A DIGEST OF HINDU LAW

ON

CONTRACTS AND SUCCESSIONS;

TRANSLATED FROM THE

ORIGINAL SANSCRIT.

BY H. T. COLEBROOKE, ESQ.

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TO THE MEMORY OF

SIR WILLIAM JONES,

AN ACCOMPLISHED SCHOLAR,

INCORRUPTIBLE MAGISTRATE,

AND SINCERE PATRIOT;

THIS TRANSLATION

OF A

DIGEST

COMPILED UNDER HIS SUPERINTENDENCE IS,

WITH GREAT VENERATION,

INSCRIBED BY

THE TRANSLATOR.

THE PREFACE.

THE motives for undertaking the compilation of a new Digeſt of Indian Law are ſo well unfolded in a letter addreſſed by the late Sir WILLIAM JONES to the Supreme Council of Bengal, that it will ſuffice to extract therefrom the ſentiments expreſſed by that venerable magiſtrate. It muſt ever be regretted, that the publick has loſt by his premature death, a tranſlation from his pen of a digeſt compiled under his direction, and an introductory diſcourſe for which he had prepared curious and ample materials.* The loſs is irreparable; for no other joins to a competent knowledge of oriental languages that legiſlative ſpirit and intimate acquaintance with the principles of juriſprudence, which he poſſeſſed in ſo eminent a degree.

" NOTHING," ſays Sir WILLIAM JONES in the addreſs alluded to, " could be more obviouſly juſt than to deter-
" mine private conteſts according to thoſe laws, which the
" parties themſelves had ever conſidered as the rules of their
" conduct and engagements in civil life; nor could any
" thing be wiſer than, by a legiſlative act, to aſſure the *Hindu*
" and *Muſelman* ſubjects of Great Britain, that the private

* See his laſt Anniverſary Diſcourſe as Preſident of the Aſiatick Society, Vol. 4, p. 176.

" laws, which they ſeverally hold ſacred, and a violation of
" which they would have thought the moſt grievous oppreſ-
" ſion, ſhould not be ſuperſeded by a new ſyſtem of which
" they could have no knowledge, and which they muſt have
" conſidered as impoſed on them by a ſpirit of rigour and in-
" tolerance. So far the principle of deciſion between the
" native parties in a cauſe appears perfectly clear; but the
" difficulty lies (as in moſt other caſes) in the application of
" the principle to practice; for the *Hindu* and *Muſelman* laws
" are locked up for the moſt part in two very difficult lan-
" guages, Sanſcrit and Arabick, which few Europeans will
" ever learn, becauſe neither of them leads to any advantage
" in worldly purſuits; and if we give judgment only from the
" opinions of the native lawyers and ſcholars, we can ne-
" ver be ſure that we have not been deceived by them. It
" would be abſurd and unjuſt to paſs an indiſcriminate
" cenſure on a conſiderable body of men; but my ex-
" perience juſtifies me in declaring, that I could not with an
" eaſy conſcience concur in a deciſion, merely on the written
" opinion of native lawyers, in any cauſe in which they could
" have the remoteſt intereſt in miſleading the court: nor,
" how vigilant ſoever we might be, would it be very diffi-
" cult for them to miſlead us; for a ſingle obſcure text, ex-
" plained by themſelves, might be quoted as expreſs autho-
" rity, though perhaps in the very book from which it was
" ſelected, it might be differently explained, or introduced
" only for the purpoſe of being exploded. The obvious
" remedy for this evil had occurred to me before I left
" England, where I had communicated my ſentiments to
" ſome friends in Parliament and on the bench in Weſt-
" minſter Hall, of whoſe diſcernment I had the higheſt opi-
" nion; and thoſe ſetiments I propoſe to unfold in this let-
" ter with as much brevity as the magnitude of the ſubject
" will admit. If we had a complete digeſt of *Hindu* and
" *Muhammedan* Laws, after the model of JUSTINIAN's ineſti-

" mable

" mable pandects, compiled by the moſt learned of the na-
" tive lawyers with an accurate verbal tranſlation of it into
" Engliſh, and if copies of the work were repoſited in the
" proper offices of the *Sedr Diwáni Adálat*, and of the Su-
" preme Court, that they might occaſionally be conſulted as
" a ſtandard of juſtice, we ſhould rarely be at a loſs for prin-
" ciples at leaſt and rules of law applicable to the caſes be-
" fore us, and ſhould never perhaps be led aſtray by the *Pan-*
" *dits* or *Maulavis*, who would hardly venture to impoſe on
" us, when their impoſition might ſo eaſily be detected. The
" great work, of which JUSTINIAN has the credit, conſiſts
" of texts collected from law books of approved authority
" which in his time were extant at Rome; and thoſe texts
" are digeſted according to a ſcientifical analyſis; the names
" of the original authors and the titles of their ſeveral books,
" being conſtantly cited with references even to the parts of
" their works, from which the different paſſages were ſelect-
" ed; but although it comprehends the whole ſyſtem of ju-
" riſprudence, publick, private and criminal, yet that vaſt
" compilation was finiſhed, we are told, in three years: it
" bears marks unqueſtionably of great precipitation, and of
" a deſire to gratify the Emperor by quickneſs of diſpatch;
" but with all its imperfections it is a moſt valuable mine of
" juridical knowledge. It gives law at this hour to the great-
" eſt part of Europe; and, though few Engliſh lawyers dare
" make ſuch an acknowledgment, it is the true ſource of
" nearly all our Engliſh laws, that are not of a feudal ori-
" gin. It would not be unworthy of a Britiſh government
" to give the natives of theſe Indian provinces a permanent
" ſecurity for the due adminiſtration of juſtice among them,
" ſimilar to that which JUSTINIAN gave to his Greek and
" Roman ſubjects; but our compilation would require far
" leſs labour and might be completed with far greater exact-
" neſs in as ſhort a time; ſince it would be confined to the
" laws of contracts and inheritances which are of the moſt

extenſive

" extenſive uſe in private life, and to which the legiſlature
" has limited the deciſions of the Supreme Court in cauſes
" between native parties: the labour of the work would alſo
" be greatly diminiſhed by two compilations already made
" in Sanſcrit and Arabick, which approach nearly in merit
" and in method, to the digeſt of JUSTINIAN. The firſt was
" compoſed a few centuries ago by a *Bráhmen* of this pro-
" vince, named RAGHUNANDANA and is comprized in twenty
" ſeven books at leaſt, on every branch of *Hindu* law: the
" ſecond, which the Arabs call the Indian deciſions, is known
" here by the title of *Fetáwíi Aálemgiri*, and was compiled, by
" the order of AURANGZIB, in five large volumes, of which
" I poſſeſs a perfect and well collated copy. To tranſlate
" theſe immenſe works would be ſuperfluous labour; but
" they will greatly facilitate the compilation of a digeſt on
" the laws of inheritance and contracts; and the code, as it
" is called, of *Hindu* law which was compiled at the requeſt
" of Mr. HASTINGS, will be uſeful for the ſame purpoſe,
" though it by no means obviates the difficulties before ſtated,
" nor ſuperſedes the neceſſity, or the expedience at leaſt, of
" a more ample repoſitory of *Hindu* laws, eſpecially on the
" twelve different contracts, to which ULPIAN has given ſpe-
" cifick names; and on all the others, which, though not ſpeci-
" fically named, are reducible to four general heads. The laſt
" mentioned work is entiled *Vivádárnava Sétu*, and conſiſts,
" like the Roman digeſt, of authentick texts with the names
" of their ſeveral authors regularly prefixed to them and ex-
" plained, where an explanation is requiſite, in ſhort notes ta-
" ken from commentaries of high authority: it is as far as it
" goes a very excellent work; but though it appear extreme-
" ly diffuſe on ſubjects rather curious than uſeful, and though
" the chapter on inheritances be copious and exact, yet the
" other important branch of juriſprudence, the law of con-
" tracts, is very ſuccinctly and ſuperficially diſcuſſed and
" bears an inconſiderable proportion to the reſt of the work.

" But

" But whatever be the merit of the original, the tranſlation of " it has no authority, and is of no other uſe then 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 *Sanſcrit*, " 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." *

BESIDES the great work of RAGHUNANDANA abovementioned, many other digeſts have been compiled by *Hindu* lawyers; which, like his, conſiſt of texts collected from the inſtitutes attributed to ancient legiſlators, with a gloſs explanatory of the ſenſe and reconciling ſeeming contradictions, to fulfil the precept of their great lawgiver, " when there are " two ſacred texts apparently inconſiſtent, both are held to " be law; for both are pronounced by the wiſe to be valid " and reconcileable." † From various digeſts, and from commentaries on the inſtitutes of law, the preſent digeſt has been compiled; and the venerable author, JAGANNA'T'HA, has added a copious commentary, ſometimes indeed purſuing frivolous diſquiſitions, but always fully explaining the various interpretations, of which the text is ſubſceptible. In reſtricting this compilation to the law of contracts and ſucceſſions, he 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 topicks, which

* The letter, from which this extract is taken, is dated 19th March 1788. On the ſame date the then Governor General, MARQUIS CORNWALLIS, with the concurrence of the Members of Council, accepted the offer in terms honourable to the propoſer and expreſſive of the moſt liberal ſentiments. " The object of your propoſition," they ſay, " being to promote a due adminiſtra- " tion of juſtice, it becomes intereſting to humanity; and it is deſerving of our peculiar attention, " as being intended to increaſe and ſecure the happineſs of the numerous ſubjects of the Com- " pany's provinces."

† MENU, Chapter II, v. 41.

ſhould be likewiſe treated for the purpoſe of aſſiſting courts of civil judicature in deciding private conteſts according to the laws, which the *Hindu* ſubjects of Great Britain hold ſacred. The body of Indian law compriſes a ſyſtem of duties religious and civil. Separating the topick of religious duties, and omitting ethical ſubjects, *Hindu* lawyers have conſidered civil duties under the diſtinct heads of private conteſts and forenſick practice; the firſt comprehends law private and criminal; the laſt includes the forms of judicial procedure, rules of pleading, law of evidence written and oral, adverſe titles, oaths, and ordeal. The tranſlation of MENU has ſufficiently made known the criminal law of the *Hindus*, which is now ſuperſeded by the *Muhammedan* ſyſtem: but another head of private conteſts, in which, under the name of diſputes concerning boundaries, the rights of huſbandmen are examined, contains matter both curious and uſeful; practical law, eſpecially the ſyſtem of evidence, muſt be ſometimes conſulted in the provincial courts, which are not governed by Engliſh law; and the rules of ſpecial pleading have been pronounced excellent by one, whoſe opinion has great weight. *

THE *D'herma Sáſtra*, or ſacred code of law, compriſing all the ſubjects abovementioned, is called *Smriti*, what was remembered, in contradiſtinction to *Sruti*, what was heard. By theſe names it is ſignified, that the *Véda* has preſerved the words of revelation, while the ſyſtem of law records the ſenſe expreſſed in other words. It has been promulgated by thirty ſix ancient ſages, who are named in three verſes of the *Padma purána;* YA'JNYAWALCYA however, mentions no more than twenty: on the other hand ſages are cited in law tracts, whoſe names do not appear in either liſt. Treatiſes, attributed to theſe ancient philoſophers, are extant, which internal evidence proves to be ancient, though probably compoſed

* Sir WILLIAM JONES, in a manuſcript note.

by

by other perſons, as the *Puránas*, written by many different authors, are all aſcribed to VYA'SA; for the dramatic form, which has been given to moſt of thoſe tracts, and the uſe of the third perſon, when the reputed author is named in his code, extort a confeſſion from commentators, that the inſtitutes muſt have been compoſed by pupils from the recollection of precepts delivered by their holy inſtructor. Without examining whether the authenticity of codes now extant be thus ſufficiently eſtabliſhed, the *Hindus* revere thoſe inſtitutes as containing a ſyſtem of ſacred law confirmed by the *Véda* itſelf in a text thus tranſlated by Sir WILLIAM JONES according to the gloſs of SANCARA; "GOD, having created the four claſſes, had not yet completed his work; but in addition to it, leſt the royal and military claſs ſhould become inſupportable through their power and ferocity, he produced the tranſcendent body of law; ſince law is the king of kings, far more powerful and rigid than they: nothing can be mightier than law, by whoſe aid, as by that of the higheſt monarch, even the weak may prevail over the ſtrong."

CONCERNING the birth and actions of the legiſlators we know little more than what is recorded in the *Puránas;* and the whole of what is there recorded, belongs either to heroick hiſtory or to mythology. Such topicks would be here miſplaced: but a ſhort notice of the inſtitutes, commentaries, and digeſts, which have been uſed by the compiler, may be fitly ſubjoined to introduce to the reader's acquaintance the authorities cited in the work.

THE laws of MENU, who is revered by *Hindus* as the firſt of legiſlators, have already appeared in the Engliſh language. Among the numerous commentators on his inſtitutes, the moſt eſteemed have been noticed in the preface to the tranſlation of his work; namely a commentary by ME'D'HA'TIT'HI ſon of BI'RASWA'MI BHAT'T'A, which, having been partly loſt, has

has been completed by other hands at the court of MADANA PA'LA, a prince of *Díg'h*; another commentary by GOVINDA RA'JA; a third by D'HARANID'HERA; and the celebrated gloſs of CULLU'CA BHATTA. The commentary called *Menwart'ha Muctávalí* and ſome others are occaſionally quoted in this digeſt.

ATRI, not named among legiſlators in the *Padma puráṇa*, is ſecond in the liſt of YA'JNYAWALCYA: he is one of the ten Lords of created beings,* and father of DATTA'TREYA, DURVA'SAS and SO'MA: a perſpicuous treatiſe in verſe, attributed to him, is extant. VISHN'U, not the Indian divinity, but an ancient philoſopher who bore this name, is reputed author of an excellent law treatiſe in verſe; and HA'RÍTA is cited as the author of a treatiſe in proſe: metrical abridgements of both works are alſo extant.

YA'JNYAWALCYA, grandſon of VISWA'MITRA, is deſcribed in the introduction of his own inſtitutes as delivering his precepts to an audience of ancient philoſophers aſſembled in the province of *Mit'hilá*. Theſe inſtitutes have been arranged in three chapters containing one thouſand and twenty three couplets. An excellent commentary, entitled *Mitácſharà*, was compoſed by VIJNYANE'S'WARA, a hermit, who cites other legiſlators in the progreſs of his work, and expounds their texts as well as thoſe of his author, thus compoſing a treatiſe, which may ſupply the place of a regular digeſt: it is ſo uſed in the province of *Benares*, where it is preferred to other law tracts; but ſome of his opinions have been ſucceſsfully controverted by late writers. Following the arrangement of his author, he has divided his work into three parts: the firſt treats of duties; the ſecond, of private conteſts and adminiſtrative law: the third, of purification, the orders of devotion, penance and ſo forth. Another com-

* MENU, Chapter I, v. 35.

mentary

mentary on YA'JNYAWALCYA by DE'VABO'D'HA, and one by VISWARU'PA, are occaſionally cited. The *Dípacalicá* by SU'LAPA'N'I, which is likewiſe a commentary on YA'JNYAWALCYA, is in deſerved repute with the *Gauríya* ſchool.

US'ANAS is another name of SUCRA, the regent of the planet Venus: he was grandſon of BHRĬGU: his inſtitutes in verſe, with an abridgement, are extant; as is a ſhort treatiſe containing about ſeventy couplets aſcribed to ANGIRAS, who holds a place among the ten lords of created beings, and according to the *Bhágavata* became father of UTAT'HYA and of VRĬHASPATI in the reign of the ſecond MENU. A ſhort tract containing a hundred couplets is attributed to YAMA, brother of the ſeventh MENU and ruler of the world below: CULLU'CA BHAT'T'A wrote a gloſs on his inſtitutes. APASTAMBA was author of a work in proſe, which is extant with an abridgement in verſe: but the metrical abridgement only of the inſtitutes of SAMVERTA is among the tracts which were collected for the preſent compilation. CA'TYA'YANA is author of a clear and full treatiſe on law, and alſo wrote on grammar and on other ſubjects. VRĬHASPATI, regent of the planet Jupiter, has a place among legiſlators; he was ſon of ANGIRAS according to one legend, but ſon of DE'VALA according to another: the abridgement of his inſtitutes, if not the code at large, is extant. PARA'SARA, grandſon of VAS'ISHT'HA, is termed the higheſt authority for the fourth age: a work attributed to him is extant, with a commentary by MA'DHAVA'CHA'RYA. VYA'SA, ſon of PARA'SARA is reputed author of the *Puránas*, which, with ſome works more immediately connected with law, are often cited in his name. SANC'HA and LIC'HITA are the authors of a joint work in proſe, which has been abridged in verſe: their ſeparate tracts in verſe are alſo extant. Heroick hiſtory notices two perſonages of the name of DACSHA; one ſon of BRAHMA', the other ſon of PRACHE'TAS: a ſimilar legend on the marriage of

their daughters, and which is evidently allegorical, is told of both: it does not appear certain which of them is the legiſlator; however, a law treatiſe in verſe is dignified with this name. GAUTAMA, ſon of the celebrated founder of a rational ſyſtem of metaphyſicks and logick, is named in every liſt of legiſlators, although texts are cited in the name of his father GO'TAMA, the ſon of UTAT'HYA: an elegant treatiſe in proſe is aſcribed to GAUTAMA. S'A'TA'TAPA is author of a treatiſe on penance and expiation, of which an abridgement in verſe is extant. VAS'ISHT'HA, the preceptor of the inferiour gods, and one of the lords of created beings, is the laſt of twenty legiſlators named by YA'JNYAWALCYA: his elegant work in proſe mixed with verſe is extant.

IN the *Padma purána* the number of thirty ſix legiſlators is completed by the following names; MARI'CHI, the father of CAS'YAPA; PULASTYA, father of AGASTYA; PRACHE'TAS, ſon of PRA'CHI'NAVARHISHA by a daughter of the ocean, and father of DACSHA; BHRĬGU, ſon of MENU; NA'REDA, begotten by BRAHMA', and again by CAS'YAPA, on the wife of DACSHA; CAS'YAPA, ſon of MARI'CHI; VISWA'MITRA, a ſage among military men, who became a *Bráhmana* through his devotion; DE'VALA, ſon of VISWA'MITRA, and grandfather of the celebrated grammarian PA'N'INI, but according to another legend great grandſon of DACSHA; RĬSHYAS'RĬNGA, ſon of VIBHA'NDACA by a miraculous birth from a doe; GA'RGYA the aſtronomer; BAUD'HA'YANA, who is frequently cited by lawyers; PAIT'HI'NASI, who is alſo cited in this digeſt; JA'BA'LI, SUMANTU, PARA'SCARA, LO'CA'CSHI and CUT'HUMI, whoſe names rarely occur in any compilation of law.

BESIDES theſe legiſlators, DHAUMYA, the prieſt of the *Pándavas* and author of a commentary on the *Yajurvéda*, A'S'WALA'YANA, who wrote on the detail of religious acts and ceremonies,

monies, and DATTA, the ſon of ATRI, are cited in this compilation; and BHA'GURI is quoted for a gloſs on the inſtitutes of MENU.

THE *Rámáyana* of VA'LMICI, the earlieſt epick poem, is cited as nearly equal in authority with the poems on mythology and heroick hiſtory, which are aſcribed to VYA'SA. For the purpoſe of elucidation the compiler ſometimes quotes metaphyſical rules, and ethical maxims; and with particular veneration, the ſublime works of UDAYANA'CHA'RYA; the reviver of the rational ſyſtem of philoſophy. For the ſame purpoſe he has made ſome uſe of the dramas and epick poem of CA'LIDA'SA, and lyrick poetry of JAYADE'VA. The treatiſes and commentaries of lawyers, which have been conſulted by the compiler, are numerous.

THE *Ch'handóga pariśisht'a* by CE'SAVA MIS'RA a celebrated philoſopher, and its commentary named *Pariśisht'a pracáśa*, are works of great authority; they treat of the duties of prieſts, eſpecially thoſe who are guided in their religious ceremonies by the *Sámavéda*. A more general treatiſe entitled *Dwaita pariśisht'a* is the work of the ſame author, a native of *Mit'hilá*. The *Viváda Retnácara*, a digeſt highly eſteemed by the lawyers of *Mit'hilá* or *Tírabhudi*, was compiled under the ſuperintendence of CHAN'DE'S'WARA, miniſter of HARASINHA DE'VA king of *Mit'hilá*. CHAN'DE'S'WARA is reputed author of other tracts. The *Viváda Chintámeni*, *Vyavahára Chintámeni*, and other works of VA'CHESPATI MISRA, are alſo in high repute among the lawyers of *Mit'hilá*. No more than ten or twelve generations have paſt ſince he flouriſhed at *Semaul* in *Tirhút*. The *Viváda Chandra* and other works compoſed by LAC'HIMA' DE'VI' are likewiſe much reſpected in the *Maithila* ſchool. This learned female ſet the name of her nephew MISARU MISRA to all her compoſitions on law and philoſophy, and took the titles of her work from the then reigning prince CHAN-

CHANDRASINHA grandſon of HARASINHA DE'VA. The *Vivāda Chandra* is never cited by name in the new digeſt; although it has been frequently copied in the anonymous commentary.

THE *Vyavahára-tatwa*, *Dáyatatwa*, and other works of RAGHUNANDANA *Bandyaghaṭíya* are highly reſpected by the *Gauríya* ſchool. This great lawyer is frequently cited by the title of *Smárta-bhaṭṭáchárya*, as VA'CHESPATI MIS'RA is diſtinguiſhed by his family name of MIS'RA. The *Dwaita nirnaya* of VA'CHESPATI BHAṬṬA'CHA'RYA, a treatiſe on queſtions of law, is often quoted by the compiler of the new digeſt, who has only once named him: in every other inſtance he cites him by the appellation of "my venerable grandfather." In alluſion to the ſimilarity of their names, this lawyer adopted a title for his work from a ſimilar treatiſe by VA'CHESPATI MIS'RA. The compiler of the new digeſt alſo quotes his maternal grandfather's brother by the appellation of "modern VA'CHESPATI."

JI'MU'TA VA'HANA, who gave his name to a digeſt entitled *D'harma retna*, is ſaid to have reigned on the throne of SA'LIVA'HANA. HE is probably the ſame with the ſon of JI'MU'TA CE'TU, a prince of the race of *Silára*, who reigned at *Tagara*. * The chapter on inheritance is extant, with a commentary by S'RI' CRI'SHN'A TERCA'LANCA'RA, a modern writer of no great authority, who belongs to the *Gauríya* ſchool and is often cited.

HELA'YUD'HA, the ſpiritual adviſer of LACSHMANA SE'NA (a renowned monarch, who gave his name to an era of which ſix hundred and ninety two years are expired), is the author of the *Nyáyá servaswa*, *Bráhmana servaswa*, *Pandita servaswa*, and many other tracts on the adminiſtration of juſtice and on the duties of claſſes and profeſſions. He was

* Aſiatick Reſearches, Vol. I. p. 357 and 361.

ſon

ſon of D'HANANJAYA the celebrated lexicographer; and his brothers PAS'UPATI and IS'A'N'A are authors of rituals; the firſt for obſequies &c; the ſecond for daily acts of religion.

LACSHMI'D'HARA compoſed a treatiſe on adminiſtrative juſtice by command of GO'VINDA CHANDRA a king of *Cá'ſi*, ſprung from the *Váſtava* race of *Cáyaſt'has*. He is likewiſe author of a digeſt entitled *Calpateru*, which is often cited. By command of the ſame prince, NARASINHA, ſon of RA'MACHANDRA the grammarian and philoſopher, compoſed a law-tract entitled *Góvindárnava*, and ſeveral other treatiſes.

S'RI' CARA'CHA'RYA and his ſon S'RI'NA'T'HA'CHA'RYA CHUR'A'MEN'I were both celebrated lawyers of the *Mait'hila* ſchool. The firſt wrote a treatiſe on inheritances; the laſt is author of a tract on the duties of the fourth claſs, which is entitled *Achárya chandricá*. I have not ſeen the other works of theſe authors.

THE *Smr'itiſára*, or at full length *Smr'ityart'haſára*, by S'RI'D'HARA'CHA'RYA a prieſt of the *Drávir* tribe, is a treatiſe on religious duties, in which queſtions of civil duty are incidentally introduced. He cites the *Cámad'hénu* a law tract ſaid to be a gloſs on MENU; but which, not having ſeen the book, I cannot affirm. The *Pradípa*, *Calpadruma* and *Calpalatá*, works of which I can give no other notices, are cited in the *Smr'itiſára*.

THE *Madana párijáta*, on civil duties, is the work of VIS'WE'S'WARABHAT'T'A and derives its name from MADANA PA'LA, a prince of the *Ját* race, who reigned at *Cáſht'hanagar* or *Dígh*. This work, which is ſometimes quoted in the name of MADANA PA'LA himſelf, cites among other authorities the *Sáparárca* and *Smr'itichandricá*, which do not appear to be otherwiſe known, and the *Hémádri*, which is occaſionally quoted in the new digeſt.

S'ULAPA'N'I, a native of *Mit'hilá*, who reſided at *Sahuríá* in Bengal, wrote a treatiſe on penance and expiation, which is in great repute with both ſchools. His commentary on YA'JNYAWALCYA, entitled *Dípacalicá*, has been already noticed. BHAVADE'VA BHAT'T'A, alſo called BALABALABHI BHUJANGA, was author of ſeveral treatiſes on religious duties. Theſe, with the rituals of the ſame author, are much conſulted in Bengal and in the ſouthern provinces of India. JITE'NDRIYA is often cited in the *Mitácſharà*, and ſometimes in the new digeſt. GO'YI'CHANDRA, GRAHE'S'WARA, D'HA'RE'SWARA, BALARU'PA, HARIHARA, MURA'RI MIS'RA and many others have been occaſionally conſulted.

AMONG modern digeſts the moſt remarkable are the *Vivádárnava sétu* compiled by order of Mr. HASTINGS; the *Viváda sárárnava* compiled, at the requeſt of Sir WILLIAM JONES, by SERVO'RU TRIVE'DI' a lawyer of *Mit'hilá*; and the *Viváda bhangárnava* by JAGANNA'T'HA, which is now tranſlated.

ON this tranſlation I ſhall briefly obſerve, that the verſion of many texts come from the pen of Sir WILLIAM JONES; for moſt of the laws quoted from MENU are found in his tranſlation of the *Mánava d'herma ś'áſtra*, and other texts had been already tranſlated by him when peruſing the original digeſt formerly compiled by order of Mr. HASTINGS. It has become my part to complete a tranſlation of the new digeſt of *Indian* law. Selected for this duty by Sir JOHN SHORE, whoſe attention extended to promote the happineſs of the native inhabitants of the provinces which he governs, and to encourage the labours of the literary ſociety over which he preſides, is no leſs conſpicuous than his ſucceſsful adminiſtration of the Britiſh intereſts in India, I have cheerfully devoted my utmoſt endeavours to deſerve the choice, by which I was honoured: nothing, which diligence could effect, has been

been omitted to render the tranſlation ſcrupulouſly faithful; and to this it has been frequently neceſſary to ſacrifice perſpicuous diction. The reader, while he cenſures this and other defects of a work executed in the midſt of official avocations, will candidly conſider the obvious difficulties of the undertaking. Should it appear to him, that much of the commentary might have been omitted without injury to the context, or that a better arrangement would have rendered the whole more perſpicuous, he will remember, that the tranſlator could uſe no freedom with the text but undertook a verbal tranſlation of it; what has been inſerted to make this intelligible, is diſtinguiſhed by italicks, as was practiſed by Sir WILLIAM JONES in his verſion of MENU and of the *Sirájiyyah*: in very few inſtances has any greater liberty been taken, except grammatical explanations and etymologies, which are ſometimes though rarely omitted, or abridged, where a literal verſion would have been wholly unintelligible to the Engliſh reader. In the orthography of *Sanſcrit* words, the ſyſtem adopted by Sir WILLIAM JONES has been followed. To obviate the neceſſity of referring to the firſt volume of the Aſiatick Reſearches, where that ſyſtem was propoſed, an explanatory note is ſubjoined. This, with an index, and a few ſcattered annotations, which have been added, may prove ſufficient to aſſiſt the occaſional peruſal of a work intended to diſſeminate a knowledge of Indian law, and, ſerving as a ſtandard for the adminiſtration of juſtice among the *Hindu* ſubjects of *Great Britain*, to advance the happineſs of a numerous people.

H. T. COLEBROOKE.

MIRZAPOOR,
17*th December*, 1796.

NOTE

ON THE ORTHOGRAPHY OF

SANSCRIT WORDS.

TO obviate the neceſſity of a reference to the firſt volume of the Aſiatick Reſearches where the ſyſtem of orthography, which is here followed, was firſt propoſed, I ſubjoin the pronunciation of the letters.

A, E: pronounced, as *u* in *ſun*, as *i* in *ſir*, as *e* in *her*. When final it has a very obſcure ſound like the *e muet* of the French. The Bengaleſe pronounce this letter as a ſhort *o*.

ˋA: as *a* in *call*.

I: as *i* in *fit*.

I′: as *i* in *machine*, and as *ee* in *ſee*.

U: as *u* in *pull*.

U′: as *oo* in *pool*.

Rĭ: nearly as *ri* in *trip*: more exactly as *ri* in *merrily*.

Rī: nearly as *ree* in *tree*.

Lrĭ: nearly as *lry* in *revelry*. In Bengal this letter expreſſes both ſyllables of the word *lily*.

Lrī: the ſame prolonged.

E′: as the firſt *e* in *there*, and as *ei* in *heir*.

O′: as *o* in *go*.

Ai: as *i* in *file*. In Bengal it is pronounced like the Greek dipthong in *poimén*, a ſhepherd.

Au: as *ou* in *thou*.

N & M repreſent the naſal ſemivowel, which is an abbreviation of the naſal conſonants at the end of a ſyllable; ſometimes pronounced gutturally, ſometimes labially. Its ſounds are familiar to the French tongue.

H: repreſents the aſpirate ſemivowel, an abbreviation or ſubſtitute, at the cloſe of a ſyllable, for the ſtrong aſpirate. It gives intenſity to the ſound of the preceding vowel. The ſhort vowels *a* and *i* and ſometimes *u*, when final, are ſcarcely perceptible unleſs followed by this element.

C: as *c* in *cauſe*, and as *k* in *kill* and *ken*. Uſed before *e* and *i*, it has not the ſound of *s* but of *k*.

C'h: nearly as *ch* in *choler*, *chiromancy* &c. *Cachexy* perhaps furniſhes a better example of this ſound.

G: as *g* in *gain*.

G'h: nearly as *g-h* in *log-houſe*.

Ṅ: as *ng* in *ſing*. It has the ſound, which we alſo give to naſals preceding guttural letters, as *ink*, *bank* &c.

Ch: as *ch* in *church*.

Ch'h: nearly as *ch-h* in *much harm; rich heir* &c. if no pauſe be made in pronouncing theſe words.

J: as *j* in *joy*.

J'h: nearly as *dge-h* in *Edge-hill*.

Ny: a peculiar naſal, pronounced before vowels nearly as *ni* in *pannier* or in *onion*. Before a conſonant it varies little from the ſound of the naſal in *ſinge*. I therefore write it in ſuch inſtances with a ſingle N. The conjunct *jny* is pronounced in the eaſtern provinces as *gy* or as *g*.

T́, T́'h, D́, D́'h: the ſounds of theſe cerebral letters can only be learned by practice; they are often confounded in pronunciation with a harſh *r*, or with an *l*.

Ń: a peculiar naſal ſounded high in the roof of the mouth.

T: as *t* in *tin* and *ten*.

T'h: nearly as *t-h* in *hit him*, *white hall* &c.

D: as *d* in *deal*.

D'h: nearly as *d-h* in *red hair*.

N: as *n* in *noble*.

P: as *p* in *pen*.

P'h: ſometimes pronounced as *ph* in *philanthropy;* more generally as in *ſhepherd*, *haphazard* &c.

B: as *b* in *bell.*

B'h: as *b-h* in *abhor.*

M: as *m* in *man.*

Y: as *y* in *yet;* in the eaſtern provinces it is pronounced as *j.*

R: as *r* in *run.*

L: as *l* in *lull.*

V, W: as *v* in *valve;* ſometimes as *w* in *wind.* In the eaſtern provinces it is confounded with *b.*

S′: a peculiar ſibillant, differing from our *s* which is dental, as it is ſounded higher on the palate. It is ſometimes pronounced like *ſh.*

Sh: as *ſh* in *ſhip,* but often pronounced as *c'h* or rather as the Greek *χ.*

S: as *s* in *ſin.*

H: the ſtrong breathing, or aſpirate; as *h* in *hair.* The conjunct *hy* is pronounced in the eaſtern provinces like *hj* confounded by the ear with *ſj* or *zj:* I cannot well mark this peculiar ſound.

Cſh: a compound letter pronounced as *cti* in *fiction;* but by ſome it is ſounded like *ch,* by others like *c'h.*

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* The original work is divided into Books and Chapters denominated *dwîpas* and *ratnas*, iſlands and gems, in alluſion to the title of the book. The chapters *(ratna)* are generally ſubdivided; ſometimes, however, two or more chapters belong to the ſame ſubject. I have taken no other freedom with the arrangement, than naming theſe *ratnas*, either chapters or ſections, according as the ſubject required. By this alteration nine *ratnas* of the firſt book are reduced to ſix chapters. The four laſt *ratnas* being chapters, whilſt the firſt five are ſections, which I have placed in two chapters.

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PART I.

CONTRACTS.

PREFACE OF THE COMPILER.

HAVING *saluted the ruler of gods, the lord of beings, and the king of dangers, lord of divine claſſes, the daughter of the king of mountains, the venerable ſages, and the reverend authors of books, I,* JAGANNA'THA, *ſon of* RUDRA, *by command of the protectors of the land, compile this book,*

2. *Entitled the ſea of controverſial waves, perſpicuous, diffuſive, with its iſlands and gems, pleaſing to the princes and the learned.*

3. WHAT *is my intellect, compared with the ſacred code? A feeble bark on a perilous ocean. The favour of the ſupreme ruler is my ſole refuge in traverſing that ocean with this feeble veſſel.*

4. THE *learned* RA'DHA'CA'NTA, GURUPRESHA'DA *of firm and ſpotleſs mind,* RA'MAMO'HANA, RA'MANID'HI, GHANAS'YA'MA, *and* GANGA'DHARA, *a league of aſſiduous pupils, muſt effect the completion of this work, which ſhall gratify the minds of princes: of this I have unqueſtioned certainty.*

5. EMBARKING *on ſhips, often do men undaunted traverſe the perilous deep, aided by long cables, and impelled by propitious gales.*

6. HAVING

6. HAVING *viewed the title of loans and the reſt as promulged by wiſe legiſlators in codes of law, and as expounded by former intelligent authors,*

7. *And having meditated their obſcure paſſages, with the leſſons of venerable teachers, the whole is now delivered by me.*

BOOK I.

ON LOANS AND PAYMENT.

CHAPTER I.

ON LOANS.

SECTION I.

ON LOANS IN GENERAL.

I.

NÁREDA:—WHAT may, or may not, be lent, by whom, to whom, and in what form, with the rules for delivery and receipt, are held *comprised under the title of* loans delivered *(rĭnádána)*.

"BY whom," as a creditor, a loan may be delivered or advanced; namely by a mercantile man and the like. "To whom," as a debtor; meaning to other persons than women and the rest. "In what form;" with a pledge previously taken and so forth. "What may be lent;" the excess above that, which ought to be appropriated to the support of the family and the like. All that *is comprised under the title of loans delivered.*

AGAIN: "by whom," as a creditor, *a loan* ought not to be delivered or advanced; namely by a priest or the like not subsisting by his own *regular* livelihood. "To whom," as debtors; to women and the rest. "In what form;" meaning clandestinely. "What may not be lent;" that, which only suffices for the support of the family and the like. All that *is comprised under the same title.*

AGAIN: "by whom" a debt should be delivered or paid; namely by the debtor. "To whom;" to the creditor *himself*, not through his wife or the

like.

like. "In what form;" with a writing previouſly executed and ſo forth. "What ſhould be paid;" a debt contracted by *the party* himſelf and the like. All that *is compriſed under the preſent title.*

AGAIN: "by whom" a debt need not be paid; by the great grandſon of the debtor or his remoter deſcendant. "To whom" *it ſhould not be paid;* to the wife of the creditor and the like. "In what form;" clandeſtinely. "What" *ſhould not be paid away;* the excluſive property of the wife and ſo forth. All that *is compriſed under the preſent title.*

"THE rules for delivery" *by the creditor;* the rules for advancing a loan on intereſt; namely, what ſort of intereſt may be taken without a breach of duty on the part of the creditor. "And *the rules* for receipt;" the rules for receipt by the creditor at the period of liquidation: thoſe *rules* are the modes of recovery conſonant to moral duty and the reſt. "The rules for delivery" by the debtor; the rules to be propounded for the diſcharge of debts, ſuch as payment on demand or the like. "The rules for receipt;" the delivery of ſtipulated intereſt and ſo forth. All theſe titles of forenſick conteſt are compriſed under the title of loans and payment: the particulars will be delivered under their reſpective heads; a little has been mentioned curſorily in this place, to explain the import of the text.

ON the reading preferred by BHAVADĒVA and others, *yathá bhavét* inſtead of *yat'hdchayat, the ſenſe is ſimilar:* the loan, which may be advanced, is comprehended under the title of loan and payment; this forms one member of the ſentence. So ſuch loans, as may not be made, and ſo forth, *are alſo compriſed under the ſame title:* and the terms loan and debt may be underſtood in the ſecondary ſenſe *of a loan not actually advanced, or a debt not actually contracted.*

ACCORDING to the *Mitácſharà*, the title of loan and payment is ſeven fold; five fold in reſpect of the debtor, and two fold in reſpect of the creditor; namely, *in reſpect of the laſt*, the rule for delivery and the rule for receipt. This will be ſubſequently explained *.

* See Chapter V. on payment of debts.

BUT

BUT the etymology of the term *ṛiṅádána* is this; "the complete delivery *(àdàna)* of a loan or debt *(ṛiṅa)*, by whom, where, and to whom *made:*" an appoſition in the form called *bahubríhi*. By the term, "complete delivery," *both* the advance and repayment are expreſſed. But, if the thing lent be underſtood, according to the rule, that "neuter derivatives from active words are ſimilar to nouns denoting ſubſtance," the word *ṛiṅádána* only ſignifies "a loan or debt *(ṛiṅa)* completely delivered *(àdíyamána)*;" being derived in the form of appoſition called *carmad'háraya*. Yet it may be alſo underſtood in the ſenſe reſulting from appoſition in the form called *bahubríhi*, "the complete delivery of a loan or debt, by whom, or in what place made." The application of ſeveral ſenſes to a wordly phraſe, through the ambiguity of terms, is unexceptionable: it is accordingly ſaid, that, "in wordly matters, there is no objection to diſtinguiſh a phraſe according to the diſtinction of inferible meaning:" and theſe, though words of a holy ſage, are ſecular; for they are unconnected with the *Véda*.

IN the expreſſion, "the loan ought not to be delivered or advanced," the word "loan" bears a ſecondary ſenſe; for it is connected with the ſecondary notion of the requeſt *without the actual advance of the loan*, and ſo forth; and it does not denote what will be mentioned as the defined ſenſe of loan or debt.

OTHER lawyers explain the title, "receipt *(àdána)* of a loan *(ṛiṅa)*, by what mode *obtained*;" another appoſition in the form called *bahubríhi*: and the third or cauſal caſe is uſed adjectively; thus the eſſential properties, with which the receipt of a loan is connected, are ſeverally titles of loans received. Thoſe eſſential properties are the creditorſhip of a *Vaiſya* or the like, the debtorſhip of others than women or the like, feneration at the rate of an eightieth part *by the month*, and ſo forth: NÁREDA alſo ſpecifies, as comprehended under the title of loans, the place where, *or perſon to whom*, the loan is made (I.)

IT is ſaid, "may, or may not, be lent;" but what is a loan? the ſage replies to that queſtion;

II.

II.

NÁREDA:—THAT contract of delivery and receipt, which is made with a view to a gain *by the lender* on the principal ſum while remaining *with the debtor*, is called a loan on intereſt *(cusída)*; and money-lenders acquire their ſubſiſtence by it.

"THE principal ſum," literally its continuance: the contract of delivery and receipt is made with a view to gain or increaſe, ſo long only as the principal remains *with the debtor*. Theſe two, *the words delivery and receipt*, are in the paſſive form. The loan is delivered by the creditor with a view to a gain on a durable capital, and is received by the debtor with a ſtipulation to that effect. When it bears no intereſt, then the term "loan" is employed in a ſecondary ſenſe; *for* a ſubſiſtence is not thereby gained.

A SECONDARY notion, or quality, is ſtated, in the fourth lecture of the *Nyáya* *, to be that which is neceſſary to the exiſtence affirmed †. That, which is given, is received back; or ſomething of the ſame kind *in its ſtead*: hence what is advanced for the purpoſes of traffick, is not a loan.

VÁCHESPATI MISRA.

"THE principal ſum;" the continuance of the money lent. "A gain;" the acquiſition of money or the like. The very loan, which is advanced by the owner or *creditor* with a view to that, is received by the uſer or *debtor*.

The *Retnácara*.

CONSEQUENTLY, that property, which affords a gain ſtipulated in conſideration of its remaining *for a time* with the debtor, is a loan; or that, which produces a gain by being advanced to remain with the debtor, is a loan. Such is the definition of loan. A full account of this will be delivered in another work.

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* Treatiſe of GO'TAMA on dialectick philoſophy.

† Eſſential, not adventitious, to the ſubject.

WHEN

WHEN intereſt is not borne, the word "loan," or debt, is employed only in a ſecondary ſenſe; for money-lenders do not acquire their ſubſiſtence by loans without intereſt: and it is employed in a general and ſecondary ſenſe in the phraſe "a loan ſhall be given" and in this "he, who takes the aſſets, ſhall be compelled to pay the debts" and in other inſtances. 'What is neceſſary to the exiſtence affirmed,' refers to the agreement, that "the debt ſhall poſitively be repaid:" and this extends to other things, as *payment* on demand and the like. Such is MISRA's opinion.

BUT we maintain this definition; money, advanced with a view to the future *revived* property of the creditor, and to his gain by means of intereſt or the like, is a loan; for, even without intereſt, there may be friendſhip gained or the like. The term is not employed in a ſecondary ſenſe: friendſhip and the like are comprehended in the phraſe, "the acquiſition of money or the like."

"THE continuance *of the principal ſum;*" its remaining with the debtor, its being unrepaid, and ſo forth. 'So long only as the principal remains;' ſince the term "only" excludes any other ſuppoſition, intereſt is not obtained if the principal ſum be wanting. But, as for what is advanced for the purpoſes of traffick, there is not any non-repayment; for the exact meaning of non-repayment is, that, after the creditor's property has ceaſed *by the act of delivering the thing lent*, neither the thing *itſelf*, which had been his property, is *ultimately* reſtored, nor an equivalent *immediately* given. Or elſe, the advance of the principal may be ſignified by the expreſſion, "ſo long only as the principal remains;" for it ſhows an inſeparable relation.* In traffick and the like, the employment of a man's own property with a view to gain is acknowledged; not the employment of another's property. According to MISRA, gain conſiſts in the exceſs above the principal held as a man's own property.

BUT we explain "the principal ſum," its continuance, *while it is* held as property by the creditor *in reverſion*, and by the debtor *in poſſeſſion*. "With a

* IN Nyaya *anwaya* and *vyatiréca;* 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.

view to a gain;" under the term "gain" are comprehended the intereſt received by the creditor, friendſhip *gratified*, duty fulfilled, or the like; it alſo comprehends the debtor's enjoyment of the thing lent and the like. Hence the expoſition of the *Retnácara*, "the acquiſition of money or the like:" it is not there ſaid "received by the debtor," but "received by the uſer;" nor is it clearly ſhown, that the expreſſion, "with a view to gain, ſo long only as the principal remains *with the debtor*," is that form of ſpeech which is named *Saptamí tat puruſha*.* It appears, therefore, that a loan or debt is money connected with a gain *allowed* in conſideration of the creditor's property in it; on the notion, that, becauſe the money was the property of that man, therefore the gain is his. Or it may be "money connected with a gain *allowed* in conſideration of the debtor's *temporary* property in it." Or, if the appoſition be thus explained, "with a view to the permanence *of the capital* and to a gain," the permanence of the capital denotes the future revived property of the creditor, and gain ſignifies intereſt *received*, duty *fulfilled*, or the like. Conſequently the word "loan" is not employed in a ſecondary ſenſe, even where no intereſt is borne; for the phraſe, "money-lenders acquire their ſubſiſtence by it," relates ſolely to loans bearing intereſt; and the tranſactions of commerce and the like connect a price with the thing, and a commodity with the purchaſe: it is not cuſtomary in *traffick* to make a diſtinction, "this is the principal ſum, this the increaſe:" therefore a capital ſo employed is not a loan.

It ſhould be here noticed, that, in the firſt place, the borrower aſks for money; next the lender gives the money, ſaying or thinking "ſo much intereſt muſt be paid, and the principal ſum be repaid:" property is thereby veſted in the uſer or debtor; for the verb "give" ſignifies an act veſting property in another, after annulling the agent's own property. Hence, if the debtor happen to loſe that money, the loſs does not fall on the creditor; and, *from the ſame cauſe*, the debtor may at pleaſure diſpoſe of what he has borrowed. Afterwards, ſince, by reaſon of the agreement made, the amount of the principal ſum muſt be repaid with intereſt, or an equivalent be given, the credi-

* Appoſition of terms, where the laſt is chiefly conſidered, and which is reſolvable into the ſeventh caſe. The compound *ſi'hána lábha* has been thus reſolved into *ſi'hánè ſatyéva lábha*, gain, only if the capital remain.

tor's

tor's property is *revived* by payment made by the debtor; or if he refuſe to pay it, the debtor commits a ſin and is liable to puniſhment. Creditorſhip and debtorſhip are diſtinguiſhed by ſome peculiarities; the definitions are not therefore identical:* it is the ſame in ſpeaking of undivided brethren and the like.† The delivery of a loan or debt *(rĭnádána)* is a phraſe, not a *compound* word. To enlarge would be ſuperfluous.

Is not loan on intereſt *(cusída)*, inſtead of loan *generally (rĭna)*, explained by ſuch a definition? This queſtion is anſwered by the following text.

III.

VRĬHASPATI:—THAT loan *(rĭna)*, which, increaſed to four times or eight times the principal, is *thus* received back, without apprehenſion of ſin, from an abject or diſtreſſed perſon *(cutſita* and *sída)*, is called a loan on intereſt *(cusída)*.

"FROM an abject or diſtreſſed *debtor*;" from a debtor who is an outcaſt or otherwiſe abject, or who is indigent or otherwiſe diſtreſſed. What is received back with intereſt from ſuch a debtor without apprehenſion of ſin; without fear of any conſequent ſin (for ſuch receipt is no acceptance of gift *from an unworthy perſon*). Hence a loan *(rĭna)* is called a loan on intereſt *(cusída)*.

IN this inſtance there is only the ſin of diſtreſſing a miſerable perſon; but there is none, if his miſery were merely pretended: and even if he were really diſtreſſed, the creditor may confer a benefit by prolonging the term of the loan or otherwiſe: and ſuch is the practice.

SHOULD the principal ſum only be received back, or ſhould it be received with intereſt? On this point the ſage ſays, "increaſed to four times or

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* *Átmáſraya;* identical. Such definitions are faulty; as A ſon of B, and B father of A.

† Apparently liable to a ſimilar objection, that they can only be thus explained; undivided brethren are thoſe who have not made a partition; and divided brethren are thoſe who do not remain in coparcenary.

eight

eight times the principal." The word "or" is indefinite; it alſo ſuggeſts a debt doubled or the like. Hence it has been already ſaid, "what is received back with intereſt." Loans quadrupled and the like will be explained under the head of limits of intereſt.

SINCE the words *rĭna* and *cusída*, are uſed ſynonymouſly, the definition of *cusída* is alſo the definition of *rĭna:* and that is made evident by NA-REDA (I & II). The other text (III) only ſhows the verbal derivation of the word *cusída*. This expoſition conforms with the opinion delivered in the *Retnácara*. The definition of the word *rĭna*, which occurs in the firſt text (I), is well delivered by a text of NA´REDA (II), although the term be changed in that text. But the word *cusída* is formed adverbially *(from the particle* cu *and noun* sída).

BY whom a loan ſhould be advanced, NA´REDA declares in the concluding part of the text quoted (II); money-lenders acquire their ſubſiſtence by it. The cauſal has the ſenſe of identity; "even that is their livelihood." Or the word ſubſiſtence *(vrĭtti)* in a neuter ſenſe, may ſignify *their mode of* exiſtence. Money-lenders are men of the mercantile claſs; accordingly YA´JNYAWALCYA, in the chapter on modes of ſubſiſtence, ſays,

YA´JNYAWALCYA:—MONEY-LENDING, agriculture, traffick and attendance on cattle are declared to be *the proper ſubſiſtence* of the mercantile claſs.

"MONEY-LENDING;" placing money at intereſt. "Traffick;" living on the profits of purchaſes made at a fair price.

The *Dípacalicà*.

V.

MENU:—THE king ſhould order each man of the mercantile claſs to practiſe trade, or money-lending, or agriculture and attendance on cattle; and each man of the ſervile claſs to act in the ſervice of the twice-born.

The

THE king ſhould compel a man of the mercantile claſs to practiſe trade, money-lending, agriculture, or attendance on cattle; and a man of the ſervile claſs to act in the ſervice of the twice-born. If they refuſe to do ſo, they ſhould be amerced by the king: on that account, only, it is mentioned in this place *(in the 8th chapter, on judicature; and on law, private and criminal)*.

CULLÚCABHATTA.

THE meaning is, that the expreſſion, "the king ſhould compel them to practiſe &c." implies, that they ſhould be amerced, if they refuſe to do ſo. But, if a *Vaiſya* do not practiſe money-lending through apprehenſions *entertained by him*, that the loans will not be ſubſequently repaid, he ſhould not be fined. Since it is declared by MENU, that an *Ambaſht'ha* ſhould live by curing diſorders,* *but, ſince men of mingled births may follow the occupation of their mother's claſs*, an *Ambaſht'ha*, adopting the profeſſion of the mercantile claſs, ſhould not be fined if he do not practiſe money-lending. To enlarge on the ſubject of fines, which have been incidentally mentioned, would be ſuperfluous.

For the ſake of conferring benefits and the like, any proprietor of wealth may lend money without intending to obtain intereſt, for that is not prohibited. By thoſe who may practiſe money-lending a ſmall part only of their wealth ought to be lent: this being incidentally mentioned, BHAVADÉVA cites the *Márcandéya purána*, on the ſubject of what may not be lent.

VI.

Márcandéya Purána: — A PRUDENT man ſhould ſet apart a fourth of his property for *pious uſes with a view to* another world; and apply half to his own ſubſiſtence, and to conſtant and occaſional rites;

2 He ſhould augment the *remaining* fourth of his property,

* Chapter 10. v. 47.

or half of half, making it his capital: the wealth of him, who acts thus, becomes productive.

The meaning is, that the whole property ſhould not be lent: and, if the eſtate be ſmall, and the family be barely maintained from it; in that caſe no loan ſhould be made. Such is the aſcertained ſenſe of the text. But, if the means of ſubſiſtence cannot be provided by the purſuit of their own profeſſion, even prieſts may place money at intereſt: this VRĬHASPATI, quoted by BHAVADĔVA, declares.

VII.

VRĬHASPATI:—A TWICE-BORN man may practiſe money-lending, agriculture or trade, not conducted in perſon; and even practiſing them in perſon, during ſeaſons of extreme diſtreſs, he is not tainted with ſin.

2. HAVING received gain, let him honour the progenitors of mankind, the deities and prieſts; when they are ſatisfied, no doubt they deprecate that offence committed by him.

THE word twice-born concerns a man of the ſacerdotal claſs; for it is ſaid, "he is not tainted with ſin:" if it concerned a man of the commercial claſs, it would be ſuperfluous to ſay, "he is not tainted with ſin;" for it is not ſuppoſed, that a man of the commercial claſs ſins by practiſing money-lending. Men of the military claſs may alſo practiſe money-lending in ſeaſons of diſtreſs, for MENU ſays, "but a *Bráhmana* and a *Cſhatriya*, obliged to ſubſiſt by the acts of a *Vaiſya*, &c."* If they can ſubſiſt by their regular profeſſion, prieſts ought not to rely on money-lending for a livelihood, ſince a text of MENU declares,

BUT, among thoſe ſix acts of a *Bráhmana*, (*reading and teaching the* Védas, *ſacrificing and aſſiſting to ſacrifice, giving and accepting*), three are his means of ſubſiſtence; aſſiſting to ſacrifice, teaching the *Védas*, and receiving gifts from a pure handed giver.†

* Chapter 10, v. 83. † Chapter 10, v. 75.

AND

AND because MENU reprehends the occupation of a *Vaiſya* followed by a *Bráhmana;*

His own office, though defectively performed, is preferable to that of another, though performed completely; for he, who *without neceſſity* lives by the acts of another claſs, immediately forfeits his own.

His own office (which ſhould regularly be diſcharged by him), however defectively it be performed, is preferable to that of another though fulfilled; becauſe he, who lives by the acts of another claſs, inſtantly falls from his own: this inculcates the neceſſity of avoiding ſuch offences.

CULLÚCABHATTA.

Here it ſhould be underſtood from the expreſſion, "he, who lives by the acts of another claſs," that ſuch a practice, whether in perſon, or not in perſon, is reprehended. It is alſo the opinion of eminent lawyers, that penance muſt be performed for exceeding the rate of an eightieth part and the like, by taking greater intereſt in a ſeaſon when no diſtreſs is experienced. It would be vain to diſcuſs further the ſubject of livelihood.

Money-lending may be alſo practiſed by a *Súdra* in times of diſtreſs; for YÁJNYAWALCYA authorizing traffick, and the *Neraſinha purána* authorizing agriculture, which, it may be inferred, are accompanied by money-lending, it is a reaſonable induction, that money-lending is alſo authorized: and, according to the opinion of VÁCHESPATI MISRA, it appears, that a *Súdra* may receive a gain.

YÁJNYAWALCYA:—A *Súdra* ſhould ſerve twice-born men; but, if he cannot thus ſubſiſt, he may become a trader.

THE *Neraſinha Puráña:*— UNASKED he ſhould give *alms to prieſts*, and rely on agriculture for his ſubſiſtence.

By whom a loan may be made, and by whom it may not be made, have been both curſorily explained.

SECTION II.

SECTION II.

ON THE SAME; AND ON THE FORM OF THE CONTRACT.

ARTICLE I.

ON THE IMPROPRIETY OF LENDING TO CERTAIN PERSONS.

VIII.

CA'TYA'YANA:—LET no man lend any thing to women, to ſlaves, or to children: whatever thing of value has been lent to them, the lender cannot *in general* recover *without the aſſent of their guardian or maſter.*

NOTHING ſhould be lent to women, becauſe they are unable to repay it; for it is recorded, that they have no property excluſively their own (Book II. Chapter IV. v. LVI.). May not their debts be repaid by their huſbands? This ſhould not be affirmed, for it is confuted by a text of YA'JNYAWALCYA, which will be quoted. It ſhould be here underſtood, that a widow has property in the wealth ſhe poſſeſſes; but, ſince ſhe is very helpleſs, and only ſupports herſelf on the abundant wealth *before* acquired by her huſband or the like, out of what funds can ſhe repay the loan? From this apprehenſion, nothing ſhould be lent even to widows. But, if there be any certainty of repayment, then a loan may be made; for this text is *only* a rule of ethics: and ſince a loan may be ſubſequently repaid by her ſon, there is no objection againſt a loan made to a woman who has a ſon, whether ſhe be a widow or have a huſband living. Nor do we ſee any objection againſt loans made to women, who have ſeparate property, on the mortgage of their immovable property. A debt, contracted by a woman, whoſe huſband is abſent, for her food and apparel, or for the ſupport of her ſervants, muſt be repaid by her lord; and debts, contracted by the wives of herdſmen and the like, muſt alſo be repaid by their huſbands: we hold it a rational opinion, that there is no objection againſt lending money to thoſe women.

NOTHING ſhould be lent to ſlaves, becauſe they alſo are declared to have no property

property excluſively their own, by the text above quoted. Here a man's own ſlave is meant; he ſhould not therefore lend any thing to his own ſlave; for what that ſlave acquires, belongs to *the maſter* himſelf. This rule may be applicable to ſlaves bought; but why ſhould not loans be made to hired ſervants, for the loans may be repaid out of their wages? Such a doubt ſhould not be entertained: ſince a ſervant only maintains his family with difficulty out of trifling wages, whence can he repay a loan? But there is no objection againſt loans made to ſervants hired on great wages; and the practice *of making ſuch loans* ſubſiſts amongſt excellent perſons.

NEITHER ſhould a man lend any thing to the ſlave of another, becauſe all his property is dependant on his maſter: if, therefore, a man do lend any thing to the ſlave of another, it cannot be demanded from his maſter. But, if the ſlave of any perſon aſk a loan in his maſter's name, and it be aſcertained that he aſks it for the ſupport of his maſter's family, in that caſe a loan may be made; for it is declared by a text of CA'TYA'YANA, that ſuch a debt muſt be diſcharged by his maſter.

IX.

CA'TYA'YANA:—BHRĬGU ordained, that a man ſhall pay a debt contracted in his remote abſence, even without his aſſent, by his ſervant, his wife, his mother, his pupil, or his ſon: *provided it were contracted* for the ſubſiſtence of the family.

BUT when a loan is aſked by a ſervant on his own account, whether he belong to the lender or another perſon, it may be given on the pledge of his wages; this will become evident on the further diſcuſſion of the ſubject: theſe texts will be explained and diſcuſſed in another place; to enlarge would be *now* ſuperfluous.

A YOUTH is a minor to the end of his fifteenth year, as we ſhall ſhow in the chapter on the payment of debts. *Nothing ſhould be lent* "to children;" this intends generally any perſon incapable of civil acts, and comprehends idiots and the like. If there be guardians of the minors and the reſt, namely their maternal uncles or the like; and theſe take up a loan from a money-lender, for the benefit of the minor or other ward, executing a deed in the ward's

name and their own; in that caſe the loan may be legally advanced after aſcertaining that the guardian does not act fraudulently: although no text occurs *to this purport*, it is proved by the frequent practice of good men. Afterwards, when the minority expires, the creditor may recover the debt from that youth; but, while the minority laſts, he could only recover it from the maternal uncle, or other perſon entitled to act *as guardian*. This ſhould be obſerved by the wife.

REVEREND perſons, as ſpiritual parents and the like, to whom harſh diſcourſe cannot be addreſſed, and who cannot be ſued in the king's courts of juſtice, may be comprehended under this text, by conſidering "Children" as an inſtance adduced of a general meaning. Conſequently, to them alſo nothing ſhould be lent; but a perſon, who poſſeſſes wealth, muſt maintain them, elſe he would fail in his duty.

X

NA'REDA to INDRA, in the *Herivanſa*: — No man, O thou ſubduer of foes, ſhould have pecuniary dealings with him, from whom he deſires much affection, nor viſit *his* wife in his abſence.

"*His*" muſt be ſupplied.

BHAVADE'VA.

"PECUNIARY dealings"; the advance or acceptance of a loan; it may alſo be underſtood of depoſits and the like. The motive *for avoiding ſuch tranſactions* is the apprehenſion of forfeiting friendſhip. But a diſtinction will be mentioned in another place. It is deduced from the obvious ſenſe of the texts, that a loan may be made to any other perſon except thoſe to whom it is forbidden to lend any thing.

ARTICLE

ARTICLE II.

ON THE CONTRACT OF LOAN.

XI.

VRĬHASPATI, quoted by BHAVADÉVA, VÁCHESPATI, and CHANDÉSWARA: —A PRUDENT lender ſhould always deliver the thing lent, on receiving a pledge of adequate value either to be uſed by him, or merely kept in his hands, or with a ſufficient ſurety, and either with a written agreement, or before credible witneſſes.

Any of theſe, by which confidence may be *given to the lender*, ſhould be furniſhed. They are mentioned generally.

MISRA.

THE word *here* employed intends comprehenſive illuſtration. If, therefore, the lender have in his power, by bailment or otherwiſe, property of more than adequate value belonging to the borrower, this ſecurity is alſo intended by the text. In like manner, where land belonging to any perſon is taken by another for the purpoſe of tillage, if the landlord aſk a loan of the cultivator, and he advance the loan even without receiving a mortgage of the land, in that caſe, although there be other creditors, the cultivator, and no other creditor, takes the produce of that land until his loan be diſcharged: ſuch is the practice. So, if the huſbandman aſk a loan of his landlord, the landlord, who advances a loan to the huſbandman, and no other creditor, ſeizes the produce of his land, at the time of gathering the harveſt, for the payment of the loan he has advanced: this cuſtom alſo ſubſiſts in this country; and on this point there is alſo the authority of a text of CÁTYÁYANA (CCLXXXI); for there is no objection to conſider land and the like as comprehended, in that text, under the word "capital." This will be diſcuſſed under the head of payment of debts: *but* hence *it appears*, *that* land or the like, on which there is ſuch a lien, may be included *in the terms of the text*. So, in other caſes alſo; for it only intends ſome ground of confidence in future repayment.

"A PLEDGE of adequate value;" by the price or uſe of which the debt may be diſcharged with intereſt: ſuch a pledge, whatever it be. It relates both to the pledge to be uſed and that to be merely kept in his hands. The uſe of this condition, *that it ſhould be of adequate value*, is obvious. Both names for a pledge (*ádhi* and *bandha*) are employed by VRIHASPATI, in a text which will be quoted (LXXX), as bearing the ſame ſenſe: but here a diſtinction appears to be intended by the ſeparate mention of them. That diſtinction, on the concurrent opinions of CHANDÉSWARA, VÁCHESPATI, BHAVADÉVA and others, is as follows: "*Ádhi*" is a pledge to be uſed; ſuch as land pledged with its produce; a cow, a female buffalo or the like, with her milk; a tree or the like, with its fruit; an elephant, a horſe, an ox or the like, to be uſed for burden; diſtinguiſhed by this circumſtance, that they are not neceſſarily impaired by uſe. "*Bandha*" is a pledge not to be uſed, but merely kept; as a copper caldron or the like, a maſs of iron or ingot of gold and the like; diſtinguiſhed by this circumſtance, that they are, or may be, impaired by uſe. This will be explained at large in the chapter on pledges. It may be noticed by the way, that a thing pledged ſhould not be hypothecated by the creditor to another perſon as ſecurity for a debt contracted by himſelf.

"WITH a ſufficient ſurety;" with a good ſponſor: one, by whom the ſum can be paid.

BHAVADÉVA.

THE ſufficiency of the ſurety conſiſts in his power to enforce the punctual payment of the money.

CHANDÉSWARA.

BY theſe *gloſſes* both the ſurety for the advance, and the ſurety for repayment, are deſcribed. One gives ſecurity againſt the abſconding of the debtor; he is ſurety for appearance, and makes a promiſe in this form, "I will produce this man". He, in confidence of whoſe aſſurance a loan is advanced to any perſon, is ſponſor for honeſty; he affirms "this perſon is unexceptionable". The ſufficiency of the firſt of theſe conſiſts in his ability to produce the man if he abſcond; or, by keeping *in view* the debtor's property, to diſtrain his effects;

effects; and so forth. The sufficiency of the last consists in his skilful judgement of a man's veracity, and so forth. The sufficiency of all *sureties* consists principally in wealth adequate to make good the debt. Accordingly this is actually expressed by BHAVADE'VA. But, in fact, honesty should be considered as a requisite to the sufficiency of a surety; for much time would be wasted in litigation, if a dishoneſt surety were accepted. It should be understood, that a person, such as a spiritual parent, from whom money cannot be recovered by harsh importunity and other *compulsory* methods, is not a sufficient person in a matter of suretyship, however venerable he be. Of this wise persons may judge from the *simple* exertion of their own intellect. A text of VRĬHASPATI (CXLII) is authority for distinguishing four sureties. That text is explained in the chapter on sureties.

"WITH a written agreement" (XI); with a written contract of loan: such a writing is noticed by VRĬHASPATI cited by BHAVADE'VA.

XII.

VRĬHASPATI:—THAT mutual instrument, which is executed when the loan is delivered and accepted, is called the written contract of loan.

THE will to make and receive a loan is the cause *of the contract*. The construction therefore is, "when the loan is delivered and accepted by the will of the parties respectively" &c. What kind of writing should be given, is declared by NA'REDA quoted in the *Vyavahára-tatwa*.

XIII.

NA'REDA:—WRITTEN evidence is declared to be of two sorts; *the first*, in the handwriting of the party himself, which need not have subscribing witnesses; and *the second*, in that of another person, which ought to be attested: the validity of both depends on the usage established in the country.

AN instrument in the handwriting of the party himself is good evidence, even though it be unattested; and, in that of another person, if attested:

ſuch is the conſtruction *of the text* by there lative order *of the terms*. "On the uſage of the country;" on ſuch uſage in reſpect of writings, as ſubſiſts in each country: *on that uſage the validity* of both *depends*; namely of an inſtrument in the handwriting of the party himſelf, and of one in the handwriting of another perſon.

The *Vyavahára-tatwa*,

"EVEN though it be unatteſted:" this expreſſion ſuggeſts, that an atteſted inſtrument *in the handwriting of the party* is alſo included, *under this text*, as a valid document. Thus the ſenſe is, that any atteſted writing is good evidence; and one in the handwriting of the party himſelf is good evidence, even though it be unatteſted. But in fact it is the practice of our country to call to witneſs the divine form of juſtice (*Srí* DHERMA) on ſuch writings. An inſtrument in the handwriting of another perſon ought to be atteſted; and there the witneſs ſhould be human: but even to ſuch writings it is uſual to atteſt the divine form of juſtice. However, ſhould the party deny an inſtrument in the handwriting of another, and to which the name of juſtice is ſubſcribed as *ſole* witneſs, how can the judge's doubts be ſatisfied? The ingenuous evidence of witneſſes ſhould therefore be adduced to prove an inſtrument drawn in the handwriting of another perſon.

Is not the ſcribe himſelf ſuch *competent* evidence? This ſhould not be objected; for YA'JNYAWALCYA declares dubious the evidence of leſs than three witneſſes: *and properly* theſe witneſſes ſhould be of the ſame claſs with the party; but, if that cannot be, they may be of other claſſes.

XIV.

YA'JNYAWALCYA:—THERE ſhould *in general* be three witneſſes; perſons, who take delight in acts ordained in the *Véda* 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. *

* The firſt and laſt parts only of this text were cited; I quote it at large from other digeſts.

HERE

HERE it ſhould be noticed, that atteſted writings only ought to be given; for, *although* YA'JNYAWALCYA (XV) declares an unatteſted inſtrument in the handwriting of the party himſelf ſufficient evidence, yet he alſo declares it to have no validity if it were obtained by force or fraud: when, therefore, a judicial proceeding is ſubſequently held, ſhould the defendant plead, that it was obtained by force or fraud, then the arbitrators and the king may doubt its validity. For this reaſon a writing, which has ſubſcribing witneſſes, is preferable.

XV.

YA'JNYAWALCYA:—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.

"*Upadhi*" *here* ſignifies fraud.

'SUCH uſage in reſpect of writings, as ſubſiſts in each country*:' in ſome countries the practice is as follows. After an auſpicious term (*as* Srì,) preceded by an epithet alluſive to memory (*as* ſmaranasíla), the name of the lender is written in the ſeventh caſe and plural number; and the name of the borrower is inſerted with the termination of the ſixth caſe before the word "uſer" *or borrower* (*C'hádaca.*) Next, the word "*Caſya*" is written; after which a word expreſſive of bond or obligation for debt is inſerted, and declared by the word "this" ſubjoined. Next, the meaning of the parties is ſtated, the ſtipulation of intereſt, the promiſe of payment, and a binding clauſe; then, after dating the inſtrument by the ſolar month and day, the debtor's name is again written, with the termination of the ſixth caſe, on the right hand ſide *of the paper*; and the deſignation of place is added. The names of the witneſſes are written on the back of the inſtrument. "The uſage eſtabliſhed in the country" intends this and other forms. Whatever be the uſage in each country, that only ſhould be obſerved in that country: and the practice above ſtated is almoſt *literally* directed by

* Comment cited from the *Vyavábara-tatwa* on v. XIII.

YA'JNYAWALCYA: for he ſuggeſts, that the lender's name ſhould be firſt written, and that the inſtrument ſhould be dated by the year, month, and day.

XVI.

YA'JNYAWALCYA:—WHATEVER contract ſhall have been concluded by mutual conſent, a written memorial of it ſhould be atteſted, after the lender's name has been firſt inſerted;

2. IT ſhould bear the year, month, half month, and day, with the deſignation *of the debtor*, by his name, claſs, and the like *.

THE epithet alluſive to memory is ſuggeſted by a text of MENU. It conveys, that this *inſtrument* is written for the ſake of *aſſiſting* memory.

XVII.

MENU:—EVEN in the ſpace of ſix months men forget occurrences: therefore were letters and writings anciently invented by the beneficent creator.

BY the cuſtom of the country, inſtruments are *now* written in the dialect of the *Yavanas*†; but among eminent *Brâhmanas* and others, writings are alſo drawn in another language. In ſome written contracts for auſpicious rites, as marriage and the like, the word "*ſwaſti*" is firſt written: its intent is *a prayer*; may this rite be auſpicious! This is noticed by the way.

XVIII.

YA'JNYAWALCYA:—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."

* The firſt hemiſtich is not here cited. I inſert it from a ſubſequent quotation in Book V, collated with the code of YA'JNYAWALCYA.

† The *Muſlemâns*.

THIS

THIS ſuggeſts, that the debtor's name ſhould be written above the contract. We do not determine whether additional matter, as titles and the like, and omiſſions, as leaving out the name of the party's father or the like, be founded on practice, or on the reaſon of the law, or, *in the laſt inſtance*, originate in indolence.

"HALF a month" (XVI); a ſide *of the month, that is* "*a fortnight.*" "By his name;" by the name of the debtor. "His claſs;" the ſacerdotal or other claſs. "And the like;" the *Véda which he follows in ſolemn rites*, and ſo forth.

XIX.

YA'JNYAWALCYA declares the form of atteſtation:—AND the witneſſes ſhould ſign *their names* all together, in their own handwriting, after writing the name of their fathers and ſo forth; *adding*, "I, ſon of ſuch a one, am witneſs to this *writing*."

HERE it is, in ſubſtance, expreſſed, that the omiſſion of the name of the witneſs's father is founded only on uſage. If the inſtrument be in the handwriting of another perſon, the writer of it ſhould add at the bottom of that inſtrument, "written at the requeſt of both parties by me, ſuch a one, ſon of ſuch a one."

XX.

YA'JNYAWALCYA:—LET the writer next ſubſcribe, at the end *of the writing*, "this *has been* written, at the requeſt of both *parties*, by me, ſuch a one, ſon of ſuch a one."

But the practice is for the ſcribe merely to ſign his name with the letters बम, *(ſtanding for* ﷺ*)*. All this is *only* mentioned to obviate the ſuppoſition, that the *forms of* writings, which occur in practice, are not directed by ſages.

IF the debtor, or a witneſs, be illiterate, the following text directs the form to be obſerved in that caſe.

XXI.

VYA'SA:—BUT a borrower, who is unlettered, ſhould direct another perſon to ſubſcribe his *declaration of* aſſent; or a witneſs, *in the ſame predicament, ſhould cauſe his name to be ſigned* by another witneſs, in the preſence of all the witneſſes.

WHEN theſe and other local uſages are obſerved, then an inſtrument in the handwriting of the party himſelf, and one in the handwriting of another perſon, are valid, and good evidence *of contracts*. Such is the meaning of the ſage, as expounded by authors. But in fact all this ſhould be conſidered as intending ſuch a document as may remove the doubts entertained by honeſt arbitrators or by the king. Elſe, if all *the parties*, the borrower, the lender, the witneſſes, and the writer, be unacquainted with the forms of writings, and a creditor could not recover a debt, though really lent, notwithſtanding the exiſtence of an atteſted writing in any irregular form, there would be a failure of juſtice on the part of the king. Again; if the inſtrument were not ſubſcribed by witneſſes, but it be ſaid by a witneſs, "I know this inſtrument," and the inſtrument be admitted in evidence by the arbitrators on any arguments; it is an atteſted inſtrument. This is mentioned by the way; the reſt may be learnt under the title of judicial procedure: but ſomething has been ſaid, in this place, to make known the ſort of writing, by which a money-ed man, who advances a loan, may be ſecure from loſing his cauſe, ſhould a diſpute afterwards ariſe. This we deem reaſonable.

"BEFORE credible witneſſes" (XI); this is another caſe of written agreements: for the preſence of witneſſes is ſuggeſted by the form for drawing written contracts: and the ſenſe of the text appears to be this; he ſhould advance a loan on receiving a pledge to be uſed by him, together with a written agreement; this is one caſe. He ſhould advance it on receiving ſuch a pledge before credible witneſſes; this forms a ſecond caſe. So likewiſe a loan, made on a pledge to be merely kept in his hands, forms two caſes *(according as it is tranſacted by a written agreement, or before credible witneſſes)*: hence ariſe four caſes. Again; two caſes ariſe alſo on loans made with a ſufficient ſurety; and the poſſible caſes are ſix in number. Alluding to this, MISRA has

ſaid;

ſaid; "any of theſe, by which confidence may be *given*, ſhould be furniſhed." Conſequently any one of theſe ſix modes, by which confidence may be given to the lender, ſhould be adopted. Here a pledge to be uſed or merely kept, as well as a ſurety, are intended to give confidence to the lender; and the writing and witneſſes, to prove the truth of the loan, if a judicial proceeding be held at a ſubſequent time.

XXII.

NA'REDA:—IN this *contract* there are two things which give confidence *to the lender*, a pledge and a ſurety; and two, which afford clear evidence, a writing and atteſtation.

"CONFIDENCE;" aſſured expectation of thereafter receiving the loan advanced: in ſome inſtances a ſurety, in others a pledge, *give ſuch confidence;* for this coincides with the former text (XI). But here the word pledge (*ádhi*) ſignifies both a pledge to be uſed and one to be kept. "Clear evidence;" certain proof: ſometimes a writing, ſometimes atteſtation, ſometimes both, are required, according to circumſtances, for the ſake of proof in caſe of diſpute.

IT ſhould be here noticed, that both texts (XI and XXII) are ethical precepts; for they exhibit cauſes of preſent evil. If, therefore, infringing theſe rules, a man deliver a loan without a pledge, or writing, or the like, he violates not his duty: and, if the debt be any how proved, the debtor ſhall be compelled by the king to repay it to his creditor. Hence the practice of advancing loans, without pledge or writing, in ſome inſtances of extreme confidence. But exceſſive confidence ſhould be no where repoſed, for the *Herivanſa* directs, "Place not confidence in what is unworthy of confidence, nor exceſſive confidence *even* in what is worthy of confidence:" and the adage expreſſes, "mutable mind, mutable wealth."

IN like manner the texts of CA'TYA'YANA and NA'REDA* (VIII and X) are ethical precepts; for the text points out a preſent evil, "the lender can-

* "IT is not expreſſed in the original, which is the ſecond text alluded to: I ſupply it from conjecture.

not

not *in general* recover &c." Consequently there is no breach of duty in lending any thing even to women; on the contrary, it is a duty to support unprotected persons, even though it be done by advancing loans: and, if the debtor be able to discharge it, the king should enforce payment of such a debt. But a man, who infringes the rule and institutes a suit *on such a debt*, incurs censure. To enlarge would be vain.

THUS a loan should not be advanced *by a moneylender*, without confidence and means of proof: and the meaning of the phrase, "in what form a loan should not be made," becomes evident.

CHAPTER

CHAPTER II.

ON INTEREST.

SECTION I.

ON LEGAL INTEREST IN GENERAL.

SUCH intereſt, as may be taken without a breach of duty on the part of the creditor, is a rule *(dherma)* for delivery *by the creditor*. Or the nature of a thing may be ſignified by the word *dherma*: as it is the nature of robbers to hurt living creatures, ſo it is the nature of a loan, that it ſhould produce to the lender the principal ſum advanced, and intereſt in addition thereto. Thus intereſt is ſignified by the term rule for delivery. MENU propounds that intereſt.

XXIII.

MENU: — A LENDER *of money* may take, in addition to his capital, the intereſt allowed by VASISHT'HA, an eightieth part of a hundred by the month.

" ALLOWED *or declared* by VAS'ISHT'HA;" this ſhows that it has been authorized by VAS'ISHT'HA. Thus, ſuch intereſt is allowed by all ſages, and is therefore legal: by taking it a man does not violate his duty. " In addition to his capital;" actually increaſing the creditor's capital, or calculated to do ſo: *ſuch intereſt* he may require. But if it be explained, " increaſing the debtor's capital," *the ſenſe is*, through the medium of moral worth: by diſcharging the debt with intereſt, immoral conduct is avoided,

and increaſe of moral worth attained; hence wealth is *alſo* increaſed. The purport is, that the moneylender may actually receive ſuch intereſt; for CULLŪCABHATTA expounds it, "one, who ſubſiſts by intereſt, may take &c." It might alſo ſignify, "a loan may produce the intereſt allowed by VAS'ISHT'HA &c." and it is alſo expounded, "a borrower may pay the intereſt allowed by VAS'ISHT'HA.

WHAT is that intereſt? The ſage propounds it; "an eightieth part of a hundred by the month." The principal ſhould therefore be divided into eighty parts; and ſo much as is the quantity of one part, he may take in the ſame kind of wealth, by way of intereſt, in addition to the principal: if, therefore, a loan, amounting to one hundred *ſuvernas*, be divided into eighty parts, one part contains a *ſuverna* and a quarter; and the intereſt in this caſe is one *ſuverna* and a quarter. "By the month;" at the end of the month.

IT is ſaid by ſome lawyers, that, a hundred being ſpecified in the text, an eightieth part is the rate of intereſt then only, when the loan amounts to a hundred: hence it appears, that the rate of intereſt varies when the loan is more or leſs; and ſuch a practice is obſervable in ſome countries. On this we remark, that no ſpecial rate of intereſt for loans exceeding a hundred, or falling ſhort of a hundred, has been recorded by any ſage. MENU has not ſpecified whether it be a hundred ſhells or a hundred *ſuvernas*; and we ſhall explain, in its proper place, the text of HA'RI'TA (XXX) as intending the rate of two in a hundred. But here we conſider "a hundred" as a mere example; the rate is the ſame on leſs ſums. VAS'ISHT'HA expreſsly declares the rate of an eightieth part on leſs than a hundred.

XXIV.

VAS'ISHT'HA: — HEAR the intereſt for a moneylender declared by the words of VAS'ISHT'HA: five *máſhas, or one ſuverna*, for twenty *palas, or eighty ſuvernas*, he may claim *and ſhould receive* each month: thus the law is not violated.

XXV.

GO'TAMA: — THE legal intereſt for twenty *palas* is five *máſhas* a month:

ON

On this ſome remark, that the *máſha* is declared by Menu to contain five *criſhnalas* or *ractícás*, (" five *criſhnalas* are one *máſha*, and ſixteen ſuch *máſhas*, one *ſuverna*;") and the ſame *máſha* is thus explained by Amera, " the firſt *máſha* contains five ſeeds of the *gunjá*". Conſequently five *máſhas* are equal to twenty five *ractícás*; and this is the rate of intereſt on a loan amounting to twenty: ſuch is the aſcertained ſenſe. On the queſtion " twenty of what denomination?" the *ſuverna*, which is mentioned after ſtating the quantity of a *máſha*, both in the text of Menu and in that of Yájnyawalcya, ſhould be taken, (" five ſuch *criſhnalas* are a *máſha*, and ſixteen ſuch *máſhas*, a *ſuverna*;") for five *máſhas* can only be the intereſt on twenty ſuch *ſuvernas*. Thus a *ſuverna*, conſiſting of ſixteen *máſhas*, contains eighty *ractícás*; its eightieth part is one *ractícá*, and the eightieth part of twenty *ſuvernas* is twenty *ractícás*. Twenty-five *ractícás* are intended by the rate of five *máſhas* (XXIV and XXV). Conſequently an eightieth part is only the rate of intereſt on a debt amounting to a hundred *ſuvernas*; but on a ſmaller debt, the rate of intereſt is higher. This is intended by Vaſiſht'ha and Gótama, and ſuch, it may be argued, is the legal rate on fifty or ſixty *ſuvernas*, or the like; and practice is obſerved to conform thereto. How then is it ſaid, 'the rate of intereſt *on leſs ſums* has not been recorded by any ſage?' And why is it ſaid, 'Vaſiſht'ha expreſsly declares the rate of an eightieth part on leſs than a hundred?'

The anſwer is this; Menu, after ſaying "a lender of money may take the intereſt allowed by Vaſiſht'ha," adds, "an eightieth part of an hundred." Since it is thence inferred, that Vaſiſht'ha has propounded the rate of an eightieth part, his text muſt be ſo explained, as to ſtate an eightieth part. That expoſition on the text of Menu, which makes the intereſt allowed by Vaſiſht'ha one caſe, and an eightieth part of a hundred another caſe, is not approved by Cullúcabhatta. Therefore, the interpretation approved by Chandéſwara, Bhavadéva, Váchespati Misra and others, ſhould be admitted, as follows. In theſe texts twenty *palas* are intended; and the *pala* ſhould be taken at four *ſuvernas*, as ſtated by Menu and Yájnyawalcya. Twenty *palas*, therefore, are equal to eighty *ſuvernas*; and the eightieth part of that ſum, or one *ſuverna*, is the monthly intereſt. But here *máſhas* are mentioned. This apparent incongruity is thus reconciled;

reconciled: the *máſha*, containing five *crìſhnalas*, as ſtated by MENU and YÁJNYAWALCYA, muſt not be taken (for it is not applicable); but the *máſha* ſtated by VRĬHASPATI as quoted in the *Retnácara* and *Chintámeni*, "a *máſha* is conſidered as the twentieth part of a *pala*." Thus the twentieth part of a *ſuverna* containing eighty *ractícás* is equal to four *ractícás*; and the twentieth part of a *pala* containing four *ſuvernas* is certainly equal to ſixteen *ractícás*; and thoſe make one *máſha*; five of theſe are equal to eighty *ractícás* or one *ſuverna*. Thus there is no inconſiſtency. Here *ſuverna* is of the maſculine gender; for it is ſo employed by MENU and YÁJNYAWALCYA, and is ſo exhibited in the ſame ſenſe by AMERA; but, in the ſenſe of gold generally, it is of the neuter gender, for AMERA ſo exhibits it in this ſenſe.

THE ſame ſhould be alſo underſtood of other things. The monthly intereſt on a *purána* is thus explained: a *pana* conſiſts of eighty ſhells, and a *pana* is the quantity of a *carſha* of copper, as mentioned by MENU; "but a *carſha* (or eighty *ractícás*) of copper is called a *pana*." The *carſha* is the fourth part of a legal *pala*; hence expoſitors ſay, a *pala* contains four *carſhas*. Conſequently the weight of eighty *ractícás* of copper is a *pana*; on this ground, the ancients eſtabliſhed it *alſo* at the value of eighty ſhells; accordingly it is familiar in practice, that eighty ſhells make a *pana*. A *puráná* contains ſixteen *panas*, according to the *Retnácara*; and *puráná* is alſo practically noticed, for ſixteen *panas* of ſhells, in penances and expiations, and on other occaſions. Now the eightieth part of a *pana* is one ſhell; of a *puráná*, ſixteen ſhells; of a hundred *panas*, a hundred ſhells or one *pana* and a quarter; of a hundred *puránas*, ſixteen hundred ſhells, or twenty *panas*. Or if the money be in ſilver coins ſtamped with legends, the intereſt on a hundred ſuch coins is one coin and a quarter: for, on eighty pieces, it is one piece; and, on twenty pieces, a quarter; which, added together, make one piece and a quarter. But, if the principal be a ſingle piece of money, the rate muſt be ſettled by its value. If its value be four *puránas*, then ſixty-four ſhells are its eightieth part; and ſo in all caſes.

AGAIN; if the debt conſiſt of kine or the like, the intereſt ſhould be ſettled on the value. It ſhould not be affirmed, that they cannot conſtitute a debt; for the limit of intereſt on cattle is mentioned (LXV). Why ſuch a practice

tice does not occur, we know not. Something, however, may be mentioned to explain the *received* diſtinctions *in theſe caſes*. If a man happen to deliver a cow or the like as a loan, the intereſt may be received on her value; *but* a great offence is committed; for the ſale of a cow is forbidden in moral law: however, a goat, a calf, or the like, may be taken by way of intereſt, without any offence on the part of the receiver; and the debt ſhould be diſcharged by returning the thing itſelf or ſomething of the ſame nature; as already ſtated by MISRA. But, in this caſe, it ſhould be returned unblemiſhed, or another cow, or the like, or other thing of equal value, ſhould be delivered. Whatever it is forbidden to ſell and give away, ſhould not be delivered as a loan; for the offence is equal. But a *Brāhmana* may advance lac, ſalt or the like, by way of loan, for there is no more offence in lending, than in giving thoſe things; and the offence is reſtricted to the ſale of ſuch things: however, at the time of repayment, the value of the ſalt or the like, and of intereſt accruing on it, ſhould not be received; for *that would equal* the offence of ſelling it. The intereſt ſhould be of the ſame nature with the thing lent; for intereſt is propounded at the eightieth part of the thing lent.

To revert to the explanation of both texts (XXIV and XXV); the inſtitutes of VAS'ISHT'HA and others were compoſed by their pupils, who heard the purport of what they record, from the mouth of VAS'ISHT'HA and the reſt: hence it is ſaid (XXIV), "declared by the words of VAS'ISHT'HA," as in the ordinances of MENU, it is ſaid, "MENU ordained."

"LEGAL," in the text of GO'TAMA (XXV), ſignifies juſtifiable in law, that is, not illegal; for it coincides with the expreſſion, in the text of VAS'ISHT'HA, "thus the law is not violated" (XXIV). Or the ſenſe may be this; he, who takes intereſt allowed by codes of law, which may produce religious merit by means of pious oblations made therefrom to Deities and *Brāhmanas* and ſo forth, has the complete benefit thereof, if he actually do make ſuch oblations to deities and prieſts; not ſo, he, who celebrates rites with wealth acquired by theft or by other nefarious means. As is declared by

MENU:—NEITHER a prieſt nor a military man, *though diſtreſſed*, muſt receive intereſt on loans; but each of them, if he pleaſe, may pay *the* ſmall intereſt *permitted by law*, *on borrowing* for ſome pious uſe, to the ſinful man, *who demands it.**

WHICH is expounded by CULLŪCABHATTA, "may advance *a loan* on ſmall intereſt, for ſome pious uſe."

"LEGAL intereſt" (XXV); intereſt authorized by law, at the rate of five *māſhas* for twenty *palas*.

The *Retnácara*.

WE expound the text (XXV), "the quantity of five *māſhas* is the intereſt for twenty *palas*," or intereſt appertaining to twenty *palas* (*ſupplying the word "pala"* by a ſecondary ſenſe *of* "*twenty*"); that intereſt accrues on a ſum of twenty *palas*. But ſome read "twenty" in the fifth or ſixth caſe (vinſaṫéh *inſtead* of vinſatih). That is wrong, for it is not approved in the *Retnácara*. The ſenſe, according to regular conſtruction, is thus; "the quantity of five *máſhas*, as intereſt appertaining to twenty *palas*, is legal."

"A MONTH"; here "*for*" muſt be ſupplied. In every text, where "month" is not ſpecified, but intereſt at the rate of an eightieth part or the like is mentioned, the word "month" muſt be underſtood: and the month is according to *ſávana* time, conſiſting of thirty days and nights; not the *ſaura* month from the ſun's departure from one ſign to his departure from another ſign. For RAGHUNANDANA, in commenting on texts quoted in the *Mala máſa tatwa*, ("certain ſacrifices and acts of devotion are "to be regulated by *ſávana* † time; ſo is impurity after childbirth and the "like; and ſo are all popular and forenſick tranſactions") ſays, that under the term, "and the like," wages, intereſt and the like ſhould be compre-

* Chapter 10, v. 117. I do not alter the tranſlation, which conforms to the literal ſenſe of the text, though it conſiſt not with the comment and the purpoſe of the quotation. See Book II. Chapter IV. v. XXIII.

† VYA'SA in the *Viſhnu-dhermóttara*.

hended

hended.' Hence it is inconſiſtent with law to regulate civil contracts by *ſaura* or ſolar time. It would be a great diſparity, were *a whole month's* intereſt, at the rate of an eightieth part or the like, paid upon a loan taken on the laſt day of the ſun's paſſage through one ſign, and repaid on the following day; and no intereſt paid on a debt contracted on the firſt day *of the ſolar month*, and diſcharged on the laſt day of the ſame month. This ſhould be determined by the wiſe.

HERE intereſt for one month is declared by ſages to be the eightieth part *of the principal*; but if the period exceed one month, the ſame rate is directed for each month: ſince the expreſſion implies repetition, it follows that the intereſt ſhall be an eightieth part for every month reſpectively: and, if the period be leſs than a month, it appears, that the intereſt ſhould be computed by a ſubdiviſion of that rate: elſe a diſparity would ariſe, no intereſt being payable on a debt diſcharged within one day of a complete month.

A GREATER or leſs fine, or other *deciſion*, ſhould not be regulated by very minute diſtinctions.

BUT ſome attend in practice even to minute variations in fines *and the like*.

XXVI.

VRĬHASPATI, quoted in the *Retnácara*:—THE eightieth part accrues *monthly on the principal*; and, if *the intereſt be* received, the *loan* is doubtleſs doubled in a third *of a year* leſs than ſeven years; *that is*, in *ſix years and eight months*.

"ACCRUES;" it is the intereſt for each month. If the intereſt be received, the loan advanced is doubled. Or the ſeventh caſe may be here uſed in the ſenſe of the third, "the debt is doubled by accumulation of intereſt." In what time? The ſage replies to this queſtion, "in a third of a year leſs than ſeven years." Divide a year of twelve months into three parts; each part contains four months; that, deducted from ſeven years, leaves ſix

years

years and eight months. Thus, if the debt amount to one hundred *ſuvernas*, the monthly intereſt is one *ſuverna* and a quarter; the annual intereſt is twelve *ſuvernas* and twelve quarters, or fifteen *ſuvernas*; the intereſt in three years amounts to forty-five *ſuvernas*; in ſix years, to twice that ſum or ninety *ſuvernas*: intereſt for eight months is eight *ſuvernas* and eight quarters, or ten *ſuvernas*; which, added to ninety *ſuvernas*, make a hundred, or the ſame amount with the original debt: conſequently, added to the principal ſum, it doubles it. This is mentioned by VRĬHASPATI to prohibit further intereſt, after a loan in gold, ſilver, or the like, has been doubled by intereſt. This will become evident under the title of limited intereſt.

THIS rate of intereſt is ordained if a pledge be given; VYĀSA propounds a diſtinction if a ſurety be given without a pledge, or if neither be given.

XXVII.

VYĀSA:—MONTHLY intereſt is declared to be an eightieth part of the principal, if a pledge be given; an eighth part is added, 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.*

" AN. eightieth part;" the eightieth.

The *Retnácara.*

THAT is, one part in eighty parts. Here a pledge intends a pledge to be kept; for in a gloſs on the text previouſly quoted from MENU (XXIII) to the ſame purport with this text, the *Retnácara* ſtates, " this concerns a pledge to be merely kept." The meaning is this; in the caſe of a pledge to be uſed, ſince the uſe of the pledge is the only intereſt, the rate of an eightieth or the like is inapplicable: all this will be explained under the title of various ſorts of intereſt.

A PLEDGE to be kept is one, which would be impaired by uſe; a pledge to be uſed is one, which is not *neceſſarily* impaired by uſe. Here it ſhould be noticed, that, if a man contract a debt, mortgaging land or the like to be

be uſed; and ſay, "the uſe of the land ſhall be the only intereſt," in that caſe, ſince there is no other intereſt but the uſe of the pledge, the rate of an eightieth part or the like is inapplicable. But if he ſay, "this land is mortgaged to you; paying your intereſt from its produce, I ſhall diſcharge the principal from the ſurplus; or, if the produce be inſufficient, I will make good the intereſt, delivering other money or goods;" in that caſe the rate of an eightieth part is applicable even to a pledge to be uſed.

Is it not the law, that, when land or the like is hypothecated, the entire uſe of it ſhould of courſe be taken by way of intereſt? On the contrary, uſufruct in exceſs is reprehended by a text, which will be quoted from VRĬHASPATI (XXXV 7). It ſhould not be argued, that a pledge delivered for uſe is a pledge to be uſed; and one delivered merely for ſecurity is a pledge to be kept. The forfeiture of the whole intereſt will be denounced againſt the unauthorized uſe of a pledge to be kept; and the forfeiture of half the intereſt, againſt the unauthorized uſe of a pledge to be uſed. It is ſaid in the *Dípacalicà*, "if a pledge to be kept, that is, one which ſhould be ſecurely preſerved, as clothes, ornaments and the like, be uſed, no intereſt *ſhall be received.*" It is not ſaid, "a pledge to be kept, that is, one not delivered for uſe;" but, "*a pledge to be preſerved*, as clothes, ornaments and the like." The proper place for this diſquiſition is the chapter on pledges. Since many texts are there cited, to expatiate in this place would be idle.

"AN eighth part is added" (XXVII); and that is an eighth part added to an eightieth part. Hence, two *panas* leſs than two *puránas*, *or one* purána *and fourteen* panas, are received, if there be only a ſurety.

The *Retnácara.*

IN that book a debt amounting to one hundred *puránas* had been already ſuppoſed; hence, in this caſe alſo, the rate of intereſt denoted is two *panas* leſs two *puránas* on a hundred *puránas*. But, in the gloſs on this text, the letter M is an errour of the pen, (aśityaſhtamabhágaſahita *inſtead of* aśityaſhtabhágaſahita) for the text exhibits *ſáſhtábhága*, with eight parts. Conſequently the ſenſe is *an eightieth part* joined to eight parts: and the portion not ſpecified muſt be a ſixteenth on the authority of uſage. Thus, what-

ever be the amount of an eightieth part, eight parts are half of that amount. But, in this caſe, an eightieth part is twenty *panas*, and theſe added to half that amount make thirty *panas*, or two *panas* leſs than two *purânas*.

But ſome, noticing another reading in the commentary on Yâjnyawalcya, *ſhaſht'hibhâga* inſtead of *ſâſhtabhâga*, ſay, the intereſt ſhould be a ſixtieth part, if there be only a ſurety: and this, they ſay, is fit. If there be neither pledge nor ſurety, the intereſt is two *purânas* for a hundred *purânas*, as ordained by the text (XXVII). If a pledge be given, twenty *panas* are the intereſt preſcribed. But in this caſe, a pledge having been given, the confidence is greater; for a chattel of equal value is in the creditor's power. If there be neither pledge nor ſurety, no confidence exiſts; for payment reſts on the will of the debtor: in this laſt caſe, therefore, the intereſt, ordained by ſages for a hundred *purânas*, is greater by twelve *panas*: and this is conſiſtent with the reaſon of the law. Now, if there be only a ſurety, confidence is given, but there is a poſſibility of trouble. For inſtance; a man advances a loan on this conſideration, "if my debtor "do not repay the loan, even then I ſhall ſubſequently recover it from his "ſurety by a ſuit at law;" in that caſe trouble *may be apprehended*, for the recovery is effected by the trouble of litigation. It is therefore proper, in ſuch a caſe, to take, in addition to the twenty *panas* allowed where a pledge is given, ſix *panas*, or half the additional twelve *panas* allowed *on loans without ſecurity*. Now this nearly agrees *with the rate of a ſixtieth part*. In dividing a hundred *purânas* into ſixty parts, firſt take one *purâna* for each part, this diſpoſes of ſixty *purânas*, and forty *purânas* remain. Again ſet half a *purâna* towards each part, thirty *purânas* are diſpoſed of, and ten *purânas* remain; and each part is one *purâna* and a half *with a further fraction from the remainder*. Reduce the ten *purânas* into *panas*; the reſult is a hundred and ſixty *panas*: ſetting two *panas* to each part, the portions amount to one *purâna* and ten *panas*; a hundred and twenty *panas* are diſpoſed of; and forty *panas* remain. Again ſet half a *pana* to each portion, thirty *panas* are diſpoſed of; the ſixtieth part amounts to one *purâna* and ten *panas* and a half, *with a further fraction*; and there remain ten *panas*, or eight hundred *çauries*. Diſtribute thirteen *cauries* to each ſhare, ſeven hundred and eighty *cauries* are diſpoſed of; and the ſixtieth part of a hundred *purânas* amounts

to

to one *purâna*, ten *panas* and fifty-three ſhells, with a fraction of one third from the remaining twenty ſhells, which may be *more accurately* divided by thoſe, who are ſkilled in the notation taught by SUBHANCARA. The amount of fifty-three ſhells and a third is, they ſay, but a ſmall exceſs above the rate of intereſt, which, in their opinion, is reaſonable; neglecting therefore minute differences, intereſt may be taken at the rate ordained by the ſage, namely a ſixtieth of the principal, if there be only a ſurety.

VÁCHESPATI MISRA, not acquieſcing in either of theſe interpretations, expounds the text otherwiſe in his digeſt. "An eighth part is added;" the eighth part of an eightieth part is added to an eightieth part. Hence the intereſt, on the ſum of twenty *palas* of gold, is ninety *racticás*. His meaning is this; *ſáſhtabhága* ſignifies joined to one part in eight parts. *The anſwer* to the queſtion, "part of what?" *is drawn* from the neareſt term, "*an eighth part* of an eightieth." Thus, an eightieth being divided into eight parts, one ſuch part is added. But the intereſt at an eightieth part of the principal is aſcertained in the caſe propoſed; the eightieth part of twenty *palas* or eighty *ſuvernas* is equal to eighty *racticás* or one *ſuverna*; to which the eighth part of it, or ten *racticás*, being added, the reſult is ninety *racticás* According to this expoſition, twenty *panas*, which are the eightieth part of a hundred *puránas*, added to the eighth of that or two *panas* and a half, make twenty-two *panas* and a half, *the rate of intereſt on a hundred puránas, if there be only a ſurety:* and the ſame method ſhould be practiſed in the caſe of ſilver coins and the like. On this opinion alſo, we do not diſcover why the letter M occurs in the gloſs *(Aſhtaménabhágéna)*.

A THOROUGH examination of theſe opinions, to ſelect the beſt, muſt depend on the mental faculties of intelligent *inquirers*. On what proof or argument it is held, according to the opinion delivered in the *Retnácara*, that the portion not ſpecified is a ſixteenth, muſt remain a queſtion: the other reading (a ſixtieth part) is not admitted in the *Retnácara* nor in the *Chintámeni*; for in both the text is thus explained, "an eighth part is added:" and in the commentary on YÁJNYAWALCYA, *where this reading occurs*, the text is not expounded. Whether the cerebral S. be not an errour of the copyiſt, is a queſtion on the ſecond interpretation. On MISRA's expoſition the queſ-

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tion is, how the intereſt, where a ſurety only is given, ſhould ſo little exceed the rate of intereſt, where a pledge is given.

" If there be a ſurety;" the ſenſe is, if there be only a ſurety; for higher intereſt would be improper if there were both a ſurety and a pledge.

" If there be neither pledge nor ſurety *(nirâdhâné)*;" here the word *âdhâna* ſignifies both pledge and ſurety; hence, if there be neither ſurety nor pledge, two *puránas* are received *on a hundred.*

The *Retnácara.*

The derivation of the word is, " what is placed *(ádhîyaté)* for the ſake of taking up a loan;" * and that deſcription is applicable both to a pledge and a ſurety. The privation of both ſorts of ſecurity is *nirâdhâna*, want of pledge and ſurety. Or the word *àdhâna* may be reſtricted to pledges: thus, becauſe an eighth part is directed to be added, if there be no pledge but a ſurety *only*, therefore by the regular form for general rules and exceptions *to thoſe rules*, the *remainder of the* text relates to a different caſe of loans without a pledge; *that is, one without pledge or ſurety.* Ultimately there is not, in our opinion, any difference.

On this ſubject an obſervation ſhould be made. The ſervant of ſome perſon aſks a loan of a moneylender; he replies, " give a ſurety or a pledge:" the ſervant requeſts his maſter to become his ſurety, that he may obtain a loan from this moneylender; his maſter replies, " I will not be thy ſurety, but I will promiſe him thy wages:" accordingly the ſervant's maſter tells the moneylender, " I will not pay him his wages, unknown to you;" and the moneylender, confiding therein, advances a loan to him. In ſuch a caſe, is it a loan with a pledge, or with a ſurety? Not the firſt: ſince the ſervant's maſter only intervenes, and is not in the nature of a thing belonging to the ſervant, there can be no pledge. Nor is it of the ſecond deſcription; for this ſervant's maſter is not comprehended under any of the deſcriptions of ſureties enumerated, ſureties for appearance, for honeſty,

* See a different etymology at v. LXXXI.

for

for payment, and for delivery. The ſervant's maſter does not ſay, "I will produce this man if he abſcond;" nor, "that man is truſt-worthy, and will not be averſe from repaying a loan received;" neither does he ſay, "if the debt be not diſcharged by him, I will make good the ſum;" nor "I will recover the amount from him and diſcharge the debt." How then can he be a ſurety? This debt muſt conſequently be one, for which there is neither pledge nor ſurety: this again is not true in reaſoning; for there is a motive of confidence. On this propoſed caſe it is ſaid, this is a debt for which a ſurety is given: although the ſervant's maſter is not poſitively comprehended in the four deſcriptions of ſureties, yet, as that enumeration is a mere illuſtration, it muſt be admitted that ſuch a perſon is a ſurety; and if the ſervant's maſter break his own promiſe, he muſt diſcharge the debt. The intereſt ſhould therefore be an eighth part added to an eightieth. Or the wages may be conſidered as a pledge. In that caſe the debtor's aſſent is given to the hypothecation; and a declaration being made by the debtor to that effect, the ſervant's maſter is certainly ſurety for delivery of the pledge, not for payment of the debt: *but*, although there be no promiſe of payment, there is a lien on the *promiſed* delivery of the pledge; and a lien prevents ſeizure by any other creditor. The intereſt, therefore, ſhould in this caſe be one eightieth part only of the principal. But, if he do not perform his work, then, no wages being earned, how is the debt diſcharged? To this it is anſwered; does the ſervant's maſter diſmiſs him without a fault? If ſo, the ſervant's maſter is amenable: the ſervant being faultleſs, and the maſter needing another ſervant, this ſervant ſhould not be diſmiſſed; for his diſmiſſion could only originate in malice. This is conſiſtent with reaſon. But, if the ſervant were faulty, his maſter would not be amenable *for diſmiſſing him*: and, when his diſmiſſion takes place, the debt ſhould be paid with intereſt, or a new pledge be given; for this caſe is the caſe of a pledge deſtroyed by the act of GOD (CI. &c). But, if the ſervant deſert his maſter without provocation, in that caſe, a ſurety muſt certainly be given, if he cannot immediately diſcharge the debt nor give another pledge; or, on failure thereof, the debt from that day becomes a debt unſecured by a pledge, and bears intereſt at the rate of two in the hundred. A man received a loan on the mortgage of a piece of land pointed out by him in this form, "I will pay thee from the produce of the preſent year; the produce

of this land is thy pledge." This debtor meditated a fraud, and gave no attention to culture, reflecting, "the produce of this land is my creditor's only; no benefit will ariſe to me from it: if no produce be obtained, what can the creditor do?" As in this caſe chaſtiſement is proper, and intereſt ſhould be computed at the rate of two in the hundred from the day when he neglected the culture of the land; ſo, in the caſe ſuppoſed, where the ſervant quits an unoffending maſter, thinking labour vain, *which is undergone* for the ſole purpoſe of diſcharging his debt, we hold it reaſonable, that he ſhould incur puniſhment. So long as he performs work, his wages for that period belong to the creditor, and no other perſon; becauſe thoſe wages are pledged to that creditor: and this pledge falls under the deſcription of a pledge to be kept. After the undertaking ſuppoſed, if the ſervant's maſter alſo advance him a loan on any terms, and he only perform ſervice for a ſhort time, ſo that both cannot be paid out of his wages; what is the rule of deciſion in that caſe? The apparent difficulty may be reconciled in the ſame manner, with the caſe where a man, renting land for cultivation from one perſon, contracts a debt to another, and ſubſequently receives a loan alſo from his landlord, both which debts cannot be paid from the produce of that land. Half of the grain produced both from the uſe of land and by corporal labour belongs to the owner of the land, half to the huſbandman. In this caſe the huſbandman's ſhare, not yet gathered, is pledged to one perſon; but no act, amounting to hypothecation, has been done by the owner of the land: hence, the produce may be taken by the firſt creditor, but the landlord retains in his power the grain produced from his own land, until his own demand be ſatisfied. Such is the practice in ſome inſtances. It cannot be aſſerted as a maxim, that the land muſt of courſe be left another year in his tillage, and that the debt may be paid from the produce of the following year. Since his tillage may be found defective, or he may be detected in knavery or the like, his tillage does not continue without the conſent of the landlord. This and other inferences may be drawn from reaſoning.

XXVIII.

YA'JNYAWALCYA:—AN eighties part *of the principal* is the monthly intereſt, when a pledge has been delivered: otherwiſe,

otherwiſe, it may be, in the direct order of the claſſes, two, three, four, or five in the hundred.

"OTHERWISE;" in caſes other than that of a pledge delivered; that is, when no pledge has been given. Since the text has the ſame tenour with that of VYA'SA (XXVII), it muſt be alſo underſtood, that no ſurety was given. For a debt of one hundred *ſuvernas*, two *ſuvernas* ſhould be paid to a *Bráhmana*; three *ſuvernas*, to a *Cſhatriya*; four *ſuvernas*, to a *Vaiſya*; five *ſuvernas*, to a *Súdra*.

XXIX.

MENU:—IF *he have no pledge, a lender of money* may take two in the hundred by the *month*, remembering the duty of good men: for by *thus* taking two in the hundred, he becomes not a ſinner for gain.

2. HE may thus take, *in proportion to the riſk, and* in the direct order of the claſſes, two in the hundred *from a prieſt*, three *from a ſoldier*, four *from a merchant*, and five *from a mechanick or ſervile man*, but never more, as intereſt by the month.

"OF good men;" reflecting that ſuch is the duty of good men.

CULLU'CABHATTA.

"Two in the hundred" (XXIX 1); this concerns a *Brāhmana*. In anſwer to the queſtion, what is the rate for other tribes, he repeats the intereſt payable by prieſts, and declares *the rates for other claſſes* (XXIX 2).

"BUT never more" *(ſamam)*; literally, uniformly or equally: that is, neither more nor leſs.

CULLU'CABHATTA.

BUT we hold, that "equally" is expreſſed for the purpoſe of ſhowing that, as a prieſt becomes not a ſinner for gain (that is, does not contract the ſinful

ſinful taint ariſing from the *undue* receipt of money) by taking two in the hundred, ſo a ſoldier, who takes three in the hundred, is not a ſinner for gain.

THUS, according to CULLŪCABHATTA, CHANDESWARA, BHAVADÉVA, VÁCHESPATI MISRA, and others, an eightieth part *of the principal* is the *monthly* intereſt, when a pledge is delivered; but two in the hundred, if there be no pledge.

THE *Mēdhātit'hi* and GŌVINDA RĀJA expound the text of MENU (XXIX), 'If a man, in diſtreſs, cannot provide for his wants on the intereſt firſt mentioned, he may take two in the hundred or the like.' For the text of YÁJNYAWALCYA (XXVIII) ſolely concerns loans ſecured by a pledge: and there is no objection to this explanation of the word "otherwiſe;" in a caſe other than that of a man, who can provide for his wants, as implied in the former part of the text; that is, where he cannot do ſo. Here it may be queſtioned, what ſhould be the application of the text of VYĀSA (XXVII); for a pledge is there ſignified by the word *ádhāna*. Although the text might be well applied by any how explaining it "proviſion for wants," yet there would be no determined rate, when no pledge is delivered: if the rate were the ſame for loans with or without a pledge, the expreſſions, in the texts of YÁJNYAWALCYA and VYĀSA, "when a pledge has been delivered," and, "if a pledge be given," would be unmeaning. But the receipt of two in the hundred and the like is authorized by the *Médhātit'hi* and other commentaries, on the authority of the phraſe, "he becomes not a ſinner for gain" (XXIX), which they apply to the caſe of utmoſt diſtreſs, for the purpoſe of obviating the doubt, whether a man become a ſinner by taking two in the hundred. The caſe of abſolute inability to provide for wants might exiſt, as well as the caſe of a loan unſecured by a pledge as ſtated by YÁJNYAWALCYA. However this *expoſition* ſhould not be admitted, becauſe it is diſapproved by CHANDĒSWARA, VÁCHESPATI MISRA, BHAVADÉVA, and many other authors. To expatiate would be vain.

ON the ſubject of loans without a pledge, the following text propounds a rule.

XXX.

XXX.

HA'RI'TA:—FOR twenty five *purânas (or four hundred* panas) *of copper, lent without either pledge or ſurety,* the intereſt may be eight *panas* a month; and the principal, being doubled in four years and two months, bears intereſt no longer: ſuch intereſt is legal; and the lender violates no duty by taking it.

" BEING doubled;" becoming two fold: and the intereſt is therefore two in the hundred by the month. " Bears intereſt no longer;" intereſt ceaſes.

The *Retnâcara.*

INTEREST is ſettled at rates varying in the order of claſſes, on loans made without receiving a pledge. By parity of reaſoning, different rates ſhould be alſo inferred, in the order of the claſſes, when a pledge or ſurety is given. As is directed by VA'CHESPATI; 'intereſt ſhould alſo be ſimi-'larly regulated, in the order of the claſſes, on loans ſecured by a pledge 'and the like.'

DOES the order of the claſſes relate to the borrower or lender? CHANDE'SWARA holds, that it relates to the debtor; for he ſays, 'both theſe texts concern a *Bráhmana* contracting debts;' and again, '*he may receive in-'tereſt at theſe rates* from a prieſt, a ſoldier, a merchant, and a mechanick '*reſpectively:*' and this is conſiſtent; for it is expreſſed in the text of MENU, " He may thus take, in the order of the claſſes, (from *Bráhmanas* and the reſt) two in the hundred and ſo forth;" and there is no difficulty in explaining the text of VISHNU (XXXI), " may receive from his debtor, in the direct order of all the claſſes, two in the hundred and ſo forth."

XXXI.

VISHNU:—BUT a creditor may receive intereſt at due rates from his debtor, or *may take from him,* in the direct order of all the claſſes, two, three, four, or five in the hundred by the month.

THE ſenſe of the text is as follows: "at due rates;" an eightieth part of the principal, or an eighth added to an eightieth: ſuch a proportion he may take by way of intereſt. In regard to loans without pledge or ſurety, the ſage adds, "two, three, four, or five in the hundred &c."

VIJNYÁNÉSWARA alſo holds, that the order of the claſſes reſpects the borrower. But, in VÁCHESPATI MISRA's opinion, it reſpects the lender; accordingly he ſays, "A *Vaiſya* infringes no duty by taking intereſt at the rates preſcribed in this text of MENU, and in other places; nor *do Bráhmanas* and the reſt *infringe any duty*, by doing ſo in a ſeaſon of diſtreſs." Here ſtating generally, that a *Vaiſya* infringes no duty, he adds, "nor *Bráhmanas* and the reſt, in a ſeaſon of diſtreſs:" ſince there is no other term in that phraſe to which the words can be referred, the meaning of what he ſays, is this, "a *Vaiſya*, in all circumſtances, and *Bráhmanas* and the reſt, in diſtreſs, infringe no duty by taking *ſuch intereſt*." What is the ſenſe of MENU's text, conſiſtently with this opinion? *It is as follows.* "In the direct order of the claſſes;" according to the order of the claſs, to which he belongs, the lender may take, &c. We think, the order of claſſes ſhould be conſidered as relating both to the lender and borrower, on the authority of both commentators, CHANDÉSWARA and VÁCHESPATI. Thus the contemplative Sage

XXXII.

YÁJNYAWALCYA ordains:----ALL borrowers, who travel through vaſt foreſts, may pay ten, and ſuch, as traverſe the ocean, twenty in the hundred 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.*

OR whatever intereſt has been ſtipulated by them, all borrowers ſhould pay to lenders of all claſſes. Thoſe, who travel by difficult roads, or traverſe the ocean, for the ſake of commerce, ſhould pay ten *panas*, or twenty *panas* reſpectively, on the hundred *panas*, if no pledge have been given. Greater intereſt is paid on account of the riſk of loſing the principal.

SÚLAPÁNI in the *Dípacalicá*

BUT,

BUT, if there be a pledge or ſurety, the intereſt ſhould not exceed the rates preſcribed, for there is not ſuch a riſk of loſing the principal. "Ten Panas;" the meaning is, a lender may take one part in ten.

THE ſage declares an alternative in reſpect of the preſcribed rates of two and three in the hundred, and the like; "or whatever intereſt has been ſtipulated by them."

The *Dípacalicá*.

ALL borrowers, *Bráhmanas* as well as others, ſhould pay to lenders of all claſſes, *Bráhmanas* as well as others, whatever intereſt has been ſtipulated by them. Whether a pledge have been delivered or not, they muſt pay the the intereſt, which has been promiſed by them in this form, "this intereſt ſhall be paid by me."

CHANDÉSWARA reads *ſwacrĭtám*, ſtipulated by the borrower himſelf. BHAVADÉVA reads *ſucrĭtám*, which he explains, "allowed by all ſages, namely, the eightieth part of the principal and the like." According to CHANDÉSWARA, this intereſt falls under the deſcription of *cărităá*, or intereſt ſtipulated by the borrower. But according to BHAVADÉVA the two caſes may be reconciled by referring them to circumſtances, in which a lender can or cannot, *part with his money on the terms generally preſcribed*. CHANDÉSWARA's interpretation ſhould be admitted, for his reading is approved by VIJNYÁNÉSWARA and ŚÚLAPÁNI.

IF the order of claſſes were referred to the borrower only, intereſt not varying on loans made by perſons of the ſeveral claſſes, there would be no purpoſe in ſaying, "to lenders of all claſſes" (XXXII). If it be referred to the lender only, intereſt not varying on debts contracted by perſons of the ſeveral claſſes, there would be no purpoſe in ſaying, "all borrowers" (XXXII). It ſhould not be argued, that the expreſſion, "all borrowers," intends all, whether traverſing the ocean or not, and ſo forth. This would be inconſiſtent with the mode in which the text is cited; "the ſage declares an alternative in reſpect to the preſcribed rates of two and three in the hundred and the like." Accordingly MISRA alſo, in his gloſs on the text of

CÁTYÁYANA

CA'TYA'YANA (LVI), ſays, " after the lapſe of ſix months, intereſt ſhould be paid by a *Súdra* at the rate of five in the hundred." Since otherwiſe he muſt contradict himſelf, it ſhould be underſtood, as the opinion of VA'CHESPATI MISRA, that the order of claſſes relates both to the lender and borrower.

XXXIII.

MENU:—WHATEVER intereſt, or *price of the riſk*, ſhall be ſettled *between the parties*, by men well acquainted with ſea voyages or journies by land, with times and with places, ſuch intereſt ſhall have legal force.

Is not this text of MENU incompatible with the text of YA'JNYAWALCYA (XXXII)? For the text of MENU is fully explained in the *Retnácara*. " Men well acquainted with ſea voyages;" mentioned merely as an inſtance ſuggeſting a trader in general: " With times and with places;" who ſee, that ſo much is the profit at ſuch a place: " Legal force;" adjudication: therefore ſuch intereſt ſhould in ſuch a caſe be adjudged. It is evident from the purport, ſince the term uſed in the text is explained adjudication, that the intereſt ſhould be regulated according to the time, place and thing; the commentator ſays as much, by adding " ſuch intereſt ſhould be adjudged:" the payment of ten and twenty in the hundred is, therefore, inconſiſtent with the obligation to pay the intereſt ſettled by men trafficking by ſea, and the like. This ſhould not be affirmed: the text of YA'JNYAWALCYA ſhould be conſidered as applicable to the caſe where no ſpecifick rate of intereſt has been ſettled. VA'CHESPATI, in his gloſs on the text of MENU (XXXIII), ſays, " they ſettle greater intereſt, expecting large profit from traverſing the ocean." Alluding to this, HA'RI'TA ſays, ſome allow intereſt at the rate of a *pana* for a *purána*.

XXXIV.

HA'RI'TA: — SOME allow a *pana* each month for one *purána*, *or a ſixteenth of the principal.*

BUT CHANDE'SWARA ſays, this text (XXXIV) concerns a borrower of

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a mixed claſs. That may be queſtioned, for, the text being explained by referring it to traders by ſea, it is uſeleſs to extend it to borrowers of a mixed claſs; and no ſage has propounded a higher rate of intereſt payable by mixed claſſes.

SECTION II.

ON SPECIAL FORMS OF INTEREST.

XXXV.

VRĬHASPATI:—LEARN, from their properties, the various ſorts of intereſt declared to be four; or according to ſome, five; and according to others, ſix;

2. *Cáyicá*, corporal; *cálicá*, periodical; *chacravrĭddhi*, compound intereſt; *cáritá*, ſtipulated; *ṡic'hávrĭddhi*, daily intereſt; and *bhógalábha*, intereſt by enjoyment.

3. *Cáyicá* is connected with (*cáyá*) *the* body *of a pledged animal; cálicá* is due monthly; intereſt upon intereſt is *chacravrĭddhi*; and intereſt ſtipulated by the borrower is *cáritá:*

4. WHEN intereſt is received at the cloſe of each day, it is called *ṡic'hávrĭddhi* or hair-intereſt; becauſe it grows daily, like hair, which can only ceaſe growing on the loſs of the head;

5. THUS the daily intereſt can only ceaſe by the payment of the principal, and hence it is called *ṡic'hávrĭddhi:* the rent *or uſe and occupation* of a *pledged* houſe, or the produce of a *pledged* field, is called *bhógalábha*, intereſt by enjoyment.

6. INTEREST payable at the cloſe of each day, and *cáyicá*, or *intereſt accruing from a pledged body*, as well as intereſt by enjoyment, the creditor ſhall receive entire, ſo long as the principal remain unpaid:

7. *But* the uſe of a pledge after twice the principal has been realized

realized from the uſufruct, compound intereſt, and the exaction of the principal and whole intereſt after a part of it has been liquidated, is uſury and reprehenſible.

XXXVI.

NA'REDA:—IN law, intereſt on loans is of four kinds: *cáyicá*, *cálicá*, *cáritá* and *chacravriddhi*, or intereſt paid on an undiminiſhed principal, periodical intereſt, ſtipulated intereſt, and intereſt on intereſt.

2. INTEREST at the rate of one *pana*, or of half *or other fraction of a pana*, repeatedly paid without diminiſhing the (*cáyá*) principal, is named *cáyicá*; but that, which runs by the month, is conſidered as *cálicá*, or *payable at a* (*cála*) *time certain*.

3. THAT intereſt is named *cáritá*, or ſtipulated, when the debtor of his own accord has agreed for it; and intereſt upon intereſt is declared to run like a wheel.

BUT the author of the *Mitácſharà* reads a quarter of a *pana* inſtead of half a *pana*.

XXXVII.

CA'TYA'YANA:—STIPULATED intereſt is that, which has been ſpecially *and freely* promiſed by the debtor, in a time of extreme diſtreſs, above the allowed rate;

2. AND *in that caſe, but* in no other whatever, ſtipulated intereſt muſt *always* be paid.

3. WHERE a loan is made on an agreement, that the whole uſe and profit of a pledge ſhall be the only intereſt, it is called *a loan on the* uſe of a pledge (*ádhibhóga*).

XXXVIII.

XXXVIII.*

YA'JNYAWALCYA: — INTEREST on intereſt is *chacravr̆iddhi;* monthly intereſt is *named cálicá;* that, which is ſtipulated by the party himſelf, is *cáritá;* but *cáyicá* accrues from the body *of a pledged quadruped.*

2. A DEBT, ſecured *merely* by a written contract, ſhall be diſcharged, *from a moral and religious obligation,* only by three perſons, *the debtor, his ſon, and his ſon's ſon;* but a pledge ſhall be enjoyed until actual payment of the debt *by any heir in any degree.*

XXXIX.

VYA'SA: — THAT intereſt is called *cáyicá,* which ariſes from *(cáyá)* the body of a *pledged* female quadruped to be milked, or a male animal to work or carry burdens.

XL.

GO'TAMA: — SOME hold, that no *lender ſhould receive* intereſt beyond the year.

A RULE, ſays MISRA, *abridged* from the *following* text of MENU.

XLI.

MENU: — LET no lender *for a month, or for two or three months, at a certain intereſt,* receive *ſuch* intereſt beyond the year; nor any intereſt, which is unapproved; nor intereſt upon intereſt *by previous agreement;* nor periodical intereſt *exceeding in time the amount of the principal;* nor intereſt exacted from a debtor *as the price of the riſk, when there is no publick danger or diſtreſs;* nor immoderate profits from a pledge to be uſed by way of intereſt.

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* The text, numbered XXXII, is again cited in this place; and the ſecond verſe of this number is again cited at CCXXIX.

CULLÚCABHATTA explains "unapproved," unſeen; *or he ſo reads the text* (*adrĭſhtam* inſtead of *adiſhtam*).

XLII.

MENU:—STIPULATED intereſt beyond the legal rate, and different from the *following* rule, is invalid; and the wiſe call it an uſurious way of lending: the lender is entitled *at moſt* to five in the hundred.*

XLIII.

MENU:—INTEREST on money, received at once, *not year by year, 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.* †

XLIV.

HARITA:—SOME allow a *pana* each month for one *purána,* or *a ſixteenth of the principal.*

2. GRAIN, *borrowed before the harveſt,* may be doubled or at moſt trebled *according to its price* at the time of harveſt, *being then payable by agreement;* and ſo may wool and cotton: *but* graſs and the fibres of graſs, clarified butter, ſalt, and raw ſugar, may be increaſed eight-fold, in one year.

XLV.

NAREDA:—OF intereſt on loans, this is *the* univerſal *and high-eſt rule*; but the rate, cuſtomary in the country, where the debt was contracted, may be different:

2. IT may be double, or treble, or, in another country,

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* Before this text, the compiler again cites the text numbered XXXIII. A different conſtruction is put upon the text by commentators. See the expoſition numbered V.

† The remainder of this verſe is cited in a ſubſequent Section (v. LXI). The firſt part of the following text has been already cited (XXXIV).

quadruple; ſo, in another, even octuple: what is uſual in the country, muſt be paid.

To reconcile the ſeeming contradictions of theſe texts, all commentators have eſtabliſhed various applications of them conſiſtent with their own apprehenſion *of the purport of the ſeveral texts*. The ſubject is very intricate; and the opinions of ſome authors ſhall therefore be ſeparately ſtated, to explain the ſenſe of the texts, and elucidate the rules eſtabliſhed.

I. ACCORDING to the *Mitácſharâ*:

INTEREST at the rate of an eightieth part and ſo forth, if it be receivable daily, is called *cáyicá*; the ſame, if receivable monthly, is named *cálicá*; this is declared by the commentator: and this intereſt, being received every month, is therefore *named cálicá*; the ſame intereſt divided by the number of days *in a month*, and receivable daily, is *cáyicá*: but *cáritá* ſignifies intereſt receivable only at the time voluntarily ſtipulated by the borrower. *Chacra vr̆iddhi* is obvious.

ON this interpretation, the texts of GŌTAMA and MENU regard intereſt named *cáritá*. An agreement for intereſt ſhould not be made, *even* by the deſire of the borrower, for a period exceeding one year. Intereſt therefore ſhould be paid by the year, as the longeſt period *for which it ought to be forborne*; *it ſhould* not *be* made *payable* at the end of thirteen months. Hence he has ſaid, "by the day; by the month; or by the year." Otherwiſe (unleſs it be paid by the year, which is the *period* mentioned) it would be difficult to obtain that intereſt, *when long forborne*. In this caſe alſo, legal intereſt only ſhould be taken. The ſage declares it: "nor any intereſt which is unapproved;" which is not propounded in codes of law; or (on the other reading) which is not ſeen in codes of law. We infer, that the four ſorts of legal intereſt, and no other, ſhould be taken.

IF intereſt have been received for a few months, and ſubſequent intereſt have remained unpaid, by reaſon of the debtor's indigence, even to the tenth or twelfth year, the principal is only doubled. The creditor may take his principal and an equal ſum as intereſt (XLIII).

"RECEIVED

"RECEIVED at once (XLIII);" another reading has *ſacrĭdáhitá*, lent once. Money ſo lent can only be doubled: but recovered from one perſon, and lent to another, it may be more than doubled. On the firſt reading, *ſacrĭdáhrĭtá*, received at once, the text ſhould be thus expounded; "*intereſt on money*, received by degrees, day by day, month by month, or year by year, may more than double the principal.

THE *cáyicá*, or corporal intereſt, mentioned by VYĀSA, and intereſt by enjoyment and hair-intereſt, explained by VRĬHASPATI, are excluſive of theſe. Hair-intereſt occurs where money is borrowed on a promiſe in this form, "I will pay twenty ſhells every day, as intereſt, until the debt be diſcharged; *on theſe terms* lend me one ſilver coin" (XXXV 4). The *cāyicá* of VYĀSA (XXXIX) is the uſufruct of a ſlave or the like, when no ſpecifick agreement is made that the uſe and profit of the pledge ſhall be the only intereſt. Intereſt by enjoyment is the uſe or occupation of a pledged houſe or the like; and is mentioned by CĀTYĀYANA (XXXVII 3) under the name of *ádhibhóga* or *uſe of a pledge*. Theſe may be received entire, ſo long as the principal remain unpaid (XXXVI 6). Or the *cáyicá* of NĀREDA (XXXVI 2) and *ſic'hāvrĭddhi* of VRĬHASPATI (XXXV 4 & 5), *that is*, *daily intereſt*, may certainly be received entire, under the authority of the law, ſo long as the principal remain unpaid: but not intereſt named *cálicá* and the reſt; for no law *expreſsly authorizes it*. Compound intereſt is immoral; and the uſe or profit of a pledged houſe or ſlave or the like, after receiving twice the amount of the principal (XXXV 7). But, we think, neither hair-intereſt *received daily*, nor intereſt received monthly or annually, is illegal, *though* it have amounted to a ſum exceeding the principal.

TO this an objection is made; if intereſt, which is payable daily, cannot, through the indigence of the debtor, be recovered each day; ſtill, whenever the debt ſhall be diſcharged, that intereſt muſt be paid with the whole arrears of the account, however great the ſum may be. This ſhould be affirmed; elſe the mention of hair-intereſt in the text (XXXV 7) is unmeaning. But there is a conſequent inconſiſtency with general practice; for in ſome countries, it is the practice, that hair-intereſt ſhould be received to the *laſt* day of the ſtipulated period; *but* if *the principal* happen to remain unliquidated

liquidated after that period, ſuch intereſt only, as is ſettled by five perſons *acting as arbitrators*, is received from that date. In other countries, hair-intereſt is only received for a few days as determined by five perſons *acting as arbitrators*; and beyond that time, ſuch intereſt as is ſettled by them.

THIS *ſeeming contradiction* may be reconciled from the text of NAREDA; "but the rate cuſtomary in the country, where the debt was contracted, may be different" (XLV 1). However, another objection is ſtarted: if ſtipulated intereſt can only be received at legal rates, it contradicts the text of CA'TYA'YANA (XXXVII 1); for he deſcribes ſtipulated intereſt as exceeding the allowed rate. It is anſwered, the prohibition againſt receiving any intereſt, which is unapproved, does not denote it *legally* irrecoverable, but immoral. If, therefore, a man require ſtipulated intereſt above the rate allowed by the law, he can recover it, but is guilty of a moral offence. This is evident from the text of VRI'HASPATI; "and the exaction of the principal and intereſt after a part of it has been liquidated is reprehenſible" (XXXV 7). YA'JNYAWALCYA alſo declares, "all borrowers may pay whatever intereſt has been ſtipulated by them" (XXXII). On this expoſition, the intereſt payable by thoſe who travel through vaſt foreſts, as ſpecified by YA'JNYAWALCYA (XXXII) is legal; for the text is cited with this obſervation, "the ſage declares an alternative in reſpect of intereſt varying according to the *claſs of the* receiver;" that is, the receiver of the loan. But, in fact, it is proper to conſider this as deſcriptive of ſtipulated intereſt, for it has the ſame import with the text of MENU (XXXIII). However, ſuch ſtipulated intereſt is legal, becauſe it is authorized by an expreſs law; but the text of VRI'HASPATI (XXXV 7) intends other borrowers than ſuch as traverſe the ocean and the like.

IT ſhould not be argued, that the text of MENU has a different purport, coinciding with part of the text of YA'JNYAWALCYA, "or whatever intereſt has been ſtipulated by them" (XXXII). That would be inconſiſtent with the interpretation of this text, "all borrowers, *Bráhmanas* as well as others, ſhould pay, to lenders of all claſſes, whatever intereſt has been ſtipulated and promiſed by them." But, if it be expounded, "all borrowers, whether trafficking by ſea or not," then it may be made to coincide with the text of MENU.

HERE

HERE it ſhould be obſerved, that the author of the *Mitácſharā* ſupplies the reaſon for the rate of ten in the hundred, and the like, payable by thoſe who travel through vaſt foreſts, and the reſt; "becauſe there is riſk of loſing even the principal lent." It is therefore indicated, that on loans ſecured by a pledge or the like, where no riſk of loſing the principal is incurred, the eightieth part only ſhould be taken.

THE text of YA'JNYAWALCYA on compound intereſt and the reſt (XXXVIII 1) is not approved in the *Mitácſharā*. According to the opinion delivered in that work, the receipt of intereſt named *cálicā* and the reſt, even beyond the year, is not forbidden.

II. According to CHANDE'SWARA:

"INTEREST beyond the year" (XLI) ſignifies intereſt exceeding the year. If a moneylender, apprehending that the ſum lent would be repaid by the borrower in very few days, bargain for ſpecifick intereſt, it ſhall only be extended to the cloſe of the year, not fixed for a period exceeding that *ſpace of time*.

CHANDE'SWARA.

THE meaning ſuggeſted by the gloſs is this: a borrower aſks a loan of a moneyed man; but he conjectures from the borrower's purpoſes, that it will be early repaid; he therefore ſays, "if you will undertake to pay intereſt for ſix months, I will lend the money;" and the borrower, agreeing to this condition, accepts the loan. In ſuch a caſe as this, a lender may require a ſtipulated period of ſix months, ten months, or one year; but not a greater time.

IN like manner, ſome perſon, whoſe capital is ſmall, practiſes moneylending, becauſe he is unable to provide for his wants by other modes; a man, needing a loan, ſaid to him "lend me money;" the moneylender rejoined, "when wilt thou repay it?" The borrower told him, "my brother is gone to the royal reſidence; when he returns, two or three months hence, I will repay you." The moneylender conſidered, "he will repay it early, and my gain will be ſmall; why ſhould I truſt my property in the

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hands of another for ſo ſmall a gain? If he will promiſe to pay intereſt during a long period, then only ſhould the money be lent." Accordingly he told the borrower, " if thou wilt pay intereſt during a longer period, I will advance the loan." The borrower acquieſcing in this propoſal, the lender added, " if thou ſhouldſt repay the loan within the year, at the end of ſix or ſeven months, or at any time before the cloſe of the year, I muſt receive the amount of intereſt for a whole year." So ſaying, he advanced the loan; and the borrower, agreeing to thoſe terms, contracted the debt: and intereſt computed for a whole year was paid, whether he diſcharged the debt within the year, or at the cloſe of the year. In ſuch a caſe as this, a lender ſhould not require a ſtipulation for intereſt one day beyond the year. But if the borrower cannot diſcharge the debt even at the expiration of the year, then indeed legal intereſt may be received beyond the year.

" NOR any intereſt which is unapproved:" let no lender receive compound intereſt, nor intereſt for ſtated times, nor ſtipulated intereſt, nor corporal intereſt, in modes, *or at rates*, unauthorized by the law. Conſequently he ſhould only receive periodical intereſt and the reſt, in legal modes; that is, at the rate of an eightieth part of the principal and ſo forth.

DOES not *cáritá* ſignify intereſt ſpecially and freely promiſed by the debtor? How then is it regulated by legal rates? *It is regulated* by the texts of MENU (XXXIII) and HÁRÍTA (XXXIV and XLIV).

THE text of MENU is thus expounded: " men well acquainted with ſea voyages" are mentioned merely as an inſtance ſuggeſting a trader in general. " With times and with places;" who ſee, that ſo much is the profit, on ſuch articles, at ſuch a place. That intereſt, which ſuch traders ſettle, when borrowing money, has legal force, and ſhould be adjudged.

THE firſt text of HÁRÍTA (XXXIV) is applied by CHANDÉSWARA to borrowers of a mixed claſs. " Grain may be doubled at the time of harveſt" (XLIV 2); grain is doubled at the time when new grain is gathered, even two or three months after the loan. If it be not then paid, it can only

only be trebled, and bears no further intereſt. " And ſo may wool and cotton;" wool, that is the hair of ſheep and the like, and cotton alſo, bear the ſame intereſt as grain. " But the fibres of graſs &c." on the fibres of the *vírana* and the like, and on graſs and the like, the intereſt is eightfold for one year. Such is the gloſs on the text of HA'RI'TA; and the meaning is, that this text does not concern the limits of intereſt.

Is not this unreaſonable? Grain muſt be repaid two-fold at the time of harveſt; that is, when new grain is gathered. If grain, therefore, be borrowed in the month of *Aſhádha*, *Jyaiſhthí* or the like, it muſt be repaid two-fold in *Bhádra* or *Pauſha*. It is, conſequently, a great diſparity, that the ſame intereſt ſhould be received in ſeven or eight months, which would be due in fifty months *at the preſcribed rate of two in the hundred*. Aware of this queſtion, CHANDE'SWARA cites the text of NA'REDA (XLV), and thus expounds it: " this rate of intereſt, an eightieth part of the principal and ſo forth, is univerſal, becauſe it is authorized by the law." In ſome countries, corn is repaid with an advance of a quarter; in others, with an advance of half *the quantity lent*: theſe rates are alſo comprehended *in the text* (XLV 2); for twice, and three times as much, and ſo forth, are mere examples. Conſequently, on ſalt, clarified butter and the reſt, intereſt ſhould be taken at the rate ſettled by the immemorial cuſtom of the country.

BUT intereſt at ten or twenty in the hundred, payable by thoſe who travel through vaſt foreſts, or traverſe the ocean, is not ſtipulated intereſt *(cáritá)*; for CHANDE'SWARA ſays, payment of it may be enforced whether it have been ſtipulated or not. In fact ſo much intereſt, as is ſpecially promiſed by the debtor, is ſtipulated intereſt; not confined to the rate of an eightieth and ſo forth. That ſtipulated intereſt alſo is allowed by the law; for YA'JNYAWALCYA declares, " borrowers may pay whatever intereſt has been ſtipulated by them" (XXXIII); and CA'TYA'YANA ſays, " ſtipulated intereſt is that which has been ſpecially promiſed by the debtor" (XXXVII). This intereſt is legal, if it were promiſed in a time of extreme diſtreſs; but, promiſed by compulſion without ſuch diſtreſs, it is not legal, for CA'TYA'YANA adds, " and in no other caſe whatever muſt ſtipulated intereſt be paid." Even though ſtipulated in a time of extreme diſtreſs, *on a loan renewed*, it

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is not legal, if payment could have been obtained; for VRĬHASPAṬI declares, "the exaction of the principal and intereſt, after a part of it has been liquidated, is uſury and reprehenſible" (XXXIV 7).

Cáyicá is of two ſorts; *one* ariſing from the body of a *pledged* female animal to be milked, or a male animal to work or carry burdens, as deſcribed by VYÁSA (XXXIX); *the other* explained by NÁREDA, intereſt repeatedly paid without diminiſhing the principal (XXXVI). The uſe and profit of a cow or the like to be milked, or of a boat or the like, where no ſuch agreement has been *expreſſly* made, as deſcribed by CÁTYÁYANA (XXXVII 3) is the *cáyicá* of VYÁSA; and it ſhould be taken at the rate of an eightieth part *by the month*, under the reſtriction of the text, "nor any intereſt, which is unapproved" (XLI).

CHANDÉSWARA ſays, a cow or the like to be milked, or an ox or the like to work or carry burdens, are inſtances mentioned generally; for the uſe of boats or the like, not expreſsly pledged, muſt otherwiſe be excluded *from that definition of* cáyicá. When there is ſuch an expreſs agreement as deſcribed by CÁTYÁYANA, the uſe of the pledge is *ádhibhóga*, the ſame with *bhógalábha* propounded by VRĬHASPATI. In this caſe, no reference is made to the rate of an eightieth part; for no text ſpecially directs it: the whole uſe and profit of the pledge *ſhall be the intereſt*; for ſuch is the import of the text. Theſe two kinds of intereſt are conſequently diſtinct, but ſhould be admitted as has been ſtated.

THE *cáyicá* of NÁREDA is thus explained; "intereſt to be repeatedly paid without diminiſhing the body (*cáyá*) of the principal ſum, at the rate of a *pana*, or half, or other fraction of a *pana*, as agreed by both parties, is named *cáyicá* according to NÁREDA."

CHANDÉSWARA.

FOR inſtance; a borrower, coming to a moneyed man, aſks a loan; in reply, he aſks, "when wilt thou repay it?" the borrower rejoins, "I will repay it at the end of a month:" a loan is accordingly concluded to mutual ſatisfaction. Afterwards, at the cloſe of the month, the creditor demands payment;

payment; but the debtor, unable to diſcharge the debt, anſwers evaſively, "I will pay you at the end of a fortnight:" the creditor repeatedly urges payment; and the debtor, in order to ſatisfy him, promiſes ſome additional intereſt, ſuch as a *pana* (*or the like.*) That additional intereſt, which he thus promiſes from time to time, being repeatedly ſettled between the parties day after day, is the *cáyicá* of NÁREDA; it is not the ſtipulated intereſt named *cáritá*, for that commences from the date of the loan. On this account it is ſeparately mentioned by NÁREDA.

"WITHOUT diminiſhing the principal;" in the caſe of intereſt payable at ſtated times *(cálicá)* and the like, if more than an eightieth part or the like have been paid for intereſt, whatever appears, on computing the account at the time of diſcharging the debt, to have been overpaid, by ſo much is the principal, which was receivable by the creditor, diminiſhed. But, in this caſe, what he receives from time to time, above the rate of an eightieth part, does not reduce the principal ſum. It is not proper to ſay, that the intereſt ſhould only be received at legal rates, becauſe this *(cáyicá)* is in its own nature a breach of the law. Were it ſo, *ſtill* the text, prohibiting any intereſt, which is unapproved (XLI), concerns only the *cáyicá* of VYÁSA, not this *(cáyicá)*: this form of intereſt is only mentioned by CHANDÉSWARA incidentally. The word *(śaśwat)* "repeatedly" ſignifies again and again: for it is ſo explained by AMERA. (Chapter XVII, on indeclinable words).

THAT intereſt, which is received month after month, at the rate of an eightieth part *of the principal*, is conſidered as *cálicá*. Here month is a mere inſtance; that intereſt, therefore, which is received by the year, is alſo conſidered as *cálicá*: and ſo is that, which is payable at the end of ſix months, or the like. Accordingly MENU, in the text cited (XLI), mentions intereſt for time generally.

"INTEREST upon intereſt:" when a debtor, unable to pay the whole amount of intereſt, promiſes to pay it with intereſt; the intereſt, which is ſo promiſed, is wheel-intereſt.

CHANDÉSWARA.

MORE will be ſaid on this ſubject, in the ſection on recovery of debts: but even intereſt upon intereſt a man ſhould only take at the legal rate of an eightieth part and ſo forth.

WHEN the borrower, at the time of receiving the loan, makes an agreement in this form, "I will pay twenty ſhells a day," and the loan is made on thoſe terms; in that caſe, ſuch intereſt is hair-intereſt, as deſcribed by VRĬHASPATI (XXXV 4). Intereſt by enjoyment *(bhógalábha)* has been already explained in the gloſs on *cáyicá*.

Cáyicá, hair-intereſt, and intereſt by enjoyment, ſhall be paid *entire*, ſo long as the principal remain unpaid. If the payment of intereſt have been diſcontinued a few days after *the loan*, and the debtor be only able to pay the debt ten or fifteen years afterwards, twice the amount of the principal only ſhall *in general* be received by the creditor, in lieu of other intereſt (XLIII.): but it is not ſo in the preſent caſe. On the contrary, hair-intereſt ſhall be received on a calculation of the daily amount *forborne*. *Cáyicá*, or intereſt accruing from a pledged body, ſhall be received on a computation of an eightieth part of the principal monthly, until the principal be liquidated: if the thing to be uſed be deſtroyed by the act of GOD, another chattel muſt be delivered in its ſtead; or, if that cannot be, intereſt muſt be made good otherwiſe. Intereſt by enjoyment continues ſo long as the thing *pledged* remains with him, who has the uſe and profit of it: if the pledge be deſtroyed by the act of GOD, the debtor ſhall be compelled to deliver another pledge under the authority of a text, which will be quoted in the chapter on pledges. The creditor ſhould receive a freſh pledge; or, if that cannot be, the price of the uſufruct *forborne* ſhould be paid, when the principal is liquidated. Theſe rules are grounded on a text of VRĬHASPATI (XXXV 6) and on one of YÁJNYAWALCYA (XXXVIII 2).

WHAT ſort of intereſt is ſuggeſted by the texts, "let no lender receive intereſt beyond the year" (XL and XLI)? It is ſaid, "ſuch intereſt is a ſpecies of ſtipulated intereſt *(cáritá)*." Here it ſhould be noticed, that the legal amount of intereſt, whether received at the time when

when the debt is discharged, or earlier, or both (*partly at one time, and partly at another*), only equals the principal sum. If stipulated interest, *cáyicá*, hair-interest, or interest by enjoyment, when added to the principal, more than double it, they are not legal *in a moral view*. By receiving such interest, *Bráhmanas* and others, and even *Vaisyas*, commit a sin; but, if a creditor insist on obtaining it, the king shall enforce payment: VRĬHASPATI declares as much (XXXV 7). The use and profit of a pledge, or the use of a chattel in that form of interest, which is named *cáyicá*, after twice the amount of the principal has been obtained from the usufruct; interest upon interest; and, the exaction of principal and interest, that is, of the principal with the whole interest, after a small part or the whole of the interest has been received, either as stipulated or monthly interest, is usury reprehensible in a man who subsists by moneylending. The meaning of the text is, that such usury produces the consequence of sin; not that the king shall not enforce payment of it.

"STIPULATED interest beyond the legal rate &c." (XLII); *this text of* MENU *is otherwise* expounded by CHANDÉSWARA: "interest exceeding the rate stipulated *by the debtor*, and different *from the rates prescribed by the law*, is invalid: for sages have declared the *legal* way of moneylending." The *legal* way of moneylending is *founded on* this: interest allowed by the law, or stipulated by the debtor, is valid, not any other interest. But if the lender, through covetousness, require greater interest, and the borrower, apprehensive of not finding any other lender, be willing to pay *higher interest*, in that case the rule is this; "the lender is entitled *at most* to five in the hundred" (XLII). "From a *Bráhmana*," should be supplied; for the rule would be superfluous, if it were referred to a *Súdra*. The author of the *Mitácsharà seems to have* entertained the same opinion; for he has not particularly remarked *on the text*. On this interpretation also, the payment of hair-interest and *cáyicá*, so long as the principal remain unpaid, is conformable to the text of NÁREDA (XLV). CHANDÉSWARA's opinion may be thus briefly stated.

III. According to VÁCHESPATI MISRA:

ON his explanation, *cáyicá* and the rest also vary from the legal rate of an eightieth

eightieth part *by the month*; for he cites the texts of VRĬHASPATI in reply to the queſtion, what other kinds of intereſt are there? And how many ſorts *of intereſt?* If intereſt at the eightieth part *of the principal*, as already mentioned by MISRA, were diſtributed by VRĬHASPATI into monthly and annual intereſt and ſo forth, the citation, introduced by the queſtion, "what other kinds of intereſt are there?" would be irrelevant.

WHEN this queſtion is put, "what other kinds of intereſt are there?" The anſwer is; hair-intereſt and intereſt by enjoyment. "How many ſorts?" The *anſwer is*, legal intereſt, as *cālicā* and the reſt; and intereſt not preſcribed by the law, as *cāritā* and the reſt. But the expoſition would be imperfect, ſince the receipt even of legal intereſt, as *cālicā* and the reſt, beyond the year, is forbidden; and the omiſſion of higheſt *limited* intereſt would be derogatory *to the ſage*.

SUBDIVIDING into four ſorts intereſt at the rate of an eightieth and ſo forth, as in the expoſition of CHANDĔSWARA; and adding them to other kinds of intereſt, namely hair-intereſt and intereſt by enjoyment; *there reſult the kinds of intereſt* ſpecified by VRĬHASPATI. Thus hair-intereſt and intereſt by enjoyment are ſtated in anſwer to the queſtion, what other kinds of intereſt are there? And *cáyicá*, and other ſubdiviſions *of the general rate*, are ſtated in anſwer to the queſtion, how many ſorts there are. This again is erroneous; for, had ſuch been the meaning, the queſtion, how many ſorts? ſhould have been firſt put. To expatiate would be vain.

ON this interpretation, the *cāyicā* of VYĀSA, ariſing from the profit of a ſlave's labour or the like, falls under the deſcription of intereſt by enjoyment; but the *cāyicā* of NĀREDA muſt be conſidered as one of the ſubdiviſions *of the general rate*. For MISRA ſays, the *cáyicā* of VYĀSA falls under the deſcription of intereſt by enjoyment; but the *cāyicā* of NĀREDA is diſtinct from theſe: and the *cáyicá* of VYĀSA is not mentioned in the following expoſition, "*cáyicá* is intereſt by the year; *cálicá*, by the month; *chacravrĭddhi*, intereſt upon intereſt; *cáritá*, intereſt ſpecially promiſed in a time of extreme diſtreſs; *sic'hávrĭddhi*, intereſt payable daily; *bhógalábha*, the uſe and profit of a ſlave's *labour* and the like."

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THE uſe of diſtinguiſhing the *cáyicá* of VYÁSA from intereſt by enjoyment will be hereafter explained. But the *cáyicá* of NÁREDA is intereſt payable by the year, conſidering the word *saśwat*, repeatedly, as ſignifying annually. This is paid without diminiſhing the principal; even though received for a thouſand years, it does not reduce the principal. If the intereſt happen to be forborne after *the firſt* few days, the whole arrears of intereſt muſt be paid when the debt is diſcharged; for, according to MISRA's opinion, this kind of intereſt is intended by the word *cáyicá* in the text of VRĬHASPATI (XXXV 6): and this has been ſtated by MISRA on the authority of HELÁYUDHA.

BUT if the expreſſion of MISRA, "to be paid by the day," be authentick; the meaning muſt be, that the ſum calculated on daily intereſt ſhall be paid yearly. Elſe it is inconſiſtent with his expoſition, "*cáyicá* is intereſt by the year." The ſpecial rule, adopted by him, that *cáyicá* and the reſt muſt be received at the rate of an eightieth part, is not ſuggeſted by the law: but hair-intereſt, which is receivable daily, is founded on a text of VRĬHASPATI (XXXV 4).

"*Adhibhóga*, or a loan on the uſe of a pledge" (XXXVII 3); where an agreement is made, that the whole uſe of the thing ſhall be the only intereſt, it conſtitutes *a loan on the* uſe of a pledge. MISRA.

IT is conſequently intimated, that the word "pledge," *in* the firſt *part of the text*, is indeterminate; for by ſuch an expoſition *cáyicá* is of two ſorts, *one of which correſponds to* àdhibhóga. It follows, that the various ſorts of intereſt are ſeven. Of theſe, the *cáyicá* of VYÁSA, *cálicá*, ſtipulated intereſt, and intereſt upon intereſt, ſhould not be received beyond the year. For the ſake of this diſtinction, VYÁSA has ſtated *cáyicá* ſeparately *from* àdhibhóga, *to which it is otherwiſe ſimilar*. *Cáyicá* is the uſe *and profit* of *the* bodies *of quadrupeds* as oxen, horſes and the like. Or the repetition of the word pledge in the text of CATYÁYANA has a determinate uſe; conſequently it ſhould be underſtood, as in the gloſs of CHANDÉSWARA, that *Adhibhóga* takes place when there is an agreement in regard to the pledge; otherwiſe the uſufruct is *cáyicá*.

SUCH intereſt may be taken even beyond the year, on a freſh agreement. The authority for this is the text of GŌTAMA (XL): and the ſenſe of the text is this; of the ſorts of intereſt enumerated, intereſt upon intereſt and the reſt, no lender ſhould take the fourth ſort beyond the year; nor any intereſt, which is not again declared or promiſed, beyond the year; that is, neither of the other three *without a freſh agreement*. The rule reſpecting the *cáyicá* of NĀREDA has been already delivered. It is the ſame in reſpect of the other two; at the time of diſcharging the debt, they ſhould be received in their own kind, or by their value.

A DEBT ſecured *merely* by a written contract (XXXVIII 2) ſhall be diſcharged by three perſons, the debtor, his ſon, and his ſon's ſon; but, in the caſe of a loan on the uſe of a pledge, the debt muſt be diſcharged even by a great grandſon. Yet if the agreement were in this form, "I will relinquiſh the pledge, when twice the amount of the principal has been realized," in that caſe the creditor muſt relinquiſh the pledge whenever he has realized double the amount of the principal.

XLVI.

YĀJNYAWALCYA:—BUT when a pledge has been given, *which the creditor promiſed to return on the debt being doubled*, then ſurely, the intereſt having equalled the principal, the pledge muſt be releaſed on the double ſum being paid, or having been received from the uſe of the pledge.

XLVII.

VISHNU:—EVEN if the higheſt intereſt, *or that equal to the principal ſum*, have accrued, the creditor ſhall not *be forced to* reſtore a pledge fixed *in his hands*, unleſs there have been a ſpecial agreement.

THIS diſtinction is alſo noticed by CHANDĒSWARA, and ſhould be admitted by others. But that is not the import of the text, "a pledge ſhall be enjoyed until actual payment of the debt" (XXXVIII 2). The text of VRĬHASPATI (XXXV 7) has been explained. His former text on intereſt

tereſt by enjoyment (XXXV 5) furniſhes an inſtance only of ſuch intereſt; for it coincides with the text of CA'TYA'YANA (XXXVII 3). It is thus expounded by MISRA: "rent" ſignifies hire, uſe, or occupation of a pledged houſe. "Produce" (*ṡadas*) ſignifies grain or other fruit of a pledged field; agreeably to the ſenſe of the verb *ṡad*, cut down or reap.

HERE boats and the like are alſo ſuggeſted by the word "houſe," taken as a general inſtance: and "rent," or uſe, alſo ſuggeſts tranſport of merchandize and the like.

IN a gloſs on the text of MENU (XLIII), MISRA thus expounds it: "if gems, *money*, or the like be received at once, double the amount of the principal only ſhould be taken; but, if they be not received at once, more may be taken." Conſequently here, as before, if intereſt have any how remained unpaid after the firſt few days, the principal is only doubled, however long the period *of forbearance* may be; and no more *ſhould be received.*

THE text, allowing a *pana* each month for a *purána* (XXXIV), and that, which confirms intereſt ſettled by men well acquainted with ſea voyages (XXXIII), concern ſtipulated intereſt only. But theſe rules ſubſiſt where the price is great at the time when the debt is contracted, or where the value of a thing, bought with money borrowed for the purpoſes of trade, and ſold in another country, is improved. The text of HA'RI'TA (XLIV 2) declares legal intereſt on particular articles. It is proper to conſider the text of YA'JNYAWALCYA (XXXII) as ſolely relating to ſuch intereſt. This and other inferences may be drawn from reaſoning.

IN this expoſition BHAVADE'VA concurs; but HELA'YUDHA reads the text of NA'REDA (XXXVI 2), *panaváhyá* inſtead of *panárdhádyá;* and explains the text, "intereſt to be borne *(váhaníyá)*, or received by the creditor, repeatedly, even for a thouſand years, if the *(pana)* principal ſum remain *due*, without any diminution of *(cáyá)* the principal, is called *cáyicá.*" On this general conſideration it is ſaid by MISRA, that *cáyicá* muſt be paid, ſo long as the principal remain unliquidated. But CHANDE'SWARA rejects this reading, becauſe it has been unnoticed by moſt authors.

"LET

"LET no lender receive intereſt beyond the year" (XL and XLI); if a creditor is deſirous of receiving intereſt, in ſuch a manner, that intereſt may not ceaſe on *its equalling* the debt, he ſhould receive his intereſt before the cloſe of the year, not after the year has expired. The meaning therefore, on this interpretation, is, that he ſhould receive the intereſt then only, when the debt is diſcharged, or the higheſt limited intereſt due for the time *the loan has remained unpaid*. But if the creditor, through want of confidence in his debtor, or from his own inability to provide for his wants *otherwiſe*, wiſhes to receive intereſt within the year, in that caſe he may receive it before the cloſe of the year; that is, he may receive the intereſt for twelve months, month by month. But after a year, the debt is only doubled by remaining undiſcharged during fifty months; before the expiration of that period, intereſt is payable on the terms of the loan. Conſequently *cáyicá*, if it can be recovered, may be taken beyond the year, when there is a promiſe in this form, "I will pay it *regularly* until the debt be diſcharged;" and ſo may *cálicá*, if there be a promiſe of paying it month by month. But if the creditor cannot obtain regular payment, the principal is doubled in *due* time.

Cáritá is deſcribed by CA'TYA'YANA (XXXVII 1) and noticed by MENU (XXXIII). By the rule, "nor any intereſt which is unapproved" (XLI), *it is directed* to take even *cáyicá* and the reſt only at the rate of an eightieth part and ſo forth. But, if there be an agreement in this form, "I will pay it daily," it is hair-intereſt. Other intereſt muſt be regulated in the mode abovementioned.

IV. ACCORDING to SU'LAPA'NI in the *Dípacalicá*:

ON the text of YA'JNYAWALCYA (XXXVIII 1) it is remarked in his work, "this verſe is not found in ſome copies." Intereſt is of ſix ſorts, under the text of VRIHASPATI (XXXV 2). There *cáyicá* is intereſt which ariſes from the labour or uſe of an animal to carry burdens, or of a female quadruped to be milked; *cálicá* is intereſt, which is payable by the month; intereſt upon intereſt is *chacravriddhi*; intereſt *ſpecially and freely* promiſed by the debtor himſelf is *cáritá*; that, which is received daily, is *sic'hávriddhi*; and the profit ariſing from the uſe of a pledge is *bhóga*.

Among

Among theſe, *sic'hávriddhi*, *cáyicá*, and intereſt by enjoyment may be received until the principal be diſcharged (XXXV 6).

THIS notion is intimated; according to YA'JNYAWALCYA, intereſt by enjoyment is comprehended under corporal intereſt *(cáyicá)*: and the *cáyicá* of NA'REDA, as expounded by CHANDE'SWARA, falls under the deſcription of ſtipulated intereſt *(cáritá)*: as expounded by MISRA, it falls under the deſcription of intereſt payable at a time certain *(cálicá)*; for the word "month" is a mere inſtance of a general ſenſe. *Sic'hávriddhi* is only a diſtinct form of ſtipulated intereſt; but ſo long as the principal remain unliquidated, this intereſt muſt be paid to fulfil the terms of the agreement. But, if there be no promiſe of paying it daily ſo long as the principal remain undiſcharged, it is not hair-intereſt. If an agreement, that intereſt, at the rate of four *panas* or the like, ſhall be paid every fifth day, ſo long as the principal remain undiſcharged, that alſo ſhould, it ſeems, be paid until the principal be liquidated; but ſuch a contract ought not to be made, becauſe it is not authorized by the law.

THE text of MENU (XLI) muſt be explained as in the gloſs of HELA'YUDHA; but other texts muſt be underſtood in the mode already ſtated. In the text of YA'JNYAWALCYA (XXXII), greater intereſt is allowed on account of the riſk of loſing the principal: it is therefore legal in this *author's* opinion. With this exception the text of VRI'HASPATI (XXXV 7) is applicable to all caſes. The ſage declares an alternative in regard to the preſcribed rates of two and three in the hundred and the like, "or whatever intereſt has been ſtipulated by them" (XXXII). This conſequently intends ſtipulated intereſt and the like: and the text, beginning with the words "intereſt upon intereſt" (XXXVIII 1), only recapitulates thoſe ſorts of intereſt.

V. ACCORDING to CULLU'CABHATTA:

"LET no lender receive intereſt beyond the year" (XLI); if a creditor, having contracted for intereſt payable at ſtated times *(cálicá)* or the like, but finding it troubleſome to receive intereſt monthly, tell the debtor, "thou ſhalt pay the intereſt of ſeveral months at once;" ſtill he ſhould receive it

within the year. For example; intereſt for ſix months, for ten months, or for one year, may be paid at once; not intereſt for thirteen, fourteen, or fifteen months. The meaning is this; if he do not receive intereſt before the cloſe of the year, in that caſe, ſince its periodical payments are interrupted, and it can *now* only be received when the debt is diſcharged, intereſt can on no account be more than ſufficient to double the debt: as is declared by MENU (XLIII). It is implied, that intereſt receivable day by day, month by month, or the like, may be taken to a greater amount than is ſufficient to double the debt, provided the principal remained unpaid. Such is the gloſs of CULLŪCABHATTA.

HERE intereſt receivable day by day is the *cáyicá* of NĀREDA; for the word *saśwat*, "repeatedly," in that text (XXXVI), bears the ſenſe of "daily." The ſame intereſt is deſcribed by VRĬHASPATI, under the name of hair-intereſt (XXXV 4). Not conſidering the *cáyicá* of VYĀSA and profit by enjoyment *of a pledge* (*bhógalábha*) as intereſt, it is ſtated that the various ſorts of intereſt are four. But, if theſe be acknowledged to be ſorts of intereſt, there are five, or ſix kinds.

IN the text of MENU (XLI) the reading is *adrĭſhtam*, unſeen: let no lender receive any intereſt unſeen in codes of law, or unknown *to the law*. This prohibition is intended to ſhow the immorality *of receiving ſuch intereſt*, not to ordain, that a lender ſhall not obtain it, if he wiſh to receive *ſuch intereſt*. Conſequently ſtipulated intereſt, and the like, which have been previouſly ſettled, only produce a taint of ſin in the lender, who receives them; not an incapacity to recover them. What are thoſe *uſurious* forms of intereſt? *In anſwer to this queſtion*, the ſage adds, "intereſt upon intereſt, &c." VRĬHASPATI propounds their nature *in a text above cited* (XXXV 3).

INTEREST upon intereſt is, in its own nature, reprehenſible; intereſt for a time certain, when more intereſt is *received*, than is ſufficient to double the principal; corporal intereſt (*cáyicá*), when the animal is too much worked or milked; ſtipulated intereſt, even though it have been ſettled by the debtor in a time of extreme diſtreſs, and by the creditor through kindneſs. Theſe four illegal ſorts of intereſt ſhould not be received: VRĬHASPATI expreſsly forbids it (XXXV 7). CULLŪCABHATTA.

HERE

HERE the *cáyicá* of NA'REDA muſt alſo be comprehended under the term *cáyicá*. Hence the receipt of that alſo is ſhown immoral. How is it immoral, if the debt be diſcharged within the fourth or fifth month; for, in that caſe, more intereſt than is ſufficient to double the principal, is not received? *This objection is* not *well founded*; for thoſe kinds of intereſt are reprehenſible from their intrinſick evil. On this opinion alſo, a creditor, who advanced a loan, ſhould only receive twice the amount of the principal, after the time when the principal is duly doubled; and not at any time before that period. But, if the debt be diſcharged before the time when it would regularly be doubled, in that caſe the principal, with *legal* intereſt only, ſhould be then received. Thus *Bráhmanas* and the reſt violate no duty. Within that period, whatever intereſt is received at any ſtated times, is *cálicá*; for the word "month" is *merely* an inſtance *ſtated generally* in the texts of NA'REDA and others (XXXVI 2). Accordingly MENU mentions periodical intereſt generally (XLI).

THE text *ſubſequently cited* (XLII) is applicable to the caſe of intereſt due without a ſpecial agreement. That will be explained under its proper head. The text, "whatever intereſt ſhall be ſettled by men well acquainted with ſea voyages &c." (XXXIII), is expounded as above ſtated.

How can it be ſaid, that ſtipulated intereſt (*cáritá*) is unauthorized by the law, ſince *cáritá* is deſcribed in the code of CA'TYA'YANA, "intereſt which has been ſpecially *and freely* promiſed by the debtor in a time of extreme diſtreſs" (XXXVII)? Nor ſhould it be argued, that it is unauthorized by the law, not being ſuggeſted in the *Véda*. The text of CA'TYA'YANA may alſo be conſidered as *a portion of* the *Véda*: elſe the higheſt *limited* intereſt, ſuch as intereſt doubling the debt and the like, would alſo be unauthorized by the law. To this it is anſwered, the law expreſſes generally, that a *Vaiſya* and others may ſubſiſt by moneylending: in anſwer to the queſtion, how much profit ought to be taken *by a moneylender*, the texts of MENU and the reſt are adduced, or the ſcriptural law to be eſtabliſhed through them; a lender may receive, on a loan, the eightieth part *of the principal and ſo forth*, in the order of claſſes, as preſcribed; or he may take, as the higheſt intereſt, if the debt have been long outſtanding,

ſtanding, a ſum equal to the principal, for the intereſt accumulated at ſuch rates: this, and other *legal intereſt*, *a lender may receive*. Intereſt ſo authorized is alone received in practice as legal intereſt. It is the rule for delivery *by the creditor*; for it is taught by the law, which ſuggeſts a mode of ſubſiſtence by the delivery of loans. But if a borrower ſtipulate greater intereſt through the urgency of his wants, then, in anſwer to the queſtion, what ſhould be done at the time of payment, a rule may be deduced from the text of CA'TYA'YANA (XXXVII 1); the debtor muſt pay the intereſt, which he has promiſed. Such intereſt, although it be ſo authorized, is not preſcribed to the lender by codes of law: hence the delivery of intereſt, which has been promiſed *by the debtor*, is a rule for receipt, * a *ſubordinate* title of judicial procedure under the head of loans delivered. But, in fact, intereſt allowed by the law is legal intereſt; and intereſt ſettled by the will of men is not received in practice as legal intereſt; for the meaning of "legal" is "allowed by the law." Hence, where a creditor, from the circumſtances of the times or the like, accepts of leſs than legal intereſt, ſince leſs intereſt muſt in that caſe be admitted, there is no objection to the law of ſtipulated intereſt, as it concerns the lender *as well as the borrower*. Such is CULLU'CABHATTA'S opinion.

VI. *According to other commentators.*

BUT others conſider the text of YA'JNYAWALCYA (XXXII) as intended to authorize the receipt of ten or twenty in the hundred from thoſe who travel through foreſts or traverſe the ocean, although *ſpecifick* intereſt have not been ſtipulated; but, if *ſpecifick* intereſt have been ſtipulated, *it is ſtated as* another caſe; "or whatever intereſt has been ſtipulated by them:" and in this are included the rates of nine and eleven in the hundred, and the like. The text of MENU (XXXIII) has the ſame import; but the expreſſion, "all *borrowers*," ſuggeſts *not only* thoſe who travel through foreſts, or traverſe the ocean, *but* any others of the four claſſes. However, the acceptance of intereſt above the preſcribed rates, from ſuch as travel through vaſt foreſts and the reſt, is immoral; for there are no grounds of reſtriction to the text of VRI'HASPATI (XXXV 7).

* See the gloſs on the text of NA'REDA (1).

HERE

HERE it ſhould be obſerved, that large gains are the grounds, on which greater intereſt is paid by thoſe, who traverſe the ocean; as intimated by the text of MENU, "whatever intereſt ſhall be ſettled by men well acquainted with times and with places." The grounds are the ſame in other circumſtances of the ſame caſe, intended by the text of YA'JNYAWALCYA (XXXII); not the riſk of loſing the principal. Thus the rate of intereſt is the ſame, even though the debt be ſecured by a pledge.

DOES not the text of MENU (XXXIII) conſequently become unmeaning, ſince CA'TYA'YANA authorizes the payment of ſtipulated intereſt by debtors of all deſcriptions (XXXVII 2)? No; for CA'TYA'YANA declares, that intereſt, which has been promiſed, through compulſion, by others than ſeafaring traders and the reſt, ſhall not be paid; "and in no other caſe whatever muſt ſtipulated intereſt be paid" (XXXVII 2). But a ſpecial rule is delivered (XXXIII), to legalize intereſt promiſed, through compulſion, by ſeafaring traders and the reſt. This text, however, is conſidered by CHANDE'SWARA, as intending traders in general: and both texts are referred by him to the head of ſtipulated intereſt *(cáritá)*. But intereſt promiſed by others than traders, in a time of diſtreſs, *is* called *cáritá and* muſt be paid by the debtor; but, promiſed through compulſion, without *any neceſſity ariſing from* a ſeaſon of diſtreſs, it need not be paid (XXXVII 2). This is a general inſtance: ſometimes, from the circumſtances of the times, even leſs than legal intereſt, accepted by the lender, is conſiſtent with uſage, and falls under the deſcription of ſtipulated intereſt. By accepting it the lender commits no ſin; but, by parity of reaſoning, a ſin is committed by the debtor *.

IF ſtipulated intereſt above the rate of an eightieth part may be paid by the free conſent of the debtor, what is the purport of the text of MENU (XLI)? Some explain it, "let no lender receive intereſt on money, which has not been lent more than a year." Conſequently this belongs to the caſe of intereſt without a ſpecial agreement; ſo VISHNU ordains, "after the lapſe of one year, debtors muſt pay intereſt, as allowed, even though not agreed

* Since the lender ſins by exacting more than legal intereſt, the commentator thinks, a borrower ſins by taking advantage of the times to pay leſs than legal intereſt.

on *at the time of the loan* †." For example; the debtor, having occaſion to incur expenſe for the nuptials of his ſon or the like, thus addreſſed the lender; "advance me this loan without intereſt; after completing the rites intended, I will repay it, making up the ſum by the ſale of effects, or by alms any where obtained;" the borrower thus contracted the debt: if it be demanded, but not paid, while he remains in the country, it bears no intereſt for one year; but after that period it bears intereſt. Such is the purport *of the text*. Then what intereſt ſhould debtors pay? The ſage propounds it; "intereſt as allowed;" as declared by the law concerning creditors, at the rate of an eightieth part and ſo forth, in the order of the *ſeveral* claſſes, *Bráhmanas* and the reſt. This interpretation of the text of VISHNU is approved by CHANDE'SWARA. The diſtinction reſpecting ſuch, as *fraudulently* go to another country, will be mentioned (Section III).

BY the negative in the expreſſion, "let no lender receive &c." is it ſignified that he cannot receive it; or, joined to the imperative, does it ſignify, that duty is not fulfilled, and *conſequently* that the receipt is immoral? Since no other law intimates the receipt *of ſuch intereſt* within the year, there is no contradiction: and, as there is no law to remove the doubt, how ſoon a loan, which has been advanced without intereſt, ſhall bear intereſt, it is ſignified that intereſt ſhall not be received within the year. Thus, if a creditor, who had delivered a loan without intereſt, aſk intereſt from the date of the loan, when payment is tendered after the lapſe of the year, then payment of intereſt for the period exceeding one year ſhall be enforced by the king: and, in this caſe, the year conſiſts of three hundred and ſixty days, counted by *ſávana* time; as deduced from the texts already quoted from the *Malamáſatatwa* (Section I, gloſs on text XXV).

"HE may take intereſt, which is unapproved" (XLI); which is not preſcribed to lenders by the law, ſuch as intereſt upon intereſt, and the reſt; but not any other intereſt except intereſt upon intereſt and the reſt: this is an explanatory precept. However, the receipt of intereſt upon intereſt and the reſt is immoral, as declared by the text of VRĬHASPATI (XXXV 7).

† Cited in its proper place in Section III. (v, LII).

Is