the initiatory rite of tonsure(a) may have been performed in the family of his natural father.† And, in a case‡ in which the adoption of one older than five years was contended to be illegal, on the opinion of it's Paṇḍits,—declaring according to the Hindu law, as received in Bengal, the adoption of such person to be legal, provided the initiatory rites (sanskárá) in the family of the natural father have not been and in that of the adopter be performed—the Sadr Diwáni Adálat appears to have determined the following points, as applicable to Bengal, where, it should be observed, the Dattaka form of adoption chiefly, if not solely, prevails§—1st. That adoption is restricted to no particular age.—2d. That, one initiated in tonsure in the name and family of his natural father, is incapable of adoption.—3d. That the age of the person selected for adoption must be such as to admit of the ceremony of tonsure being performed in the adopter's name and family.

The limitation of adoption to any particular age is thus overruled: but without presuming to question as applicable to Bengal the accuracy of the other two points of law resulting from the decision referred to, there is no impropriety in expressing a doubt, whether they can be received as constituting a general rule universally decisive on the questions which they regard.—1st. Such rule would be at variance with the doctrines of the Dattaka Mímánsá, and Dattaka Chandriká, as detailed in a note subjoined.‖—2d. The authenticity of the passage, attributed to the Kálikapuráṇa, on which the opinion of Jagannátha and the Paṇḍits of the Sadr Diwáni is founded is justly denied, and it is interpreted as admitting the adoption of one, although initiated in tonsure by his natural father.—3d. The received definition of the Kṛitrima son, and particularly the

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* v. D. M. Sect. IV. § 22; et. D. Ch. Sect. II. § 25.

† v. Digest Ch. IV. Sect. VIII.

‡ v. Printed reports on select cases.—Kerut Naraen versus Mt. Bhobioesree.—Cause No. 22 of 1806.

§ v. Note X. subjoined. ‖ v. Note XI.

(a) See 1 Morl. Dig. 20, 21.

mode of affiliation* current in the Maithila country, obviously refer to one of years somewhat mature, who, if not necessarily, mostly be initiated in tonsure by his natural father: and the adoption of such person is certainly justified by practice obtaining some parts of India.

The difficulty, or rather impossibility of defining any unvarying principles, universally decisive on the questions referred to is obvious. The most general and consistent rule which presents itself is this.†— Any person, on whom the adopter may legally perform the Upanayana rite‡ is capable of being affiliated as a Dattaka son: while one, not so qualified may be lawfully adopted as a Kṛitrima son.

HEAD THIRD.

The form to be observed in adoption, and the effects of it's omission.

Regarding the mode of adoption, a text of Vasishṭha is most usually cited. This enjoins, that the party proceeding to adopt should previously give notice to the ruling power (**Rájá**), and after having invited kinsmen, should complete the adoption by the observance of the prescribed solemnities, viz., a burnt sacrifice and recitation of the prescribed prayers. The forms propounded at greater length by Çaunaka, Vṛiddha Gautama, Baudháyana and other primitive writers, essentially conform with this of Vasishṭha. The former provide for the attendance of Bráhmanas, and an officiating priest, to demand the son to be given.

v. D. M. Sect. V. § 31. D. M. Sect. V. D. Ch. Sect. II.

The expression '**Rájá**' has been explained by commentators to signify the chief of the town or village. They seem however agreed,§ that, the notice enjoined, and the invitation of kinsmen are no legal essentials to the validity of the adoption being merely intended to give greater publicity to the act, and to obviate litigation and doubt regarding the right of succession.

D. Ch. Sect. II. § 6.

The form propounded by Vasishṭha; and more particularly those by the other holy writers, in pursuance of the works of eminent authors, may be correctly regarded, as referring exclusively to the son given;‖ the adoption of a Kṛitrima son being held to be valid, without the observance of any particular form or solemnities.¶

* See that propounded by Rudra Dhára in Note XVI.

† v. Note XII. subjoined.

‡ For the rules, for performing the rite of Upanayana, consult D. Ch. Note to Sect. II. § 31: and for the designation and order of the different initiatory rites, see D. M. Note to Sect. IV. § 23.

§ v. Note XIII. ‖ v. Note XIV. ¶ v. Notes XV. & XVI.

D. M. Sect. V. § 45 & 46. D. Ch. Sect. II. § 17. D. Ch. Sect. VI. § 3.

Should a son be adopted without the observance of prescribed form, his filial relation would not be established, but he would be entitled to assets sufficient to defray the expense of his marriage.

D. M. Sect. IV. § 22. et. seq. D. Ch. Sect. II. § 20. et seq.

The Dattaka adopted son, except perhaps in the case of a nephew affiliated by an uncle must be initiated in certain rites in the name and family of his adoptive father, and the Kṛitrima son, in some instances may, but in all, need not necessarily be so initiated :* The question as to the particular rites required has already been discussed under the preceding head.

HEAD FOURTH.

The effects of adoption.

D. M. Sect. D. Ch. Sect. V.

The legally adopted Dattaka or son given in all cases is, and the Kṛitrima or son made in some instances may be, invested with every filial right in respect to his adoptive father, of whose family he becomes a member.†

D. M. Sect. VI. § 6. 7. D. Ch. Sect. II. § 18. 19.

The Dattaka adopted son ceases to have any claim to the family or estate ; and is incapable of performing the funeral rites of his natural father, except where affiliated as a Dvyámushyáyaṇa, or son of two fathers. This rule would not apply to the Kṛitrima adopted son, who would be necessarily the son of two fathers,‡ unless, (if such case could occur), where wholly uninitiated in the family of his natural family.

D. M. Sect. VI. § 10 & 47.

The adopted son cannot marry any kinswoman related to his father and mother within the prohibited number of degrees as his consanguineal relation endures : nor the son of two fathers marry in the general family of either.

D. Ch. Sect. IV. § 2. et seq. D. M. Sect. VI. § 50. 51. 52.

The adopted son not only inherits of his adoptive father, but likewise lineally and collaterally§ of the near and distant kinsmen of that person. He likewise represents the real legitimate son, in relationship to his adoptive mother, whose ancestor are his maternal :andsires. The rule hovever now suggested, would not apply to the .ṛitrima son as usually adopted in the Maithila country.‖

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* v. Note XVII.

† v. Note XVIII.

‡ v. Note XIX.

§ v. Note XX.

‖ v. Note XXI.

HEAD FIFTH.

Special Rules.

Firstly.—Regarding the Dvyámushyáyaṇa.

The adopted son may retain filial relation to his natural father, in which case, he is called a Dvyámushyáyaṇa or son of two fathers. This double filial relation proceeds from a special agreement, between the adoptive and natural father, at the time of adoption, or may exist without such agreement; as mostly, if not always, in the case of the Kṛitrima adopted son, who is not alienated by his natural father. In the first case, such son is denominated a complete (nitya) in the second an incomplete (anitya) Dvyámushyáyaṇa.

D. M. Sect. VI. § 41. et seq.
D. Ch. Sect. II. § 36. et seq.

The adopted son, who is son of two fathers, inherits the estate and performs the obsequies of both fathers, but the relation of his issue (except in the case of the Kṛitrima son, as usually affiliated in the Maithila country,) obtains exclusively to the family of the adoptive father.

D. M. Sect. VI.

Secondly.—Regarding the succession of the adopted son.

Thirdly.—Regarding the succession of co-existent legitimate and adopted sons.

Where, subsequent to an adoption legally made, a legitimate son is born to the adopter, the adopted son, at a division of heritage with such son, receives a quarter share* according to the Dattaka-Chandriká. A distinction however obtains in the case of the Dvyámushyáyaṇa—From an obscure part of that work, it would appear to be the doctrine of its author, that such son, would would only take half the share, to which the son absolutely adopted, would be entitled, in participating with a legitimate son, subsequently born.—On the same principles, this author appears to provide that, where legitimate issue is subsequently born to the natural father, the Dvyámushyáyaṇa only takes in the estate of such father, the half of the share of a legitimate son.

D. M. Sect. V. § 40.
D. M. Sect. X. § 1.
D. Ch. Sect. V. § 17.

ILLUSTRATIVE NOTES REFERRED TO IN THE PRECEDING SYNOPSIS.

NOTE I.

Only those technically denominated, the son given, &c. (p. 221)]. On the subject of sons, to be affiliated in the present age, the two texts of law quoted in D. Ch. Sect. I § 9. are usually cited. The term

* v. Note XXII. subjoined.

'son given,' occurring in the latter, is explained in the Vyavahára-Mádhava* and other works, as likewise denoting the 'son made'—The Putriká-putra does not appear to be regarded as a subsidiary son,† and it is not unreasonable to infer, that the affiliation of such son, would be valid in the present age. The term 'aurasa' or 'legitimate son,' occurring in the text noticed, might consistently be construed as also indicatory of the 'Putriká-putra.' This term is used to denote a daughter, appointed to be a son, the one appointed to raise up issue, and the son of either.—Yájñavalkya declares the Putriká-putra to be equal to the real legitimate son,‡ and Manu propounds that there is no difference between a son and an appointed daughter, and a son's son, and the son of such daughter.§ Further, an equal division of the heritage is ordained between the Putriká-putra, and a real legitimate son subsequently born. It should be observed however, that Jímúta-Váhana denies that a daughter, appointed to raise issue, can acquire any superior right, unless she bear or be likely to bear a son.‖

NOTE II.

The 'son given' (Dattaka or Dattrima) *and 'son made'* (Kṛitrima or Kṛita) (p. 221)]. For the description of the 'son given' by Manu, see D. Ch. Sect. I. § 12. The same author thus describes the son made.—"He is considered as a son made, whom a man takes as his "own son, the boy being equal in class, endowed with filial virtues, "acquainted with the merit of performing obsequies to his father, "and the sin of omitting them."—Vijñáneçvara in the Mitákshará and Visveçwara in the Madana-parijáta intimate, that the son made should be an orphan.¶

NOTE III.

A son self-given, and a son rejected (p. 221)]. These are described by Manu (v. Translation by Sir William Jones, Ch. IX. verse 167. et seq.) The author of the Mitákshará and other writers provided that these sons should be of the same tribe.

NOTE IV.

A doubt might be entertained (p. 222)]. The expression 'aputra,'—destitute of male issue, occurring in the texts of Manu cited as authorities for adoption is explained as intending,—one whose son may have died, and one to whom no son may have been born.**—The first explanation obviously, and the second by implication may

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* A commentary on Parasara current, in Western and Northern India.

† Sect D. Ch. Sect. I. § 8.

‡ 2. 120. cited in Trans. of Mit. on Inh. Ch. I. Sect. XI.

§ 9. 130. 133.

‖ Consult generally Trans. of Dáya-bhága, Ch. X; and of Mit. on Inh. Ch. I. Sect. XI.

¶ v. Trans. of Mit. on Inh. Ch. I. Sect. XI. § 17. et note.

** v. D. M. Sect. I. § 3. 4. 9. and D. Ch. Sect. I. § 3. 4.

be construed as solely referring to the 'Gṛihí' or married man.—Again, Medhátiṭhi declares that the scriptural precept enjoining the production of a son must positively in some way be fulfilled by a person of the description noticed.* These however do not appear sufficient grounds to pronounce the illegality of an adoption made, generally by a man who may not have married(a) or still less, one whose wife may have died. In fact, the passage in question of Medhátiṭhi may be regarded as merely enjoining the more obligatory necessity for a married man, having no male issue to adopt a son. Jagannátha, in the Vivádа-bhangárnava or Digest, translated by Mr. Colebrooke expressly rejects as erroneous the doctrine which would restrict adoption to a man in the order of the Gṛihí.† It may be observed that as marriage is one of the last of the perfective rights, necessary to complete the regeneration of 'the twice-born,' celibacy is scarcely known amongst the Hindús.—The individuals excluded from inheritance are, "the impotent person, the outcast and his issue, one lame, a madman, an idiot, a blind man, a person afflicted with an incurable disease, and others similarly disqualified."—The admissibility of a doubt as to the legality of an adoption by such persons is suggested with reference to a passage in the Mitákshará, which declares, that the specific mention of 'the legitimate son' and 'son of the wife' in a text of Yájñavalkya, providing for the inheritance of such sons of disqualified persons, is intended to forbid the adoption by them of other sons.‡ The author of the Dattaka Chandriká likewise, arguing from the same or a parallel text that an adopted son is not ordained for disqualified persons, excludes such son of those persons from succeeding to the estate of the paternal grandfather.§ In the absence, however, of other authorities, those alluded to can hardly be admitted as sufficient to establish a general rule vitiating in toto, the adoption by one excluded from inheritance.—In fact, the author of the Dattaka Chandriká, without advancing such position, merely denies the right of one so adopted to inherit of his adoptive grandfather, and perhaps no more was intended by the author of the Mitákshará.

NOTE V.

Is incapable in his own right of adoption (p. 222)]. This position may be questioned, and does not appear to be a generally received rule. In the tract of country denominated Maithila, a custom prevails of the adoption by a widow of a Kṛitrima son, for the performance of her Sapiṇḍikaraṇa, or right of association with departed ancestors, the observance of which, on the eleventh day from her decease, exempts the other relatives who are unable to celebrate such ceremony from observing in her honour, (as they otherwise would have to do,) twelve monthly funeral repasts.—The practice is perhaps founded on, orjustified by, the following passage from the Dvaita-nirnaya of Váchaspati-miçra, an author of paramount authority in the 'Maithila' country—"Its pur-"pose is, for the man, that he may be excluded from the hell denomi-

* See D. M. Sect. I. § 60.
† v. Digest, Chap. IV. Sect. VIII.
‡ v. Trans. of Mit. on Inh. Ch. II. Sect. X. § 11.
§ D. Ch. Sect. VI
(a) See 1 Morl. Dig.

'put;' for the woman, that some one may exist, capable of per-
" forming her rite of Sapiṇḍana or association with departed ancestors.
" Should individuals, capable of promoting these objects exist, a son
" must not be adopted. Accordingly, from the resemblance to the
" condition of being parents of male issue; where, the son of a whole
" brother may exist, by a man, other persons,—and where the son of a
" rival wife may exist, by a female, sons made, and, so forth, must not
" be affiliated. To this doctrine conform Asahaya, Udaya-kára, the
" Kalpataru, the Parijáta, the Ratnákara and other works."—This passage sufficiently explains, why the custom in question is restricted to widows. A husband is capable of performing the Sapiṇḍana, or Sapiṇḍi-karaṇa, (for the terms are synonimous) for his deceased wife. On the same principle should the husband leave an adoptive son who would necessarily be filially related to his wife, the widow could not adopt a peculiar son for herself.—The son affiliated by a widow, according to the custom noticed, is not regarded as related in any way to her husband, and merely succeeds to her exclusive property.

NOTE VI.

Though it is admitted by his sanction, she may affiliate on the part of her husband (p. 222)]. On the subject of the adoption by a woman, this portion of a passage from Vasishṭha is usually cited. "Let not a woman either give or accept a son unless with the assent of her husband." Váchaspati-miçra, in another work, the Çráddha-Chintamani, maintains that the clause, " unless with the assent of her husband," refers only to the gift, and not the adoption of a son, a woman, as well as a Çúdra, from their inability to perform the sacrifice included in the prescribed ceremony, being both incapable of adopting a Dattaka or son given. In this opinion he is supported by Rudra-dára, the author of the Sudhi-Viveka, a work also current in Maithila. Both authors have perhaps, from their silence, left it doubtful, whether they allow the adoption of a Kṛitrima son, (at which no sacrifice is performed,) through the delegated agency of a wife or not: It would however be difficult to shew that such adoption were at variance with their express doctrines.—" This objection (says Mr. Colebrooke, in allusion
" to the opinion of Váchaspati-miçra, just mentioned) may be obviated,
" by admitting a substitute for the performance of that ceremony: and
" accordingly adoption by a woman, under authority from her husband,
" is allowed by writers of the other schools of law: Nanda Paṇḍita,
" however in his treatise on adoption, restricts this to the case of a
" woman, whose husband is living, since a widow can not, he observes,
" have her husband's sanction to the acceptance of a son. On the
" other hand, Bálam-bhaṭṭa,* contends that a woman's right of adopt-
" ing, as well as of giving a son is common to the widow and the
" wife. This is likewise the opinion of the author of the Vyavahára-
" Mayúkha: but while he admits that a widow may adopt a son with-
" out her husband's previous authority, he requires that she should
" have the express sanction of his kindred. Writers of the Gaura

* A commentator on the Mitákshará.

"school, on the contrary insist on a formal permission from the "husband declared in his life-time." It may be added that the author of the Viramitrodaya concurs in the opinion of the Vyavahára-Mayúkha just noticed.—Of these works, the former is more particularly current at Benares, and the latter among the Marahattas.* Nanda Paṇḍita has not omitted expressly to disallow the ability of kinsmen to authorize a widow to adopt.†

NOTE VII.

An only son (p. 224)]. Nanda Paṇḍita and the author of the Dattaka Chandriká, extend the prohibition to one of two brothers, and the author of the Mitákshará forbids the gift of the elder of many.‡

NOTE VIII.

Should assent or (being a minor) be given by a competent party (p. 224)]. The necessity of the assent of the object of a Kṛitrima adoption, to which the only parties are the adopter and adopted is obvious: and it would be highly unreasonable, could parents affect the rights of their adult son, by giving him away against his consent. —Texts of law indeed are not wanting, prohibiting generally the gift of a son against his will: but it seems a correct construction, that such texts merely refer to the adult son. A minor legally can have no will.

NOTE IX.

Some difficulty exists in extracting a consistent doctrine (p. 224)]. Bálam-bhaṭṭa,§ and other authors seem to imply the necessity of the assent of the mother if alive and capable to the gift by the father: and Jagannátha in the Digest, while he admits the validity of the adoption intimates the abillity of a son given without the assent of his mother, to perform her funeral rites. Nanda Paṇḍita,‖ Vijñáneçvara,¶ Váchaspati-miçra, Rudra-dhára, Chandeçvara and others, who admit the legality of the adoption of a son given without the assent of the mother by the father, seem to restrict the independent gift by a woman of her son to the case of the widow; and on the other hand, the author of the Dattaka Chandriká includes the cases wherein the husband may have emigrated or entered a religious order; and Bálam-bhaṭṭa provides, that the wife may give away her son without the consent of her husband, if the distress be urgent. A provision to this effect certainly appears consistent and reasonable. —In any case in which a question might arise, it would naturally rest with the court, assisted by Paṇḍits to determine what special

* Mr. Colebrooke in his Preface to the Daya-bhága, &c.
† D. M. Sect. I. § 18.
‡ v. Trans. on Inh. Ch. I. Sect. XI. § 12.
§ Trans. Mit. on Inh. Note to Ch. I. Sect. XI. § 9.
‖ D. M. Sect. IV. § 12. ¶ Trans. of Mit. on Inh. Ch. I. Sect. XI. § 9.

circumstances of distress or necessity would justify or validate the gift of her son by a mother without the father's consent. It may with some reason be inferred, that one adopted as a son given, under an invalid gift, who voluntarily remained as son to his adopter, might be regarded as a Kṛitrima son.

NOTE X.

Chiefly, if not solely prevails (p. 226)]. In a Note on Chap. 10. Sect. X. of the Digest, Mr. Colebrooke observes, that in Gaura or Bengal and most countries, other than Mithila sons are only adopted in the Dattaka form. The prevalence however of such practice should not vitiate a Kṛitrima adoption, unless indeed it appeared such mode were expressly prohibited by works on law of paramount local authority.

NOTE XI.

The doctrines of the Dattaka-Mímánsá *and* Dattaka-Chandriká (p. 226)]. The following appears to be that of Nanda Paṇḍita, from his elaborate and intricate gloss on the passage referred to, which is attributed to the Kálika-puráṇa.* The most preferable object for adoption is a child wholly uninitiated: his filial relation proceeds from the performance by the adopter of initiatory rites. Next in rank to him is one initiated as far as tonsure exclusive, for the performance of which, the period from the third to the fifth year is prescribed. Inferior as an object of adoption, is one, whose tonsure has been performed by his natural father, who, provided he be under six years of age may be adopted, and acquires filial relation to the adopter on the performance by that person of the different initiatory rites preceded by a sacrifice for male issue (putreshṭi). Such son, from his having been initiated in tonsure and other rites in both families is a Dvyámushyáyaṇa, or son of two fathers. It is to be observed, that Nanda Paṇḍita, in the abstruse gloss noticed, seems to have betrayed himself into an inconsistency. According to his explanation, if the boy proposed to be adopted have not been initiated in the rite of tonsure by his natural father, he cannot be adopted after having attained his fifth year: if however, he has been so initiated, he may be affiliated, (provided he be under six years of age,) a sacrifice and so forth being observed as already noticed.—The subjoined appears to be the substance of the doctrine in the Dattaka-Chandriká, resulting from the most abstruse part of the work.†—1st. The most preferable object for adoption is one, for whose upanayana rite, the prescribed principal season has not elapsed: the previous rites performed by the natural father are not to be renewed. Such son becomes filially related by the mere performance of the rite in question,—2d. Inferior as an object of adoption is one for the performance of the upanayana rite, on whom the principal season has elapsed. In the case of such adoption, the sacrifice for male issue must be observed, and the rites of tonsure and the rest be performed by the adopter on the adopted.

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* v. D. M. Sect. IV. § 22. and 54.

† v. D. Ch. Sect. II. § 20. and 33.

NOTE XII.

The most general and consistent rule which presents itself (p. 227)]. This is stated with reference to a text of Vasishṭha, and the supposed doctrine of the Dattaka-Chandriká detailed in the preceding note and founded on that text. This intimates, that the son given by initiation in the rite of upanayana, in the family of the adopter becomes a member of that family. Supposing the rule suggested to be accurate, it would remain to be determined, what circumstances would constitute a disqualification to the performance by the adopter of the rite in question on the adopted.—The author of the Dattaka-Chandriká has left it doubtful, whether in his opinion, the celebration of that rite by the natural father would be an insuperable bar to its re-performance by the adopter, and hence to adoption: or, in the same manner, as the rite of tonsure, it might be renewed by the adopter in his own family.—Another question would likewise arise, whether, even after the expiration of the secondary season for the celebration of the rite in question, as provided in the case of the natural father, the adopter by observing certain penances might not derive ability to perform the rite in question. A determination of these points in the present compilation could not without presumption be attempted. It may however be remarked, that it appears more reasonable to suppose, that the celebration in the family of his father, of so important a rite as the upanayana, or the expiration of the secondary period prescribed for the performance of that ceremony, should constitute an impediment to the adoption of a son given by precluding the capability of the rite referred to, being celebrated in the family and name of the adopter.

NOTE XIII.

They seem however agreed (p. 228)]. "The representation to "the king, and invitation of kinsmen, are for the sake of attestation, "and removing doubts as to the right of inheritance and not intended as any legal essential," (Rudra-dhara in the Sudhi-viveka). "'Having convened kinsmen'—This is for the sake of the succession "of the adopted son (dattaka)."—Vachaspati-miçra in the Çrád[illegible] Chintámani.—So also in the Vivádа-Ratna-kára of Chandeçvara.

NOTE XIV.

As referring exclusively to the son given (p. 228)]. In the forms propounded by Çaunaka and the rest, allusion is made in express terms to the son given; and that prescribed by Vasishṭha is directed after advertence to the sons given bought and deserted. Nanda Paṇḍita insists, that these forms refer to the other adopted sons as well as the son given;* and the general application of the latter form is intimated in the Mitákshará.† The author of the Sudh[illegible] however, as well as those of the Çráddha-Chintámani and

* See D. M. Sect. V. § 41. 50. &c.
† See trans. of Mit. on Inh. Chap. I. Sect. XI. § 15.

Ratna-kára introduce the form propounded by Vasishṭha head of the son given, as merely applicable to that description of son and Bálam-bhaṭṭa commenting on the passage of the Mitákshará referred to in the case of a Kṛitrima adoption, excepts the sacrifice or burnt offering directed in the text of Vasishṭha. It has been intimated, that the other parts are no legally essential portions of the form propounded by the author in question.

NOTE XV.

The adoption of a Kritrima son being, &c. (p. 228)]. The adoption of a Kṛitrima son is chiefly prevalent in the Maithila country; and is rarely practised in other parts of India.—"The practice (says Mr. "Colebrooke) of adopting sons given by their parents, was there "abolished by Çrí-Datta and Pratihasta, although the latter had been "himself adopted in that manner. Their motive was, lest a child "already registered in one family, being again registered in another, "a confusion of families and names should thence ensue. A son adopted in the form so briefly noticed in the present section, does not lose "his claim to his own family, nor assume the surname of his adoptive "father: he merely performs obsequies and takes the inheritance."* —The translator is informed that Çrí-Datta and Pratihasta have not abolished the practice noticed in their written works. A case of the nature alluded to had occurred: in consequence, a general assembly of Brahmans was held, at which the celebrated Paṇḍits mentioned presided, and it was there agreed, that for the future the practice of the Dattaka adoption should be discontinued. But though this mode of adoption does not accordingly now prevail in the Maithila country, unforbidden as it is by Váchaspati-miçra, and the best writers there current, it is not to be inferred, that if in any case preferred, such mode of affiliation would be illegal.

NOTE XVI.

Valid without the observance of any particular form (p. 228)], In treating on the Kṛitrima son, Rudra-dhára in the Sudhi-viveka adds. —"The form to be observed is this. At an auspicious time, the adopter of a son having bathed, addressing the person to be adopted "who has also bathed, and to whom he has given some acceptable "chattel, says, "Be my son." He replies. "I am become your son." "The giving some chattel to him, rises merely from custom. It is "not necessary to the adoption. The assent of both parties is the "only requisite; and a set form of speech is not essential."

NOTE XVII.

Kṛitrima son in some instances may, but in all need not, &c. . It would appear that the Kṛitrima son as usually affiliated in the Maithila country is not initiated in any rites in the family of

* Note to Chap. IV. Sect. X. of the Digest.

his adopter. That in some cases, such rites, might be
ed by the adopter may however be inferred.—1st. In the dubious passage of the Kálika-puráṇa, the performance of initiatory rites in the family of the adopter is declared to be necessary in the case of all adopted sons.—2d. If the complete induction of the adopted son, i the family of the adopter, be contemplated, the necessity of the vance of those rites, should apply as much to the one adoption as the other. Important distinctions would probably obtain, between Kṛitrima sons, who had or had not been initiated in the family of their adoptive fathers, as will be presently noticed.

NOTE XVIII.

The Kṛitrima in some instances may be invested with every filial right (p. 228)]. Consult the preceding two notes. The Kṛitrima son, as usually affiliated in the Maithila country would indeed take the estate of his adoptive father, but continues a member of the family of his natural father, and is not regarded as prolonging the line of his adopter.

NOTE XIX.

This rule would not apply to the Kṛitrima adopted son, &c. (p. 229)]. In respect to this rule, it may be first observed, that Bálambhaṭṭa provides generally, that the given son is competent to inherit the estate, and perform the obsequies of his natural father, should he have no other male issue.* The rule in question is founded on a text of Manu,† in which the son given only is mentioned. In the Mitákshára, it is incidentally stated that the mention of the given son in this text, is intended for any adopted son; but it by no means appears that, this is a generally received exposition and could only hold in certain cases, (if any such might occur,) where the adopted son, were an orphan, or tacitly relinquished by his parents, and solely and exclusively initiated in the name and family of the adopter. It would certainly be inconsistent with the principles of Hindu law, could the filial relation towards the father, without any act on his part be divested from the son. In the case of the Kṛitrima adopted son, as usually affiliated in Maithila, no doubt as to his retaining relation to the family of his natural father can exist.

NOTE XX.

But likewise lineally and collaterally (p. 229)]. This position, obviously resulting from adoption is supported by the Mitáksharâ‡. A doubt indeed with reference to passages in the Dattaka-Mimánsà §

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* v. Trans. of Mit. on Inh. Note to Ch. I. Sect. XI. § 32.
† Cited in D. M. Sect. VI. § 6.
‡ v. Trans. on Inh. Ch. I. Sect. XI. § 30, 31.
§ D. M. Sect. VI. § 32. et. sev.

and Dattaka-Chandriká* may be entertained, as to the accuracy of this position, as a general and unrestricted rule. It however appears, more reasonable, to construe those passages, as well as authorities,—on which they are founded, and which declare the relation of the adopted son as Sapiṇḍa, in the family of the adopter, to extend to three degrees only,—as referring merely to the oblation of the funeral cake, impurity on occasions of deaths and births, and disability of marriage in the family of the adopter. This in fact is intimated by Nanda Paṇḍita.†

NOTE XXI.

Would not apply to the Kṛitrima son as usually, (p. 229)]. In the Dvaita Nirnaya, Váchaspati-misra declares, that no relation obtains between the Kṛitrima adopted son and the father of the adopter. From which it is to be inferred, that such adopted son could not inherit of that person, and a fortiori from the collateral kinsman of the adopter. The same inference in fact results from the circumstance of the Kṛitrima son in question, not being considered as a member of his adopter's family.—It may however be concluded, that where the adopter might die in family-co-parcenery with his father and brethren, his Kṛitrima son would be entitled to receive on division his share.

NOTE XXII.

Receives a quarter share (p. 230)]. This rule is founded on texts of Vasishṭha and Kátyáyana.‡ The latter of which however is variously read. 'A third part' is substituted by some for the more prevalent reading, 'a fourth part:' the difference being adjusted with reference to the qualities of the claimants. It is not easy to determine at least satisfactorily the exact right conferred on the adopted son by the expression, 'chaturthánçá (a fourth part or quarter share). If it be contended, as it perhaps justly may, that by the expression in question, a specific share of the whole estate is assigned to the adopted son, a great inconsistency would result—Where, a division of heritage might take place between an adopted son, and several legitimate sons subsequently born, the share of the former would, in some instances exceed those of the latter. This objection might be obviated by adopting the exposition of Nanda Paṇḍita, who explains the terms referred to as signifying 'a quarter share; not an entire share'§ intimating probably thereby that the adopted son under the circumstances proposed should receive the fourth of the share which would be allotted to him, supposing him to be a real legitimate son. Thus, if 1,700 Rupees or Bíghas were to be distributed between one

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* D. C. Sect. III. § 18. 19. 20.
† D. M. Sect. VIII.
‡ Cited respectively in D. Ch. Sect. V. § 16. 17.
§ D. M. Sect. V. § 40.

adopted and four real legitimate sons subsequently born, the portion of the former would be 85, while each of the latter would take 403·75, or perhaps, the objection stated might be more satisfactorily obviated, by construing the expression, 'a fourth part or qu share,' to signify the fourth of the share received by a legitimat —Thus in the case supposed, the share of the adopted would be and those allotted to each of the legitimate sons 400.

FINIS.

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