Is it not impoſſible there ſhould be intereſt different both from intereſt upon intereſt and the reſt, and from intereſt at the rate of an eightieth part and ſo forth: how can an explanatory precept have been delivered forbidding other ſorts? If a man have contracted a debt, at the time of harveſt, for the ſupport of his family, and have hoarded a large quantity of grain; and, the price happening to be greatly enhanced, ſhould the creditor at the time of repayment ſay, "the price of grain, which was purchaſed by thee with my money, was doubled in five months, pay me therefore double the principal beſides intereſt thereon;" this explanatory precept is intended to prevent ſuch a tranſaction. It is accordingly uſual, in ſome diſtricts, for lenders, who deſire greater profit, to require from the borrower a ſtipulation for the current price in the month of *Aſhádha*.

If ſuch be the meaning, what is the ſcope of the text of Menu above cited (XLII)? It is a rule for intereſt on a debt contracted without *an agreement for* intereſt; for, if a debt ſo contracted remain long unpaid, it bears intereſt. This will be particularly diſcuſſed in another place (Section III). The text is an anſwer to the queſtion, whether intereſt ſhall in this caſe be taken at the rates preſcribed by the law, or in the form of ſtipulated intereſt (*cáritá*) and the like: intereſt beyond the rates preſcribed by the law, which ſuggeſts the mode of ſubſiſtence by moneylending, is invalid. Though aſked by the lender, it ſhall not be obtained. A reaſon is given; becauſe the wiſe have declared thoſe rates, as fixed by the law, the *proper* way of lending: hence a creditor of the ſervile claſs is entitled *at moſt* to five in the hundred.

If the rate fixed by the law be the only *proper* way of lending, is not *other* intereſt, even though promiſed by the debtor in a time of extreme diſtreſs, invalid? Therefore does the ſage add, "different." Here again fixed rates muſt be brought forward; "different from the rates fixed by mutual conſent of lender and borrower." Intereſt different from that, and exceeding the legal rates, is invalid. Such is the ſenſe of the text (XLII). After how many days does a debt, which remains unpaid, bear intereſt? It is anſwered; "let no lender receive intereſt ariſing from a debt, which has not exceeded one year." Or the negative may be underſtood

ſtood in the phraſe, " take intereſt which is unapproved ;" and the ſenſe is, " let no lender receive intereſt unauthorized by the law." What is that *intereſt?* To this queſtion the legiſlator replies, " intereſt upon intereſt &c." and the negative here denotes *the* immorality *of ſuch conduct*. Conſequently, ſhould a creditor be deſirous of receiving intereſt unauthorized by the law, ſuch as intereſt upon intereſt and the like, he can receive it, but he commits a moral offence. Accordingly VRĬHASPATI declares it reprehenſible (XXXV 7). This interpretation is conſiſtent with the opinion of CULLŪCABHATTA, and ſhould be admitted. Ultimately there is no difference.

IT ſhould not be objected, that whatever interpretation has been delivered by ancient authors, that only ſhould be admitted ; becauſe an opinion not matured cannot be well adopted. There is no proof to ſupport their interpretation. Nor ſhould it be ſaid, this text is *ſufficient* authority. It is evident, that the text admits of another interpretation : and it muſt remain a doubt what interpretation ſhould be eſtabliſhed, ſince their comments are diſcordant. Nor ſhould it be objected, what proof is there to ſupport the interpretation propoſed ? It is a *ſufficient* argument, that the text may coincide with the rule of VISHNU (LII) ; for it is a maxim *in logick*, that propoſitions ought not to be ſeparated in ſenſe, when their coincidence is poſſible. Nor ſhould it be affirmed, that VISHNU's rule may be otherwiſe explained. It is a maxim, that an obvious meaning is to be preferred to a forced conſtruction : it would therefore, ſay theſe lawyers, be irregular to explain it otherwiſe.

ON this *expoſition of the law*, *cáyicá* is of two ſorts ; the *cáyicá* of VYĀSA and the *cáyicá* of NĀREDA. *The firſt*, noticed by VYĀSA, by VRĬHASPATI, and by YĀJNYAWALCYA *alſo* according to the *Dípacalicá*, is in the nature of a uſufruct ; but diſtinguiſhed from intereſt by enjoyment, in the manner already ſtated : the uſe of a pledge is intereſt by enjoyment (XXXVII 3) ; the benefit ariſing from the labour of a ſlave or the like, not pledged, is (*cáyicá*) corporal intereſt. When the agreement runs in this form, " this cow ſhall be milked by you one day in each month, and that ſhall be the only intereſt on the debt," ſuch intereſt is named *cáyicá*. Since there is no contract of hypothecation, it is not the uſe of a pledge. The

owner

owner may pledge the ſame cow to another creditor; and he may pay the intereſt otherwiſe: and another chattel may be required as a pledge for the ſame debt, to give confidence to the lender.

AGAIN; a debtor may himſelf work two or three days *for the benefit of his creditor.* In that caſe alſo, *the benefit of his labour* is the intereſt named *cáyicá.* Here the word *(cáyá)* "body" is indeterminate; and the uſe of a boat or the like for *the* tranſport *of goods*, in lieu of intereſt, is alſo *cáyicá:* and that muſt be allowed, ſo long as the principal remain unpaid (XXXV 6).

WHEN the benefit ariſing from *the labour of* a ſlave has been ſettled as *cáyicá* intereſt; and that ſlave, through indolence or inability, performs no labour, but pays money equal to the value of his labour, ſhould that money be received as intereſt or not? and, if it be received, under what deſcription of intereſt does it fall? It is anſwered, the money is merely an equivalent for his labour; it ſhould be received and conſidered as *cáyicá* intereſt.

IF a moneyed man tell ſome merchant, "receive a hundred *ſuvernas* from me, and trade with them; whatever be the profit, one half the reſidue, after paying me intereſt, muſt be delivered to me, and thou ſhalt take the other half for thyſelf: but, if the capital happen to be loſt, the loſs ſhall be ſolely thine, and I ſhall recover the whole principal from thee." On theſe terms the loan is advanced; and the man acts accordingly. Is money ſo advanced a loan or not? If it be a loan, is the moiety of the profit, which is receivable *by the creditor*, intereſt or not? It is ſaid, ſince both *the requiſites of a loan*, the continuance of the *creditor's* property in the money *lent*, and *the receipt of* a gain, have place in that contract, nothing prevents its being deemed a loan: however, the moiety of the profit, which is receivable *by the creditor*, is not intereſt, but profit ariſing from commerce.

WHAT exertion for gain is, in this caſe, made *by the lender?* Any merchant tells a publick officer, "you muſt prevent the exaction of exorbitant duties payable at wharfs and the like; in conſideration of which, I will give you a quarter of my profits:" as in this caſe the protection, afforded by that

officer againſt the exaction of exorbitant duties, is the exertion, for which he receives a quarter of the profits, ſo, in the firſt caſe, the act of furniſhing a loan as a capital for trade, and the ſtipulation then made, conſtitute the exertion on the part of the lender. Or, in both caſes, the money *paid* is ſimilar to gratuitous preſents of bread, fruit, mangoes, fiſh and the like: it is not *cáyïcá* ariſing from the perſonal labour of the borrower; nor intereſt of its own nature ariſing from increaſe *of ſtock*; for that is not named in the law as a ſpecies of intereſt, nor is it deſcribed under any other kind of intereſt.

If the merchant trade in *tila*, gold or the like, and the lender receive from the merchant half the *tila*, gold, or the like, gained in commerce, in that caſe, ſince the merchant is independent, the lender's ownerſhip is the only motive for the delivery of the thing. The delivery and receipt are conſequently civil acts; and the receipt is no acceptance of things beſtowed for religious purpoſes. There is no conſequent ſin in receiving thoſe things. Thus ſome expound the law.

VII. *The ſeveral expoſitions conſidered.*

But if the merchant fraudulently withhold the moiety of the profit, he is a promiſe-breaker, and ſhall be compelled by the king to deliver it. This creditor, however, exacts more *than legal* intereſt from the debtor's neceſſities. But intereſt, which is exacted at *the* pleaſure *of the lender*, whether at legal rates, or in the form of ſtipulated intereſt and the like, if it be unreceived for ſome time, can only be taken to an amount ſufficient to double the principal.

If the money be advanced on theſe terms, "take from me a hundred *ſuvernas*, and trade with them on our joint account, but intereſt muſt be paid me;" that commerce is carried on on account of both parties, and the ſhares muſt be ſo diſtributed, as may have been agreed. But, if the lender add, "ſhould the capital happen to be loſt, the loſs ſhall not fall on me," and the merchant acquieſce *in thoſe terms*, the whole loſs muſt be borne by him, through the exigence of his affairs, *which compelled him to accept ſuch terms*: but, if his aſſent were extorted by force, the loſs ſhall not be borne by him; this method is conſiſtent with the reaſon of the law.

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In the caſe ſuppoſed, if the merchant, who borrows the money, trade in ſalt, lac, or the like, with or without the knowledge of a *Bráhmana* who lent the money, the ſin falls on that *Bráhmana* according to *the* circumſtances *of his knowledge or ignorance of the particular trade carried on.* This is *a* demonſtrated *rule.*

On the doubt, whether it be money advanced for commerce, or money lent, it is ſaid; one half is a loan veſting temporary property in the uſer, and the other half is money advanced for commerce. Hence there is, in this caſe, trade in partnerſhip, and a combination of debt and commerce: to receive intereſt on the whole ſum, without a previous agreement, would be therefore contrary to law. But, if the lender delivered the money with this ſtipulation, "the whole ſum ſhall be a loan in thy hands, and it ſhall produce to me half the commercial profit," there, ſince the two acts (of advancing a ſum for trade and delivering it as a loan) are incompatible, the contract of loan ſhall prevail; for the property of the former owner is diveſted *by that act.* He ſhall not therefore receive half the commercial profit, but intereſt on the whole ſum: of the profits of trade ſo much only, as the merchant may voluntarily give, can be received by the lender. If the capital happen to be loſt, whether the exonerating clauſe ("if a loſs happen, it ſhall not fall on me,") be expreſſed in the agreement or not, the loſs does not fall on the creditor, but on the debtor alone. But, if an agreement were made for the payment of half the commercial profit by the debtor, it muſt be paid to fulfil the agreement, as abovementioned. This has been ſufficiently explained.

The *cáyicá* of Na'reda ſhould be explained, as in the gloſs of Chandéswara, from the ſenſe of the word *śaśwat*, repeatedly, or again and again. Or the method, approved by Hela'yudha, the *Mitácſharà*, Misra and others, may be followed: thus *cáyicá* is intereſt payable daily; and the word *śaśwat* ſignifies long, as in the example "*śaśwatíh ſemáh*, many years," and in other inſtances. According to Vrĭhaspati, it is included in the deſcription of hair-intereſt, and muſt be paid ſo long as the principal remain undiſcharged. In the text, it is particularly mentioned, "at the rate of a *pana* &c." (XXXVI 2) to remove the doubt whether intereſt ſhould be received daily at the proportional rate of an eightieth part

by

by the month: more or leſs *than that rate* is therefore taken as hair-intereſt; and ſuch is the current practice. This being the caſe, the *cáyicá* of NA'REDA, as explained by CHANDE'SWARA, falls under the deſcription of *(cáritá)* ſtipulated intereſt.

WERE it ſo, would it not be unpaid; for the text of CA'TYA'YANA expreſſes, "in no other caſe whatever muſt ſtipulated intereſt be paid" (XXXVII 3)? Payment being requiſite when the period, *for which the ſum was lent*, had elapſed, the debtor's inability to make immediate payment occurred *as a circumſtance of diſtreſs*. Therefore intereſt then ſettled, *as the conſideration of forbearance*, muſt be paid, though it be *(cáritá)* ſtipulated intereſt. But greater intereſt, promiſed before the period had elapſed, in conſequence of menaces, need not be paid.

BUT *cálicá* is regulated by the rate of an eightieth part and ſo forth: with or without an agreement, it is intereſt receivable month by month, on the concurrent opinions of many authors. According to this interpretation, if a creditor be deſirous of receiving his intereſt on a loan, of which the intereſt has not ceaſed *becauſe it has not yet equalled the principal*, he muſt take (*cálicá*) periodical intereſt. In that caſe there is no limitation of a ſubſequent period, *beyond which intereſt may not be received*; a diſtinction aſſumed by HELA'YUDHA. Here it ſhould be noticed, that the word "month" is merely a general inſtance: accordingly MENU ſtates periodical intereſt generally. Hence that intereſt, which is receivable every half year, is alſo *cálicá*. Conſequently whatever intereſt is received from time to time, at ſhort periods, before the debt is diſcharged, is *cálicá*. But this intereſt may be included under (*cáritá*) ſtipulated intereſt. However, *ſic'hávriddhi*, which ought to be received day by day, but in ſome inſtances is paid by debtors to creditors for many days at once, to ſave trouble, is not (*cálicá*) periodical intereſt. The *cáritá* of CA'TYA'YANA has been ſufficiently explained.

IT ſhould be remarked, that intereſt at the rate of twenty in the hundred, payable by ſeafaring traders and the like, and at the rate of ten in the hundred by thoſe who travel through vaſt foreſts and the like, is (*cáritá*) ſtipulated

lated intereſt. It ſhould not be aſked, how can intereſt at the rate of twenty in the hundred and ſo forth be deemed *cáritá* as this is deſcribed by NA'REDA (XXXVI 3), ſince CHANDE'SWARA, in his gloſs on the texts concerning thoſe rates of intereſt, mentions, that intereſt at the rate of twenty in the hundred and ſo forth muſt be paid, even though not expreſsly promiſed by ſeafaring traders and the reſt when the loan was received? As intereſt at the rate of two *panas* a month for one ſilver coin, though not expreſsly promiſed, is paid by the immemorial cuſtom of the country (on the ground, that intereſt, formerly ſettled by certain debtors expreſsly promiſing it to their reſpective creditors, is conſidered in practice as ſtipulated intereſt, and is therefore now valid by tacit conſent, though not ſpecified by an individual borrower, and is adjudged by arbitrators quoting *for their authority* approved uſage;) ſo, in this caſe, the text (XXXII) is cited as proof of cuſtomary intereſt. Elſe law muſt be eſtabliſhed on another foundation than ſcriptural *authority*.

ACCORDINGLY MENU does not ſpecify the rate of twenty in the hundred and ſo forth; but ſays, "whatever intereſt ſhall be ſettled by men well acquainted with ſea voyages &c." (XXXIII). Conſequently this ſenſe is deduced *from the text*; ſuch intereſt only, as is ſettled by merchants, ſhall be paid: if the party himſelf have not ſtipulated the rate, that intereſt only, which has been promiſed by former borrowers, as inſtanced by YA'JNYAWALCYA (XXXIII), muſt be paid. In the text of NA'REDA (XXXVI 3) the word "debtor" muſt be conſidered as denoting any perſon who contracts debts and follows the practice derived from *the example of* eminent perſons.

WHAT is the rate for thoſe who do not traverſe the ocean, but croſs the SINDHU and other great rivers? It is anſwered, they are travellers by dangerous routes (explaining "*cantáragáh*" in a general ſenſe, inſtead of reſtricting it to travelling through vaſt foreſts); they muſt therefore pay ten in the hundred. The meaning is this; ſuch as travel by difficult roads, where life is endangered, neceſſarily obtain greater profit, and therefore pay higher intereſt: but thoſe, who voyage by ſea (a ſtill more difficult route, in the higheſt degree tremendous, where life is expoſed to the utmoſt danger,)

tranſporting large cargoes with great trouble, certainly obtain ſtill greater profit; twice as much ſhould therefore be paid by them. When no ſpecial agreement has been made reſpecting the rate of intereſt, what ſhould be received from thoſe traders, who neither travel by dangerous roads nor traverſe the ocean, but buy and ſell in their own country? Intereſt at the rate preſcribed by the texts which ſpecify an eightieth part *by the month*; for this text (XXXII) cannot be extended to a general ſenſe. But if they promiſe to give intereſt, then indeed ſuch intereſt ſhould be paid (XXXIII). Since CHANDE´SWARA expounds the phraſe in this text, "men well acquainted with ſea voyages," as a mere inſtance ſuggeſting a trader in general, that general ſenſe is the ground of this inference, coinciding with the *latter part of the* text of YA´JNYAWALCYA, "or whatever intereſt has been ſtipulated by them" (XXXII).

IF merchants, whether trading by ſea, by dangerous routes, or in their own country, receive a loan from a moneylender, with or without a ſtipulation for high intereſt, in expectation of great profit; but if they be afterwards accidentally diſabled from travelling for the purpoſes of commerce, and remain at home, or die; in that caſe with what intereſt ſhould the principal ſum be received by the creditor from thoſe perſons who have been *thus* unable to trade, or from their ſons? It is anſwered, that ſometimes thoſe, who travel through vaſt foreſts, remain afterwards at home ten or fifteen years; when they borrow for the occaſions of buſineſs, without ſtipulating the rate of intereſt, it would be inconſiſtent with the practice of good men, to require from them payment of ten in the hundred. By "thoſe who travel through foreſts," ſhould be underſtood "thoſe who *actually* perform a journey through foreſts:" ſince there is no journey then performed through foreſts, intereſt at the rate of ten in the hundred ſhould not be paid. So, in the caſe propoſed, ſince there is no actual performance of a journey by dangerous routes, ten in the hundred ſhould not be paid, but intereſt at the rate of an eightieth part and ſo forth. But where the merchant actually travels through vaſt foreſts, ſince the whole tranſaction, from his reſolution to undertake the journey, until the concluſion of the journey, is conducted by him *with that view*, a debt contracted by him, even before the journey *be actually undertaken*, is contracted by one, who *actually* performs a journey by dangerous

dangerous routes; in that caſe, therefore, payment of ten in the hundred is legally required. Seafaring, "*Sámudra*," here bears its regular ſenſe, as a derivative from the noun *(Samudra)* ſea; and a ſimilar expoſition is eſtabliſhed from its aſſociation in the text (XXXII), "ſuch as traverſe the ocean, twenty in the hundred."

If the intereſt have not been ſettled, legal intereſt only ſhould be taken; if it have been ſettled, a ſimilar expoſition is eſtabliſhed from the import of the words "well acquainted with ſea voyages, and with times and with places," in the text of Menu (XXXIII). Therefore, in this caſe alſo, intereſt at the rate of an eightieth part and ſo forth ought alone to be paid; but intereſt promiſed by the debtor muſt be paid (XXXVII). However, if it be promiſed through compulſion, it need not be paid; as ſhown by the ſequel of the ſame text (XXXVII 2). But, when men travel for the purpoſes of commerce, ſuch intereſt, though promiſed through compulſion, muſt be paid; elſe the deſcription ſtated in the text (XXXIII) would be unmeaning, "men well acquainted with ſea voyages."

Is it not *true*, that ſtipulated intereſt need only be paid, when promiſed in a time of diſtreſs (XXXVII); yet in this inſtance, the borrower experiences no diſtreſs; on the contrary, it is a time of exertion for gain. How then can it be intended by Cátyayana, that intereſt, promiſed in ſuch circumſtances, ſhould be paid? *The objection is* not *well founded*; "a time of extreme diſtreſs" is mentioned by way of illuſtration; elſe, ſhould a man receive a loan from a moneylender, on a ſtipulation of more *than regular* intereſt, to accompliſh the conſtruction of a houſe or the like, which he is anxious *to erect* for *the ſake of reward in* a higher world, he would not pay ſuch greater intereſt, becauſe it was not ſtipulated in a time of extreme diſtreſs; but he, who promiſed greater intereſt for the ſake of performing his father's obſequies, or celebrating his daughter's nuptials or the like, muſt pay it: which would be contrary to reaſon. The opinion of Chandéswara and others is therefore accurate, that Cátyáyana only declares undue that intereſt, which has been promiſed through compulſion.

Where a trader, having promiſed, or not having promiſed, greater intereſt

tereſt through compulſion, traverſes foreſts or ſeas, in expectation of great profit, but *ſuch* great profit happen not to be *obtained*, what intereſt ſhould in that caſe be paid? It is ſaid, whether great profit have been obtained or not, the journey through foreſts or the like is *performed*; therefore intereſt at the rate of ten in the hundred and ſo forth, or *any* intereſt which has been promiſed, muſt in ſuch a caſe be paid. All this is deduced from the expoſition of the text. But in fact the ſettled rule ſhould be argued from the immemorial cuſtom of the country.

WHEEL-INTEREST is explained by CHANDE'SWARA; where the debtor, unable to diſcharge the arrear of intereſt, promiſes to pay it with intereſt; that intereſt, which is ſo promiſed, is *(chacra vr̆iddhi)* wheel-intereſt. It ſhould be underſtood, that, if the creditor, actually receiving the amount of intereſt from the debtor, at the very ſame time lends again that very ſum to the debtor, it is not wheel-intereſt; for the amount of intereſt becomes, in this caſe, a principal ſum. Accordingly it is ſaid, in the following text of MENU, "He, who cannot pay the debt."

XLVIII.

MENU: — HE, who cannot pay the debt *at the fixed time*, and wiſhes to renew the contract, may renew it in writing, *with the creditor's aſſent*, if he pay all the intereſt then due.*

FOR, if he pay the ſum into his creditor's hands, and having torn the former writing and executed another writing, receive the ſame *ſum*, the phraſe, "may renew it in writing," would not be employed. Since the debt is different from the former debt, the writing is then executed for the debt then contracted, without connexion with the former writing. But, if he do not diſcharge the ſum, he renews the contract in writing for that ſame debt with intereſt, after cancelling the former writing. If an artful creditor, himſelf, deliver other money into the debtor's hands, and bid him pay the *former* debt, and the debtor do ſo, ſurely in that caſe it is not wheel-intereſt; intereſt upon intereſt ſhould only be conſidered as valid, when no ſuch artifice

* See CLVII, where this verſe is again cited.

is

is practiſed. This ſhould be determined by the wife. Other *points* will be ſtated in the chapter on the recovery of debts.

It has been mentioned more than once, that hair-intereſt is *intereſt* receivable day by day, in conſequence of an agreement in this form, "I will pay it daily." Intereſt by enjoyment is the uſe and benefit of a pledged houſe and the like (XXXV 5): "the rent, or uſe and occupation, *of a houſe*, and the produce (*ṡadas*) *of a field*," according to the literal ſenſe of the verb *ṡad*, cut down or reap; as remarked by Misra. It ſhould not be objected, that intereſt by enjoyment ſhould be included under *cáyicá*, becauſe Vyáſa intends a generick deſcription (XXXIX). Why then is intereſt by enjoyment ſpecially mentioned by Cátyáyana (XXXVII 3) under another name, "uſe of a pledge?" and why are *cáyicá* and *bhógalábha* ſeparately mentioned by Vrihaspati (XXXV)? *but* ſages cannot be cenſured for the exerciſe of their *legiſlative* authority in making a diſtinction, for the ſake of the rule to be delivered, that a pledge is not releaſed, ſo long as the debt be not wholly diſcharged. Corporal intereſt, hair-intereſt, and intereſt by enjoyment muſt be paid, ſo long as the principal remain unliquidated (XXXV 6). If the payment of hair-intereſt happen to be diſcontinued at the end of a few days, or if the corporal intereſt be not received, or if a pledged field or the like be damaged by the act of God or the king; in ſuch caſes, when the debt is *afterwards* liquidated, hair-intereſt, calculated from the date of the loan, muſt be paid; the value of corporal intereſt muſt be made good; another pledge muſt be delivered for uſe and occupation; or, if the debtor do not *deliver another pledge*, the value of uſufruct muſt be made good. A full explanation of pledges may be ſeen under their proper head (Chapter III).

If ſuch be the caſe, does it not contradict the text of Menu (XLIII); for the inferible ſenſe of the law is, that a creditor ſhould not receive more than double the principal paid at once? No; for the original period for the receipt of hair-intereſt is *the cloſe of* each *ſucceſſive* day: the text is only applicable to other caſes. Is it not ſeen, in ſome countries, that hair-intereſt is not received ſo long as the principal remain undiſcharged; but is only received for a ſtipulated period, or for a certain number of days? To re-

concile this apparent difficulty, the text of NA'REDA is adduced; "but the rate, cuſtomary in the country, where the debt was contracted, may be different" (XLV).

IF a debt have been contracted on a promiſe of hair-intereſt; and half the principal have been diſcharged at the end of a long period, what kind of intereſt is afterwards adjudged? It is fit, that half the hair-intereſt ſhould be paid; for it is not proper, that the whole intereſt be ſtruck off when the whole principal is not diſcharged, nor that the whole intereſt be paid, when ſome part of the principal has been diſcharged: and in the caſe of corporal intereſt alſo, if the uſe and profit of a female buffalo affording much milk, or of a horſe or the like carrying great burdens, have been aſſigned as *cáyicá* intereſt, in that caſe, a part of the principal being liquidated, the debtor may aſſign the uſe and profit of another milch buffalo or of another horſe or the like, and not allow the profit of that horſe and buffalo; for there is no *law* to ſhow the neceſſity of allowing the uſe and profit of the thing originally aſſigned.

BUT, in the caſe of (*ád'hibhóga*) *a loan on* the uſe of a pledge, a debtor cannot obtain the releaſe of the pledge however valuable, ſo long as the principal remain unliquidated (CII). For this reaſon, corporal intereſt and intereſt by enjoyment have been diſtinguiſhed: and the diſtinction is well explained as conſiſting in the exiſtence or non-exiſtence of a contract of hypothecation.

WHERE the harveſt is fixed as the period of a loan in grain, under the rule of HA'RI'TA (XLIV 2) as expounded in the *Retnácara*, the creditor can only receive double the principal *in kind*; intereſt therefore cannot, in this caſe, be received at the rate of an eightieth part and ſo forth, becauſe the *general* law for an eightieth part is oppoſed by the *ſpecial* rule of HA'RI'TA. This inference ſhould be queſtioned; for ſuch is not the meaning of the *Retnácara*; the rule of HA'RI'TA is there inſerted under the head of (*cáritá*) ſtipulated intereſt; and ſtipulated intereſt does not exclude the rate of an eigthtieth part and ſo forth: for the grounds of excluding the rate of an eigthtieth part and ſo forth, another authority than ſcripture muſt *therefore* be eſtabliſhed.

eſtabliſhed. The rule of HA'RI'TA ſhould for this reaſon be conſidered as relating to ſtipulated intereſt regulated by the practice prevalent among former eminent perſons; not as eſtabliſhing a rate for intereſt, on his own authority. Accordingly, ſhould any trader borrow grain on a ſtipulation for intereſt at the rate of an eightieth part and ſo forth, and ſelling it conduct commerce, even that is *a* fit *tranſaction*.

How then ſhould the text of NA'REDA (XLV) be applied? For it is thus expounded according to the *Retnácara*: 'this rate of intereſt, an eightieth part of the principal and ſo forth, is univerſal, becauſe it is authorized by the law; but a rate, fixed by the immemorial cuſtom of a country, is different therefrom, and is not univerſal; for ſuch local cuſtom only ſubſiſts in particular countries: accordingly in ſome diſtricts grain is currently received back with an advance of half the principal; in others, with a quarter: but, if it were the cuſtom of countries, that twice the principal alone ſhould be accepted, it would be ſo in all *countries*.' *This objection is* not *well founded;* the particular practice of one country is ſtated in the rule of HA'RI'TA; *not an* univerſal *rate*.

GRAIN doubled at the harveſt is not the higheſt *limited* intereſt; but is either legal, or ſtipulated intereſt, according to the opinion *which may be followed*. The higheſt intereſt *ſtated* trebles the principal; that is, ſo much as trebles the principal is the higheſt *allowable* intereſt. "So, of wool and cotton;" that is, on theſe, as on grain, ſo much intereſt, as trebles the principal, is the higheſt *allowable* intereſt; and intereſt doubling the principal is different.

"WOOL or hair of ſheep and the like;" in anſwer to the queſtion, when is the principal doubled, ſince there is no harveſt of wool? the ſage adds, "in one year" (XLIV). In regard to fibres of graſs and the like it is alſo the ſame: "in one year" is underſtood; and graſs and the like are alſo ſimilarly doubled in one year; and ſome hold, that the higheſt intereſt on graſs and the like is eight fold of the principal. But others think graſs and the like are increaſed eight fold; and bear intereſt no longer than until the debt be made octuple: ſuch therefore is the higheſt intereſt on theſe articles;

articles; and the word "ſo" is not extended to this part of the text, *to declare that intereſt on graſs doubles the principal in one year.* This is founded on the coincidence of the text with that of VRĬHASPATI (LXVII); for "length of time" there denotes the higheſt *limit of* intereſt. Why the text (XLIV) is expounded by CHANDE'SWARA, "on graſs and the like the intereſt is eight fold for one year," may be queſtioned.

IN practice the receipt of grain doubled at the time of harveſt is very reprehenſible. Its partaking of the nature of *(cáritá)* ſtipulated intereſt is the ground of this notion, ſince no other grounds of it are perceived. Or intereſt on grain doubling the principal at the time of harveſt is named uſury.

XLIX.

NA'REDA: — BUT the *rate of* intereſt, which has been mentioned, is conſidered as uſury on grain.*

THE meaning of the text of VRĬHASPATI (XXXV 7) is this; "the uſe of a pledge after twice the principal has been realized, and the other two caſes there ſtated, are uſurious;" this is one propoſition: that uſury is reprehenſible, is another propoſition *of the text.* Conſequently, the receipt of grain doubled *in one ſeaſon* being uſurious, it follows that it is reprehenſible. But the receipt of intereſt at the rate of an eightieth part and ſo forth ſhould be held blameleſs, by reaſon of the practice eſtabliſhed by eminent perſons: and intereſt on grain, doubling the principal, appears to be *(cāritá)* ſtipulated intereſt; elſe it would be excluſive of the ſix ſorts of intereſt *propounded by ſages.*

UNDER the term "grain" peaſe and the like, as well as barley and the reſt, are comprehended; for AMERA ſays, "peaſe and the like are grain in the pod; and barley and the reſt, are grain in the ear."

IF thoſe, who travel through foreſts and the like, borrow grain, at what rate ſhould intereſt *be paid?* Whatever intereſt they ſettle, ſuch intereſt only ſhould

* THE laſt hemiſtich of a text which is again cited, v. LVIII 2.

be

be paid (XXXIII). But, if no intereſt be ſettled, then indeed, ſince there is no law for the receipt of more than double the principal, intereſt only doubles the debt. It ſhould not be argued, that the text of HĀRĪTA (XLIV) ordains twice or thrice the principal payable only by ſuch as traverſe foreſts and the like. No author has ſo explained the text; but, without ſpecifying the eightieth or other legal rates, it marks the intereſt uſually paid by all perſons on *loans of* grain.

SOME lawyers remark; when a man has borrowed grain to be repaid two fold, but is unable to diſcharge the debt at the time of harveſt, and, the debt long remaining unpaid, if arbitrators adjudge the payment of three times the principal, at the *current* price of a particular month, together with intereſt, in that caſe the trebled principal is ſuggeſted by the texts of HĀRĪTA and others (XLIV &c.); the valuation is grounded on local cuſtom; and the intereſt is compound intereſt: but if they adjudge payment of four times the principal with intereſt, the quadrupled principal is ſuggeſted by the text of VRĬHASPATI (LXIII).

YET in fact all this depends ſolely on local cuſtom; for the text of HĀRĪTA, and that of VRĬHASPATI, propound the higheſt legal intereſt. At the fit period for limited accumulation of intereſt, whether three times or four times the principal be then received, the intereſt is legal; but the receipt of compound intereſt, antecedent to a promiſe from the debtor, is not authoriſed by law. The fit period for limited accumulation will be declared under the title of limits of intereſt.

ADMITTING that compound intereſt is reprehenſible by general law or local uſage, *ſtill the text* (XXXV 7), *which declares uſurious further benefit* after the principal has been doubled, intends loans in gold or the like; for, ſince the higheſt accumulation of intereſt on clothes and other commodities is declared to extend to three times the principal and ſo forth, it is wrong to cenſure the receipt of three times the principal *in ſuch caſes*.

A *Brâhmana* aſks a loan from another *Brâhmana*, and the lender, exacting a ſtipulation for intereſt at the monthly rate of a *pana* in a *purána*, delivers the

loan; and the other pays the debt within the year; is the receipt of ſuch intereſt, in this caſe, reprehenſible or not? It is ſaid, the receipt of ſuch intereſt is evidently immoral, ſince (*cáritá*) ſtipulated intereſt itſelf is immoral, according to the gloſs of CULLŪCABHATTA on the words "any intereſt which is unapproved" (XLI); and it is held ſo by MISRA, becauſe the borrower is oppreſſed by the exaction of exceſſive ſtipulated intereſt and the like.

PERIODICAL intereſt and corporal intereſt are alſo termed immoral by CULLŪCABHATTA: how does that apply; for, if the borrower diſcharge the debt within the year and pay ſuitable intereſt, there is nothing blamable in *the receipt of* that *intereſt?* The anſwer is, under the authority of the text only; *but* it is not deemed immoral if received from time to time; and the text of VRĬHASPATI is adduced to connect the ſenſe, ſhowing the immorality of periodical intereſt and the reſt, in certain circumſtances; not of ſtipulated intereſt, *which is univerſally cenſured.* Accordingly CULLŪCABHATTA ſays, "ſtipulated intereſt is immoral, even though it have been *freely* ſettled by the debtor in a time of extreme diſtreſs, and by the creditor through kindneſs." It is conſequently an improper proceeding of a lender, wilfully to violate the law and exact a promiſe of more than legal intereſt. On other expoſitions alſo, ſince the rate of an eightieth part and ſo forth is alone legal as the primary rate, the receipt of ſtipulated intereſt at any other rate is not laudable.

IF a debt be contracted with an agreement in this form; "at the end of three months I will repay one coin and a quarter, lend me now one coin;" the intereſt amounting to a quarter *of the debt* is *(cāritá)* ſtipulated intereſt; for the rate of intereſt and period of the loan are ſettled by the debtor. In the caſe propoſed by CHANDĒSWARA, intereſt on a loan advanced with a previous ſtipulation in this form, "if thou wilt pay intereſt during one year, or half a year or the like, then only will I advance the loan," is alſo a ſort of ſtipulated intereſt: for, in this caſe, there is a promiſe of paying *a certain amount of* intereſt at the rate of an eightieth part and ſo forth. But in fact reaſon ſhows, that excepting the *regular* method of receiving the principal with ſuitable intereſt, every diſingenuous proceeding is immoral.

VIII.

VIII. *On the assignment of bonds, &c.*

In some instances, a creditor has demanded his money from his debtor, *in these words*, "pay the debt of a hundred *suvernas*, which is due to me;" but the debtor has not been able to discharge it; afterwards, the creditor, reduced to poverty by the circumstances of the times, or *even without necessity*, of his own accord, sells the written contract for that debt to some *other* person: this practice is not immoral; for it is not forbidden by the law, nor does it distress the debtor.

To the question, what is sold in the case supposed? The answer is this; not the mere written leaf, for it could not bear so high a price, nor would the purchaser, on a purchase of the written leaf only, be entitled to receive the sum stated in the writing. Nor *is* the debtor *sold;* for the creditor has no property in *the person of* his debtor. Nor *is the* money, *which has been* lent by the creditor, *sold;* for *his property in* that money is already devested; or, even though it be not *wholly* devested, the seller has not at that time an *indisputable* property therein. Nor *is* the money, which will be *subsequently* paid, and which is receivable by the creditor, *sold;* for it cannot in such a case be money receivable by the creditor, since the purchaser, *not the seller*, will have property in the money, which will be paid by the *present* user *or debtor*. It is therefore held by some lawyers, that the money, which will be paid by the debtor, is acknowledged as the transitory property of the lender, but, in consequence of the price now received and of the agreement made to that effect, that property will be devested, and transferred to the purchaser: accordingly a sale, consisting in the receipt of a price, is now established from the consequences which are to follow, by means of *taking into consideration* past events:* and the seller has property in the price *received;* for, in consequence of his present expectation of a future receipt, the buyer assents to the transfer of property in the price to the seller. But that is wrong; for, should the debt be never actually paid, in consequence of the debtor's decease or the like, such a transitory property could not be

* The philosophical opinion, to which, I conceive, this alludes, is more expressly stated in other places. A past event, that is, its completion, exists metaphysically as a cause of future events. Strict logicians do not admit this metaphysical existence, and are therefore at a loss to connect causes and effects not immediately consecutive. To solve the difficulty they have recourse to the relation between cause and effect, which they place, in philosophical arrangements, under the category quality.

established:

eſtabliſhed: ſince the money payable by the debtor is become null, the ſale of it is alſo null, and the receipt of the price would be therefore invalid.

We think, that this is a ſecondary ſale of the promiſe of payment, like a gift, or ſale, of *moral* purity. Thus, after the receipt of a loan, the lender's property being deveſted, and property veſted in the borrower, the promiſe of payment is the only ground for the repayment of the loan when its period has elapſed; and that promiſe diſpoſes the debtor to give effect to the creditor's *revivable* property, through fear of incurring guilt by withholding payment of the money due to the creditor, or in conſequence of a complaint preferred before the king or the like: in the caſe ſuppoſed, that *promiſe*, bought by any perſon, would induce guilt *in the debtor* if he withheld payment of the debt from the perſon who had purchaſed *the promiſe*; and exciting his apprehenſions of incurring ſuch guilt, or by means of a ſuit preferred before the king, or the like, it diſpoſes the debtor to give effect to the purchaſer's *contingent* property.

It ſhould not be objected, that payment made to the purchaſer would be a violation of promiſe on the part of the debtor who had ſaid *to the creditor* "I will pay the money unto thee." It is a rule, that the reaſon of the law extends to the repreſentative. There is no breach of promiſe in his paying the money to the purchaſer, who is the repreſentative of the creditor; as there is none on the part of him, who has promiſed to give jewels and the like, and who pays their value.

When a field or the like is ſold, an intereſt of the nature of property, ſimilar to the former owner's property, is veſted by the ſale in the other party; but, in this caſe, by what ſecondary notion of a veſted intereſt, does it become a ſecondary ſale. From the ſecondary notion of ſomething producing a lien on the guilt of the debtor if he withhold payment of the money, it is *ſhown to be a* ſecondary *ſale*. Conſequently, ſhould the debtor and his offſpring happen to die without paying the debt, the loſs falls on the purchaſer, as *it would have fallen* on a creditor who had not ſold *the demand*; but, if a thing ſold, yet remaining with the ſeller, be deſtroyed by the act of God, the price muſt be refunded by the ſeller.

In this *assignment of bonds*, one form is a sale made with a written contract previously executed; another is a sale made in the debtor's presence, or with his knowledge; another *again* is a sale before witnesses; these and many other forms regulated by the custom of the country, such as a sale authenticated by an unattested instrument in the handwriting of the party, or his own recovery of the debt and payment of it to the purchaser, may be understood by a simple exertion of intellect. The form is also similar in the case of hypothecating a written contract of debt: but with this difference, that, if the debtor happen not to pay the sum borrowed by him, the intermediate user *or debtor* must make good the debt, out of his own funds, to the ultimate creditor; and the promise of payment concerns the lender only, but is in the power of the ultimate creditor; consequently the debt cannot be received by the lender without the assent of the ultimate creditor.

Some person, applying to a merchant who lives by moneylending, says, "deliver me cloth to the value of a thousand *suvernas*, and let that value remain a debt due from me;" on those terms giving a writing he takes the cloth: what does the value of it become; for no money has been paid? On this doubt, it is said, the price of the commodity, which was sold, is a debt mentally contracted; interest must therefore be paid on the price of the commodity.

Is not the sense of the word *(rĭna)* debt, 'money or goods delivered and producing gain *to the lender* in consideration of its remaining *for a time* with the debtor?' but, in this case, since the price of the cloth was not then paid, it could not be delivered, and the requisites of a debt cannot therefore exist. *The objection is* not *well founded; by fiction* there may be a delivery of the price of the cloth, as there may be *a fictitious delivery* of gold or the like *given* by way of gratuity, though it be not actually produced.

In the parallel case proposed, there is, on the part of the votary, a present act of volition to annul his own property and vest property in another, which amounts to gift, and is not imaginary; but here, since there is no such money as that, in consideration of which property shall be vested in the buyer,

after the property of the ſeller has been deveſted, the buyer's property is null; and, the intended delivery being imaginary, is it not actually invalid? Admitting the objection, "deliver" is ſecondary in the definition of debt: and, in the caſe ſtated, the thing lent becomes the property of the buyer, *whether it be* the price or value of the cloth *which is lent*, *or* only the cloth ſold; as in the caſe of compound intereſt. This ſubject has been further treated by me (JAGANNÁ'THA) in the *Rínavádárt'ha*. In the caſe propoſed, there is a mixed tranſaction of loan and ſale.

Form of a writing for a debt ſold.

AFTER writing on the aſſignment the name of the lender and ſo forth, it is uſual to write, "this ſale of a written contract of debt:" and that is proper; for by ſelling the written leaf with the letters inſcribed on it, the ſale of the thing written is alſo valid; as the approach of horns is *denoted* when *it is ſaid* a horned animal approaches. Thus, ſince letters muſt extend to the words, the ſale of the words *conſtituting a promiſe* is certainly valid. Or it may be written, "this bill of ſale of a debt;" by this the ſale of an unwritten debt may alſo be effected: and it is equally proper in the preſent caſe.

ON the reaſoning above ſtated, although the thing promiſed might not be ſold, the promiſe may be ſold; and here the meaning of debt is, money received after ſuch previous promiſe. The debt belongs to the purchaſer alone; hence, if it happen to remain unpaid, the ſin conſiſts in not paying the debt due to the purchaſer, not in withholding a debt due to the ſeller. But ſuch intereſt only, as had been promiſed, ſhould be paid; not intereſt at the rate of an eightieth part and ſo forth, when ſtipulated intereſt had been previouſly promiſed, and no expreſs declaration was made concerning intereſt at the time of the ſale. If a debt be ſold by a *Bráhmana* creditor to a *Súdra*, intereſt muſt be received at two in the hundred, the regular rate in the order of claſſes; not at five in the hundred: for intereſt is ſettled by the agreement made when the debt is contracted. Nor ſhould the purchaſer then exact a promiſe of greater intereſt; for that loan had been already advanced by another perſon. But, after the lapſe of the period ſtipulated, ſhould the debtor be unable to diſcharge the debt, the purchaſer, who is become

become the creditor, may, according to ſome opinions, exact a promiſe for ſtipulated intereſt or for the *cáyicā* of NA'REDA, as explained by CHANDE'SWARA, at the rate of a *pana*, or half, or other fraction of a *pana*; for that is the proper time for a ſtipulation of ſuch intereſt, and the debtor is then in the power of him, who purchaſed the debt.

ALTHOUGH there be no expreſs text of ſages on the preſent ſubject, this and other rules for contracts valid by uſage are deduced from the authority of reaſon copying ſacred law for the ſake of legal deciſion in caſes of doubt. A portion of the ſubject has been inſerted by way of illuſtration; other points may be ſimilarly reaſoned by the wiſe.

Form of a writing for a debt pledged.

AFTER writing the name of the lender and ſo forth, and ſubjoining, "this contract of debt on the pledge of a debt;" it ſhould be added, "a debt of ſo much is contracted by me, giving unto thee, as a pledge, a debt amounting to ſuch a ſum contracted by ſuch a one, on an agreement for ſo much intereſt, in ſuch a year, month and day, and in the preſence of ſuch and ſuch perſons," and ſo forth: it ſhould be *further* written, "if this debt be not diſcharged by me on ſuch a day of ſuch a year, then the debt due to me by ſuch a perſon ſhall be thine," and ſo forth, according to circumſtances. This and other forms, as ſuggeſted by common ſenſe, are ſtated by way of example, to guard againſt defective writings.

IN this caſe the firſt debt ſhould not be recovered *from the debtor*, until the cloſe of the period for which the ſecond loan is made. But, if *no more than* half or other portion of the original debt were made over as a pledge, then a proportionate part may be recovered from the debtor; and it ſhould be inſerted in the inſtrument. However, it is not proper to fix a period for the ſecond loan extending beyond that of the firſt loan. This and other points may be inferred from reaſoning.

Form of a writing for a price lent, or credit given in conſideration of intereſt.

IT ſhould be a document of the debt, not a document of ſale only; becauſe the ſale is ſhown by the declaration of the debt; for the declaration in

words

words runs thus, "I borrow the value of this commodity, ſo and ſo, which is bought of you." It ſhould not be affirmed, that *it might be drawn* converſely; and thus the inſtrument would be only a bill of ſale. Were it ſo, the debt would not be *the* chief *object of the writing*, and the clauſe fixing the period *of repayment* and ſo forth could not be well arranged. But, ſhould it be thought neceſſary to authenticate the purchaſe, a ſeparate document would be proper. To expatiate *in this place* would be vain. Sales and the like may be ſimilarly authenticated by bills of ſale: *but* that ſhould be hereafter diſcuſſed under the head of ſales and ſo forth.

IX. *On uſage in general.*

DOUBTS, occurring on many ſubjects, have been ſolved by reference to practice; a deciſion being therefore valid when founded on the practice obſerved to exiſt, is not law uſeleſs? Practice, which is founded on law, prevails; hence uſage, inconſiſtent therewith, muſt be abrogated. But where no expreſs law is found, one ſhould be eſtabliſhed on approved uſage.

L.

MENU:—WHAT has been practiſed by good men and by virtuous *Bráhmanas*, if it be not inconſiſtent with the legal cuſtoms of provinces or diſtricts, of claſſes and families, let him *(the king)* eſtabliſh.

WHAT is not inconſiſtent with the uſages of provinces, claſſes and families, and has been practiſed by virtuous and learned *Bráhmanas*, though it be law not found *in codes*, let him eſtabliſh.

CULLŪCABHATTA.

BY the expreſſion, "law not found in codes," it is intimated, that law ſhould be eſtabliſhed on approved uſage: elſe it would have been ſaid, "if there be no *expreſs* law." But the practice *of forbearance*, which has been introduced by good men, through tenderneſs, in conſideration of the debtor's inability to pay and ſo forth, ſhould not be aboliſhed. The uſe of law is only to prevent the introduction of multiform practices at the will of men of the preſent

preſent generation. Where many texts of law are inconſiſtent, or many interpretations of the ſame text are contradictory, uſage alone can be received as a rule *of conduct:* and practice, which differs in ſome reſpects from poſitive ordinances, but is not remote from ancient legiſlation, can only be confirmed by its *general* connexion with law. Conſequently that practice, which is conformable to law, is beſt; but that, which is inconſiſtent therewith muſt be aboliſhed: yet, if that may not be, practice inconſiſtent with law muſt be nevertheleſs retained. But where no *poſitive* ordinance is found, there is nothing inconſiſtent with any known law, and in that caſe approved uſage alone muſt regulate *proceedings*. Hence it is ſaid, "human tradition is not unfounded." Still, however, the example of learned and virtuous *Bráhmanas* ſhould be followed for the ſake of proſperity; not the practice of immoral and fooliſh *Súdras* and the reſt. This and other points may be viewed by a man's own judgment: and it muſt be ſo underſtood in all matters, not in caſes of debt alone. Thus have been diſcuſſed the various ſorts of intereſt.

SECTION III.

ON INTEREST SPECIALLY AUTHORIZED AND SPECIALLY PROHIBITED.

ARTICLE I.

ON DEBTS BEARING INTEREST WITHOUT AN EXPRESS AGREEMENT.

LI.

CA'TYA'YANA:—THOUGH a loan be made *expreſsly* without intereſt, yet, if the debtor pay not the ſum lent after demand, but *fraudulently* go to another country, that ſum ſhall carry intereſt after a lapſe of three months.

Uddhára (the term employed in the text) here ſignifies money received without a promiſe of intereſt. "If he go to another country," if he abandon the country in which the creditor reſides, that debtor ſhould *immediately* pay the ſum lent.

The *Retnácara.*

IF he abandon the country in which the creditor reſides; that is, if he go to another country.

"AFTER a lapſe of three months;" if it have been demanded, *it ſhall bear intereſt* at the end of three months.

The *Chintámeni.*

THAT is, if the ſum lent be demanded but not paid, *it bears intereſt* after a lapſe of three months from the date of the loan. In this caſe, a loan has been amicably made by the creditor without any ſtipulation for intereſt; it is proper, that no intereſt ſhould be paid by the debtor while friendly intercourſe is maintained: but if he do not pay it after demand, the friendly conſideration no longer ſubſiſts, and intereſt ſhould therefore be paid. In

that

that caſe it commences at the expiration of three months under the authority of the law. However, ſhould he fix a near term after the firſt demand, with the aſſent of the creditor, and pay it at that term, no intereſt accrues: accordingly it is ſaid in a text, which will be cited, "after more demands than one." But no intereſt accrues within three months, even though the debt be repeatedly demanded; for no law *has authorized it*.

If it be aſked, what ſort of intereſt? *the anſwer is*, intereſt at the rate of an eightieth part and ſo forth, as preſcribed by law. But CULLÚCABHATTA expounds the text of MENU (XLII) as relating to this caſe; "intereſt exceeding the fixed rates, or thoſe preſcribed by law, and contrary to, that is different from, intereſt agreed on, or, in other words, intereſt not agreed on, is invalid and cannot be *exacted*: intereſt not agreed on cannot be *exacted* at rates not declared by the law; for there can be no intereſt, which is neither ſettled by the parties, nor preſcribed by law." Conſequently, in a caſe where none was agreed on, intereſt ſhould be received at the rates preſcribed by law, in the order of the claſſes. So *the following text*;

LII.

VISHNU:—AFTER the lapſe of one year, debtors, *who have not acted fraudulently*, muſt pay intereſt, as allowed, even though not agreed on *at the time of the loan*.

"As allowed;" at the rate of two and three in the hundred and ſo forth, in the order of the claſſes. He declares another diſtinction in reſpect of intereſt without a ſpecial agreement.

LIII.

VISHNU:—*Sages have declared it* an uſurious mode; yet a lender may exact five in the hundred.

"FROM twice-born men," muſt be ſupplied in the text: hence it is an uſurious mode, originating with abject perſons. MENU and the reſt have declared it *ſo:* this muſt be ſupplied in the text. Conſequently a lender

may

may exact, even from a twice-born man, the intereſt which is receivable from a man of the ſervile claſs, or five in the hundred; but ſuch conduct is immoral: and this muſt be underſtood of a ſum lent without any agreement for intereſt, and which has been demanded.

LIV.

CA'TYA'YANA declares it:—WHAT has been amicably lent for uſe, ſhall bear no intereſt, until it be demanded back; but if, on demand, it be not reſtored, it ſhall bear intereſt *on its true value* at the rate of five in the hundred.

THE rate of five in the hundred, which is mentioned *in theſe texts*, ſuppoſes a debtor of a twice-born claſs; for, if it concerned a debtor of the ſervile claſs, it would not exhibit an uſurious tranſaction, but would be a vain repetition of the rate of five in the hundred. Hence it is CULLU'CABHATTA'S interpretation, that, becauſe a lender may exact five in the hundred from a debtor of a twice-born claſs, therefore do ſages term it an uſurious way.

IT is, *however*, proper to conſider the phraſe, "the lender is entitled to five in the hundred," as a mere repetition of the rate of intereſt receivable from a debtor of the ſervile claſs; for it is difficult to eſtabliſh another rule of intereſt: and the ſenſe is, ſages have propounded this rate of intereſt, as the way of moneylending; therefore is a lender entitled to it. This may be argued on the authority of VA'CHESPATI MISRA; for he ſays as much in his gloſs on a *ſubſequent* text (LVI 2): and it is proper to eſtabliſh the ſame induction in the preſent inſtance; for there is no difference: and this intereſt ſhould be underſtood in all caſes where no agreement for intereſt was expreſsly made.

IF a debtor, having received a loan free of intereſt, go to another country after the debt has been demanded, intereſt is ordained after the lapſe of three months; the ſage alſo propounds intereſt in the caſe of a debtor who remains in the ſame country.

LV.

LV.

CA'TYA'YANA:—A DEBTOR, who, even reſiding in his own country, pays not *the debt* after more demands than one, ſhall be forced, however unwilling, to pay intereſt on it, though not ſtipulated, *after the lapſe of one ear.*

MEANING the very ſame caſe, VISHNU ſays in the text above cited (LII), "after the lapſe of one year."

ACCORDING to MISRA, the phraſe "*if he* go to another country" (LI) is indeterminate; for, citing the laſt text (LV), he ſays, all this ſuppoſes payment fraudulently withheld; but, in a caſe void of deceit, the rule of VISHNU (LII) *is applicable.*" Yet, in fact, a journey to another country is equivalent to fraud; but he, who reſides in his own country, is not *ſuppoſed* to practiſe fraud but only procraſtination. Both texts therefore coincide. Thus, the two different periods for the receipt of intereſt are regulated by the practice or omiſſion of fraud, inſtanced in the *debtor's* journey to a foreign country, and *his* reſidence in his own country. It is then only conſidered as a journey to another country, when the debt cannot be demanded at the place where the debtor reſides; not when he merely quits the village, and ſo forth. Even though both parties reſide in the ſame town, yet if the debtor abſcond whenever he ſees the creditor, it is *the ſame with* a journey to another country. Or, if both reſide in a foreign country, it is a reſidence in the ſame country. Hence both texts coincide in *conſidering* the fraudulent intent *of the debtor*: and, if a debtor, from whom payment is demanded, go to another country after appointing a time *of payment*, and returning pay the ſum at the time appointed, there is no fraud.

"PAYS not" (LV); 'the *debt, or* principal ſum,' ſhould be ſupplied in the text. "After more demands than one;" after repeated demands. The reading approved by CHANDE'SWARA is *áváhét* inſtead of *áharét*; *ſtill* the meaning is "muſt pay to the creditor." Conſequently, the aſcertained ſenſe of the text is this; in the caſe of a loan made through friendſhip, if it be not paid after demand, and any fraud be practiſed, intereſt, though

not *previouſly* agreed on, accrues after the lapſe of three months; but, if no fraud be practiſed, after the lapſe of one year.

LVI.

CÁTYÁYANA:—SHOULD a man, having bought a marketable commodity, *fraudulently* go to another country, without paying the price of it, that price ſhall bear intereſt after three ſeaſons, *or ſix months.*

2. *Even without a journey to a foreign country,* a depoſit, the balance of intereſt, a commodity ſold, and the price of a commodity purchaſed, not being paid *or delivered* after demand, ſhall bear intereſt at the rate of five in the hundred, *if the debtor be a* Súdra.*

THE third meaſure of the ſecond verſe is read in the *Chintámeni, Yáchyamánónachéddadyát,* inſtead of *Yáchyamánamadattanchét: (it makes no change in the ſenſe).*

Should a man, having taken a marketable commodity or vendible thing, ſuch as cloth or the like, go to another country, that is abſcond, without paying the price of it, *that price ſhall bear intereſt* after three ſeaſons, or ſix months. What intereſt? The ſage ſubjoins it, "A depoſit &c. ſhall bear intereſt at the rate of five in the hundred" (LVI 2). The prohibition of intereſt on a depoſit and on the price of a commodity will be explained as *reſtricted* to a depoſit and price not demanded. "Balance of intereſt;" the compound term is in the form of appoſition called *tatpuruſha.* Such is MISRA'S opinion.

THE terms may be joined in the form called *Carmadháraya;* "intereſt and the balance of it;" for this appoſition is preferable. If it be aſked, balance of what? the anſwer is ſuggeſted by the neareſt term, balance of intereſt. Such is CHANDÉSWARA'S interpretation. But it may be queſ-

* THE laſt verſe is again cited in Book II. chapter I. v. XXXII.

tioned,

tioned, why the terms ſhould not be explained, in the appoſition named *Carmadhâraya*, " remaining intereſt."

HERE it ſhould be remarked, that, according to many commentators, the period when the principal is doubled, excepting this caſe of periodical intereſt, is the time when the debt ſhould be paid *by the debtor*, and intereſt be received *by the creditor*. If a debtor do not pay it, although it be then demanded, but put off payment, ſaying, " it ſhall be paid to-morrow, or it ſhall be paid the day after to-morrow," in that caſe, legal intereſt accrues after ſix months: " balance" is here a general inſtance. According to others, if an honeſt debtor, being then unable to diſcharge the debt, ſtipulate intereſt and renew the contract, intereſt commences from that date, and is wheel-intereſt: ſince intereſt is here ſtipulated, the rate of two in the hundred, and ſo forth, is not applicable to this caſe.

OR it may be thus explained; if a balance of intereſt only be due, there is no wheel-intereſt: for this reaſon the word " balance" is here employed. But, if the whole intereſt be due, intereſt alſo accrues after the lapſe of ſix months, under the rule exemplified by the caſe of the ſtaff and bread.* But, if the intereſt have been paid, and the principal only be due, it bears no intereſt, however long it remain unpaid (XLIII). In this caſe it muſt have been particularly ſpecified by the parties, " that, *which remains due*, is the principal; this, *which is paid*, is the intereſt". In the caſe of periodical intereſt alſo, if it be not *regularly* paid month by month, this text (LVI) is applicable.

" A COMMODITY ſold, and the price of a commodity purchaſed (crayam vicrayam†);" That which is purchaſed *(crîyaté)* is *(craya)* the commodity; that, for which a vendible commodity, as a cow or the like, is ſold *(vicrîyaté)*, is *(vicraya)* the price. Here alſo three ſeaſons are underſtood. Therefore, on a bailment, on the balance of intereſt, on a vendible commodity, and on the price of a commodity, if they be demanded

* THE rule may be thus expreſſed; " the greater includes the leſs." The example alluded to is this; one bids another throw away the bread touched with the ſtaff; of courſe the ſtaff was no leſs to be ſhunned, than the bread it had ſoiled.

† IN the uſual acceptation, the ſenſe would be purchaſe and ſale.

and

and not delivered, intereſt muſt be paid after ſix months, at the rate of five in the hundred, by a defaulter of the ſervile claſs; for it coincides with the rate *preſcribed for that claſs* (XXIX 2).

MISRA.

SOME hold, that, if three ſeaſons muſt be alſo underſtood in this text, the preceding text would be ſuperfluous; it is therefore proper not to connect the terms with the three ſeaſons there mentioned. How then is the period determined, when intereſt ſhall commence on the balance of intereſt and ſo forth? Being mentioned in the ſame text with *the* price *of a commodity, intereſt commences* on theſe, as on the price of a commodity, after three ſeaſons.

THAT ſhould be queſtioned; for, ſince the phraſe muſt be ſeparately referred to "depoſit" and the reſt, there is no difficulty in this conſtruction of the text, "on the price of a commodity *(vicraya)* intereſt accrues after three ſeaſons." Why has not the ſage inſerted in this text, "after three ſeaſons," and, "go to another country," and omitted thoſe terms in the preceding text? *The objection is* not admiſſible, for with ſages there can be no expoſtulation.

BY ſaying, "muſt be paid by a defaulter of the ſervile claſs," it is eſtabliſhed, that, in the caſe of amicable loans, intereſt at the rate of five in the hundred ſhall only be paid by a *Súdra*; for intereſt on *ſuch* a loan, and on depoſits and the reſt, can only be payable *by him*, after the lapſe of three months, and ſix months reſpectively. Therefore a man, who, after receiving the price of the cow, does not deliver that cow when demanded, though ſold by him, and a purchaſer, who does not pay on demand the juſt price of a commodity purchaſed, muſt pay intereſt at the rate of five in the hundred *and ſo forth*, in *the inverſe* order *of claſſes*.

The *Retnácara*.

For a ſeries may be either direct or inverſe.

DOES the cow, or the price of the cow, bear intereſt at the rate of five in the hundred? It is the ſame thing; for, ſince a cow cannot be divided,

it

it is only her value that is divided, as has been already mentioned. If a man, having bought a cow, go to another country without paying the price, muſt the cow or the price be delivered with intereſt after three months? It is ſaid, the price only muſt be paid with intereſt; for, after the purchaſe, the cow became the property of the purchaſer. Accordingly, on religious occaſions, people diſmiſs bulls and the like, which they have purchaſed for a price promiſed *but not yet delivered.* Purchaſe is only forfeited by neglect during a ſpecifick time. To expatiate would be vain. But he, who, having ſold a cow and received the price, does not deliver the cow ſold, muſt give her with intereſt after ſix months.

In the preceding text a demand muſt be abſolutely underſtood: if the thing be demanded but not delivered, it bears intereſt; not, if no demand be made. Again; under the expreſſion "go to another country" (LVI 1) intereſt after three ſeaſons is ruled, if fraud be practiſed, by the ſame reaſoning with that above ſtated.

LVII.

CÁTYÁYANA:—But he, who, having received a chattel lent for uſe, goes to a foreign country without reſtoring it, muſt pay intereſt, according to the value of it, after three ſeaſons *or ſix months.*

"A chattel lent for uſe" *(yáchitaca)*; a thing intruſted to him.

The *Retnácara.*

Meaning ornaments or the like for decoration, which a man, aſking *(yáchitwá)* from any perſon, has obtained. In regard to this, the ſame practice prevails with that reſpecting *other* bailments.

But Misra ſays, the *following* texts of NÁREDA concern chattels intruſted for uſe.

LVIII.

NÁREDA:—There ſhall be no intereſt, without a ſpecial

 agreement,

agreement, on valuable things lent through friendſhip *for uſe, not for conſumption;* but, even without agreement, property ſo lent bears intereſt after half a year;

2. THIS is declared to be the legal rate of intereſt on amicable loans. But the *rate of* intereſt, which has been mentioned, is conſidered as uſury on grain.

HE thus expounds the texts: the word "give" here ſignifies intruſt or lend *for uſe;* there is not conſequently any contradiction to the text above cited (LI).

SUCH being the caſe, it is made evident, that a loan for uſe, which is ſimilar to a depoſit, bears intereſt after ſix months, if it be not reſtored *on demand.* But the text of NAREDA is cited by CHANDESWARA, after diſcuſſing loans for uſe, with the text of VISHNU (LII) interpoſed. This opinion is thereby intimated; a loan advanced *free of intereſt,* in conſequence of ſome apprehenſion from human cauſes, bears intereſt in three months after it has been demanded; but a loan, which is advanced through friendſhip, bears intereſt in ſix months after it has been demanded. The text of CA'TYA'YANA (LIV) is cited in the *Vivada Chintameni,* and by CULLU'CABHATTA, for this import; and *this* text muſt be ſimilarly expounded. This obſervation of ſome lawyers is not *well founded*: for CHANDE'SWARA has thus arranged *the compilation:* inſerting all the texts of CA'TYA'YANA, he quotes texts of other ſages; elſe, if the text of CA'TYA'YANA (LIV) had the ſame import with that of NA'REDA, it would be wrong to interpoſe *another.* Therefore MISRA's interpretation ſhould be deemed right in this inſtance.

THE term "without agreement," which occurs in both hemiſtiches, ſignifies "not in any manner expreſſed in words," *that is,* not ſtipulated: hence, if intereſt have been expreſſed by the borrower, the creditor may exact ſome *intereſt.* "Without agreement" *may be explained* without a declaration of its bearing intereſt, without any ſtipulation of intereſt; for the particle A' is explained by AMERA, aſſent or promiſe. Or the term might

might ſignify "intereſt not ſettled with the conſent of the borrower," and, as here uſed, "that, which has not been ſettled to bear intereſt with the conſent of the borrower."

"USURY on grain" (LVIII 2); on grain lent without any agreement for intereſt, but not repaid on demand. The rate of intereſt, which has been declared by ſages, ſuch as twice the principal and ſo forth, is deemed uſury. On a loan advanced with a declaration, that intereſt ſhall on no account be received thereon, ſhould the creditor afterwards require intereſt, from the circumſtances of the times, or in conſequence of a breach of promiſe, no ſuch intereſt is allowed: though not declared by the text of any ſage, this may be deduced from reaſoning by wiſe *inveſtigators*.

ACCORDING to MISRA, intereſt accruing, in all theſe caſes, after the lapſe either of three, or of ſix months, muſt be underſtood of payment fraudulently withheld; but, if no fraud be practiſed, intereſt commences after the lapſe of a year, under the rule of VISHNU above cited (LIV). In fact a journey to another country indicates fraud; and another country is that, during the debtor's reſidence in which the creditor cannot demand payment of the debt: herein MISRA and CHANDÉSWARA concur. But according to CHANDÉSWARA a debtor offends not by going to another country on urgent buſineſs, as has been already noticed. In the caſe of a commodity purchaſed and the reſt, intereſt alſo commences after the lapſe of a year, if the debtor have not gone to another country; this is deduced from the expreſſion in the *Vivàda Chintámeni*, "in all theſe caſes;" and is not diſallowed by CHANDÉSWARA, CULLÚCABHATTA and the reſt.

ON a loan made without intereſt, and of which payment is withheld after demand, intereſt accrues at the end of three months; on other things fraudulently withheld after demand, ſuch as a depoſit, a bailment for uſe, or the like, intereſt accrues at the end of ſix months; but not reſtored through inability, and ſubmiſſively refuſed, they bear intereſt after the lapſe of a year. Such is the opinion of CHANDÉSWARA, CULLÚCABHATTA, MISRA and others. If payment be withheld by one taking

taking the protection of ſome perſon who may awe the creditor, how ſoon intereſt commences in ſuch a caſe, is not expreſsly ſaid by any author.

ACCORDING to the *Mitácſhará*, intereſt is in ſome caſes due without a ſpecial agreement, as is declared generally by NÁREDA (LVIII); but remarking, that "intereſt without a ſpecial agreement is *in certain caſes* prohibited," *the author of the Mitácſhará* ſubjoins, as a particular rule, the text *ſubſequently cited* (LXXI). Conſequently, from the ſeveral applications of the general and particular rules, intereſt without a ſpecial agreement, accruing at a certain period on loans advanced free of intereſt, appears obviouſly ſuggeſted; but no intereſt, without a ſpecial agreement, on the price of a commodity and the reſt. That, however, is not ſatisfactory; for intereſt without a ſpecial agreement is allowed on things amicably lent; and fines and the reſt would be vainly included in the ſecond text (LXXI). This text, therefore, is not oppoſed to the preceding text (LVIII); but it reſtrains a purchaſer, who covetouſly demands intereſt at the ſame rate with loans, becauſe a commodity purchaſed by him has long remained with the ſeller. Accordingly the text of CÁTYÁYANA (LVI 2) has a ſimilar import; and the ſame rule ſhould be underſtood in regard to the price of a commodity purchaſed.

IN this gloſs the third meaſure of the text of CÁTYÁYANA (LVII) is read "after the lapſe of a year," inſtead of, "after three ſeaſons." Conſequently, ſhould a man, who has received a loan exempt from intereſt, go to another country before it be demanded, *he ſhall pay* intereſt after the lapſe of one year (LVII); but, if he go to another country without reſtoring it after it has been demanded, *he ſhall pay* intereſt after a lapſe of three months (LI). The word "*yáchitaca*" muſt ſignify a loan in general, inſtead of a chattel lent for uſe, for this text (LVII) is inſerted after ſtating the text *firſt cited* (LI). If one, who remains in his own country, do not pay the debt after a demand, it bears intereſt from the date of the demand; for the text of CÁTYÁYANA (LV) does not ſpecify a period.

ACCORDING to this gloſs, what is the purport of the text of NÁREDA (LVIII)? The anſwer is, two caſes have been declared according as the

debt

debt has, or has not, been demanded from one, who goes to another country; in regard to him, who reſides in his own country, one caſe has been declared, *that is, the caſe* where the debt has been demanded; it is proper to refer the text of NA'REDA to the caſe of one, who reſides in his own country, but from whom the debt has not been demanded. Were it ſo, what would be the rule where a demand was made after a lapſe of ſeven months? In reply it is aſked, why does the creditor neglect intereſt, to which he is entitled, under the authority of the text, after the lapſe of ſix months? if through tenderneſs he exact not intereſt, the debtor need not pay it.

ON this expoſition, the text of VISHNU (LII) concerns one, who has received a loan for uſe, and goes to a foreign country before it has been demanded; and the text of CA'TYA'YANA (LVI) ordains intereſt, after ſix months, on depoſits and the like *not reſtored* after demand. According to this interpretation, if ornaments or the like be aſked and obtained for a nuptial feſtivity or the like, they are ſimilar to a depoſit, and are not loans, for they are ſtated by YA'JNYAWALCYA with depoſits (Book II, Chapter I, v. X). But if an agreement were made, at the time of receiving a loan exempt from intereſt, or the like, in this form, "it ſhall be reſtored by me at the end of one year;" in this and ſimilar caſes, if the thing be not reſtored after the period has elapſed, it then bears intereſt; and not after ſix months. This and ſimilar rules may be deduced by the wiſe from arguments conſiſtent with common ſenſe. But the author of the *Mitácſharà* is revered by CHANDE'SWARA and the reſt, and is more ancient than they. Of the two opinions which ſhould be rejected, which adopted in practice, muſt be determined from the difference of times and of places.

ARTICLE II.

ON THE LIMITS OF INTEREST.

LIX.

GÓTAMA: — THE principal can *only* be doubled by length of time, *after which intereſt ceaſes.*

THAT, which is lent *(prayujyaté)*, is *(prayóga)* the principal. The money lent can be doubled, that is, can only be doubled; elſe it would be uſeleſs to declare, that twice *the principal* may be received on account of the length of time *elapſed*. By the word "only" it is forbidden to receive more than twice the principal. Accordingly CHANDÉSWARA ſays, the word "or" in a text already quoted from VRÍHASPATI (III) is indefinite, and alſo ſuggeſts a debt doubled or the like. "By length of time;" counting from a period ſomewhat leſs than ſufficient to double the principal, intereſt ceaſes if the debt remain longer due. This is meant in a text cited from VRÍHASPATI (XXVI). Elſe the mention of double the principal in a text of law propounding right and wrong would be uſeleſs. The text cited from HA'RÍTA (XXX) makes this evident; for the verb there uſed *(ſanſthá)* ſignifies *ſtops or* "bears intereſt no longer:" and this intereſt, ſufficient to double the principal, is the higheſt intereſt receivable on gems, *gold*, and the like, not on grain or the like, for *ſuch limitation of intereſt on grain and the reſt* is oppoſed by a ſpecial text, which will be cited.

CHANDESWARA remarks, "this concerns a loan of valuable things in general:" by the term "in general" it is declared, that this text is a general law; it follows, that ſpecial rules are thereby oppoſed. Accordingly MISRA declares the full meaning; "this concerns gems, *gold*, and the like, as ordained by CA'TYA'YANA."

LX.

CA'TYA'YANA: — FOR gems, pearls, and coral, for gold and ſilver, for cloth made of *cotton the* produce of fruit, *or made* of *ſilk* the produce of inſects, or *made* of *wool* the produce of ſheep, the intereſt ſtops when it doubles the debt.

"STOPS

"Stops when it doubles the debt;" accumulates no further. "Coral," expreſſed in the plural, implies "and the reſt," by which ſhells are included *in the text*; for HA'RĪTA declares, that intereſt ceaſes when it has doubled the principal at the rate of eight *panas* in twenty-five *purānas*. (*Purāna* is a name for *a certain number of* ſhells). This induction is conſiſtent with practice; and it is proper, that double the principal be the limited accumulation on ſhells, ſince no ſpecial rule has been declared. It is the ſame in reſpect of conchs and the like.

"Of the produce of fruit;" as cotton and the like. "Of the produce of inſects;" as ſilk and the like. "Of the produce of ſheep;" as blankets and the like.

The *Retnácara*.

LXI.

MENU, ſtating generally, that "intereſt on money received at once, *not month by month, or day by day, as it ought*, muſt never be more than enough to double the debt, *that is, more than the amount of the principal paid at the ſame time*," adds a ſpecial rule; — ON grain, on fruit, on wool or hair, on beaſts of burden, *lent to be paid in the ſame kind of equal value*, it muſt not be more than enough to make the debt quintuple.*

"GRAIN;" as rice, barley or the like. "Fruit" (*ſada*) or any thing produced from trees. Here "trees" is merely illuſtrative, for "the produce (*ſada*) of a field" occurs in a text, which will be cited from GO'TAMA (LXII). "Wool or hair," what is afforded by ſheep, *cows* and the like, as wool, cow-tails and the like; *as appears* from the derivation *of the word* (*lava*) *what* is ſhorn (*lúyaté*).

The *Retnácara*.

WHAT is ſhorn (*lúyaté*) is wool or hair (*lava*), ſuch as wool and other hair on the body (*lóman*). CULLŪCABHATTA.

* THE firſt hemiſtich has been already quoted (XLIII).

"HAIR"

"HAIR" (*lava*); any thing to be ſhorn (*lavaníyam*), except wool; that is, hair on the body (*lóman*) and the like.

The *Vivádа Chintámeni*.

"WOOL or hair" (*lava*); cowtails and the like.

The *Dípacalicá*.

"WOOL or hair" (*lava*); the fleece of ſheep, the pod of muſk-deer, and the like.

The *Mitácſharà*.

ALL therefore agree, that the word "*lava*" is ſynonymous with *lóman*, being derived from the ſame crude verb (*lú*, cut or ſhear). But MISRA thinks, hair other than that of ſheep is meant in the text of MENU, becauſe it is oppoſed by the text of CA'TYA YANA (LX). But according to the *Retnácara* and the reſt, this text (LX) concerns cloth alone; it is almoſt expreſsly ſaid ſo by CHANDE'SWARA.

"BEASTS of burden;" employed for tranſport, as horſes and the like. On theſe, the intereſt of the loan muſt not exceed the quintuple; with the principal it muſt not amount to more than quintuple; it can produce no more. *That* the quintuple includes the principal *is thus inferred:* as it is declared, that a debt is doubled in fifty months, and *accumulation* then ſtops; that is, intereſt ceaſes; and conſequently the principal is one part, and the intereſt another part, which united make the double ſum; ſo, in this caſe alſo, by parity of reaſoning, the principal is one part, and the intereſt four parts, which united make the whole quintuple ſum. Accordingly, any ſuch debtor, who has borrowed grain or horſes valued at a hundred *pieces of money, for intereſt* at the rate of two in the hundred, however long the period of *debt may be*, can only be liable to pay grain and the like amounting *in value* to five hundred *pieces of money*, and no more.

The *Retnácara*.

HERE the rate of two in the hundred is a mere example; on a loan ſecured by a pledge alſo, where the rate of intereſt is an eightieth part of the principal

principal *by the month*, the intereſt can only double the principal which conſiſted of gems, *gold* or the like; and, by parity of reaſoning, it can only make the debt quintuple, if it conſiſted of grain or the like: for no other limit of intereſt is found in the *codes of* law. VRĬHASPATI (XXVI), declaring that the principal is doubled even in the caſe of a loan ſecured by a pledge, ſtates that alone as the limit of intereſt; and it concerns gems, *gold*, and the like, for it has the ſame import with the text of CA'TYA'YANA (LX).

ON this it ſhould be remarked, ſay ſome lawyers, that the rule regards prieſts only; but, if the debtor be of the military or other claſs, intereſt muſt make the debt treble, quadruple, or quintuple, in the order of the claſſes: elſe it would be a great diſparity, that intereſt payable by a *Sûdra* ſhould ceaſe after twenty months; and, payable by a *Bráhmana*, after fifty months. That is wrong; for no ſage has mentioned intereſt on gems, gold, or the like, more than ſufficient to double the principal. As intereſt on a loan ſecured by a pledge ſtops at the end of ſix years and eight months, but, if there be neither pledge nor ſurety, at the cloſe of fifty months; ſo, if the debtor be of the ſacerdotal claſs, intereſt ſtops at the end of fifty months, but, if he be of the ſervile claſs, at the end of twenty months: there is no *unjuſt* diſparity.

INTEREST on grain or the like makes the debt quintuple in ſo much time, as is ſufficient for intereſt to become equal to four times the debt, whether at the rate of an eightieth part and ſo forth, if a pledge or the like have been given, or at the rate of two in the hundred and ſo forth, if there be neither pledge nor ſurety; not in ſo much time, as would make *other* debts double: elſe, ſince the law ordains monthly intereſt at the rate of an eightieth part and ſo forth, ſomething leſs than twice the principal would be received on grain or the like, if the period elapſed were one day ſhort of eight months above ſix years, but five times the principal would be received on grain and the like if the eighth month were completed; which would be a great diſparity. Since fifty months and various other periods are not ruled *univerſally*, it is proper to affirm, that intereſt ceaſes at thoſe periods reſpectively, when it has riſen to ſo many times the principal.

LXII.

GÓTAMA:—INTEREST on milk or curds, on *the* hair *of goats and the like*, on the produce of a field, and on beasts of burden, shall rise no higher than to make the debt quintuple.

WHAT is produced from cattle *(paśórupajáyaté)* is *(pasúpaja)* the produce of cattle, such as milk and the like, excepting *however* clarified butter.

The *Chintámeni*.

IN the *Retnácara* a gloss is found, "milk, clarified butter and the like." It is liable to objection; for interest making the debt octuple will be declared for clarified butter.

"HAIR" (*lóman*); wool; for AMERA explains wool, the hair of sheep and the like.

"THE produce of a field;" fruit produced from a field, as barley, wheat, plantains, mangos and the like.

The *Retnácara*.

IT is also proper to include grain *in general* under this *term*. Interest on grain, making the debt quintuple, is declared by MENU and GÓTAMA; *but* by VRĬHASPATI it is declared to make the debt quadruple.

LXIII.

VRĬHASPATI:—ON the precious metals *or gems* the interest may make the debt double; on clothes and inferiour metals, treble; on grain, quadruple; so on fruit, beasts of burden, and wool or hair.

"PRECIOUS metals;" gold and silver.

The *Retnácara*.

IT is a general expression comprehending gems and the like; for the rule coincides with that of CATYÁYANA (LX).

THE

THE term "inferiour metals" ſignifies *all* other minerals except gold or ſilver, namely copper and the reſt.

The *Retnácara.*

EXCLUSIVE alſo of gems and the like; for otherwiſe it would contradict CA'TYA'YANA. It is ordained by this *text* (LXIII), that intereſt on grain, fruit, hair or wool, and beaſts of burden, may make the debt quadruple.

LXIV.

VISHNU, cited in the *Retnácara:* — ON precious metals *or gems,* the higheſt intereſt ſhall make the debt double; on cloth, treble; on grain, quadruple; *on fluids, octuple:* on female ſlaves or cattle, the offſpring ſhall be taken as intereſt.

ON female ſlaves and the like, and on cattle, ſuch as cows, female buffaloes and the like, which the owner, unable to maintain them, has lent to ſome perſon that they may be ſupported and bear offſpring, allowing *as the conſideration of their ſupport* the milk *of the female quadrupeds,* or the ſervice *of the female ſlaves,* and which have remained long with him, the offſpring ſhall be the only intereſt; that is, no other intereſt ſhall be taken.

CHANDE'SWARA.

THE text ſhould be read, "on grain treble, on cloth quadruple;" by which the remark of CHANDE'SWARA is juſtified; "VISHNU, VAS'ISHT'HA and HA'RÍTA declare, that intereſt on grain may make the debt treble."

BEFORE the phraſe, "on female ſlaves and cattle, the offſpring ſhall be the intereſt," "on fluids octuple" has been omitted by the errour of the tranſcriber; for it is found in the *Vivádа Chintámeni,* and the ſame is propounded by YA'JNYAWALCYA. "Fluids" intend ſalt, (*though cryſtallized*) and oil and ſimilar commodities.

LXV.

YA'JNYAWALCYA:—THE offſpring of female ſlaves or cattle

tle *ſhall be taken as intereſt;* on ſome fluids the higheſt *accumulation through* intereſt may be eight times as much *as the principal;* on clothes, grain, precious metals or gems, it may be *in order* four times, three times, or twice as much *as the articles lent.*

THE offſpring of female ſlaves or cattle, taken as *(vriddhi)* intereſt, or increaſe in its accepted ſenſe, is not the higheſt *legal* intereſt (*paramavriddhi*), for the term is explained by authors according to its derivative ſenſe *(varddhana)* increaſe in general (from the crude verb *vridh*, grow): the offſpring of cattle and of female ſlaves is the only intereſt; it is poſſible, that cattle and female ſlaves ſhould be lent by one, who is unable to maintain them, and who wiſhes they ſhould be ſupported and bear offſpring.

The *Mitácſhára.*

SU'LAPA'NI, in *his* commentary on YA'JNYAWALCYA, ſays; ſince there can be no other intereſt on female goats and the reſt, and on female ſlaves and the like, placed as pledges, their offſpring is the only intereſt. The higheſt intereſt on oil and the like lent at intereſt, being added to the principal, makes the debt octuple, and accumulates no further.

THUS, according to ſome opinions, cattle and female ſlaves are not conſidered in ſuch a caſe as conſtituting a debt; and it is intimated in the gloſs of the *Mitácſhará*, that they do not conſtitute a debt: ſince they belong to the original maſter alone, they do not fall under the deſcription of debt. Yet, if female ſlaves and the reſt be at any time accepted as loans by any perſon; then the limit of intereſt ſhould be deemed the ſame as on gems, *gold*, and the like; for no ſpecial rule has been delivered.

" CATTLE" is underſtood in the feminine gender from the contiguous term " female ſlaves;" hence it is is rightly expounded, female goats and the like, and cows and female buffaloes and the like: in fact the term " female *ſlaves*" is a general illuſtration.

LXVI.

LXVI.

VASISHT'HA:—GOLD, ſilver and gems may be doubled; grain trebled; fluids, *as ſugar juſt expreſſed and the like*, are under the ſame law with grain; and *ſo rare* flowers, roots, and fruit: what is ſold by weight, *except gold and the like*, may make the debt eight fold.

"FLUIDS;" the juice of ſugarcane and the like: theſe alſo are trebled.

The *Retnácara.*

IT is expounded, juice of ſugarcane and the like, becauſe it will be declared, that oil, ſalt and ſimilar commodities are increaſed eight fold.

"AND flowers, roots, and fruit;" by the particle "and" the phraſe is connected with the word trebled, to which the ſenſe of the text reverts: the conſtruction therefore is, "ſo flowers, roots and fruit are alſo trebled." CHANDÉSWARA gives a ſimilar expoſition. In the *Vivádа Chintámeni* it is obſerved, that intereſt on the produce of fruit, inſects and ſheep, and on flowers, roots and fruit, is declared by CÁTYÁYANA (LX), and by VASÍSHT'HA (LXVI), to make the debt double, and treble. The paſſage at large will be quoted from MISRA in another place.

"WHAT is ſold by weight;" literally, what is held in the ſcale; namely, at the time of ſale for the purpoſe of determining its quantity: and that is camphor and the like. Although gold and the reſt be likewiſe ſold by weight, yet they cannot be intended by the text, becauſe a ſpecial law, limiting accumulation to twice the principal, oppoſes *that conſtruction.*

INTEREST on grain trebles the debt (XLIV 2). Grain may be doubled at the time of harveſt, that is, when new grain is gathered; it may be doubled at that ſeaſon, even within two or three months from the *date of the* loan. But, if not repaid at the ſeaſon when new grain is gathered, it is trebled, and bears no further intereſt. "So may wool &c." wool and cotton bear the ſame intereſt with grain. "Fibres of graſs," or reeds, and graſs

and the reſt, may be increaſed eight fold in one year. Such is the ſenſe of the text (XLIV 2).

The *Retnácara.*

FROM this gloſs it follows, that intereſt on grain *only* trebles the debt. Conſequently, VISHNU, YA'JNYAWALCYA, VAS'ISHT'HA and HA'RÍTA propound *the limit of intereſt on grain at* three times the principal. But this contradicts the accumulation ſtated in the texts of many ſages, "three times, four times, and five times the principal."

ON this point MISRA ſays, if the price of grain, after the crop is produced, have fallen below the price it bore at the time when it was lent before the harveſt, the debt may be trebled; if the price be more reduced, quadrupled; if ſtill more reduced, quintupled; but, when the price has fallen very little, the debt is only doubled: and he expounds the text (XLIV 2) otherwiſe, as will be mentioned. According to this gloſs, it appears from the circumſtances mentioned, "lent before the harveſt, and repaid at the time of harveſt," that the limits of intereſt are not ſtated in *the text:* conſequently, when intereſt is received at the legal rate of an eightieth part and ſo forth, how far does accumulation extend? To this queſtion there is no anſwer. If it be affirmed, according to this expoſition, that intereſt doubling or trebling the debt is oppoſed to the rate of an eightieth and ſo forth, then it contradicts the *Retnácara;* for there intereſt is ſtated at two in the hundred and the like, and it is inconſiſtent with reaſon to admit a different rate of intereſt upon grain from *that, which is preſcribed for* other articles. This and other objections may be ſuggeſted.

THE author of the *Retnácara* reconciles the ſeeming inconſiſtency of ſuch forms *of intereſt*, by diſtinctions relative to the good or bad qualities of the borrower, and the differences of time and place. `SU'LAPA'NI holds, that the texts ſhould be expounded according to the length or ſhortneſs of the period elapſed. In the *Vivádа Chintámeni* ſeveral modes are ſtated.

THE opinion, intimated in the *Retnácara*, is, that intereſt on grain doubling the debt at the time of harveſt, ſimilar intereſt on wool and cotton, and intereſt

intereſt on reeds, graſs and the reſt making the debt octuple in one year, concern debtors of mixed claſſes; for, ſtating the *firſt* text of HA'RI'TA (XXXIV and XLIV 1) as intending borrowers of mixed claſſes, the author cites the other text (XLIV 2) prefacing it with the word "ſo:" elſe, if it only concerned the limits of intereſt, it would be incongruous to cite it under that *other* title. Accordingly, in his gloſs on the text of CA'TYA'YANA (LX), he expounds "produce of fruit" cotton and the like. But intereſt trebling the debt is ſtated as the limit of intereſt; for that coincides with the text of VAS'ISHT'HA (XLVI).

IT is ſaid, intereſt on reeds, graſs and the reſt makes the debt octuple at the cloſe of one year; what is the accumulation on produce *of fields*, and on beaſts of burden and the like? The anſwer is, when twice the principal is the limit of intereſt, there the order of claſſes is ſuppoſed: in other circumſtances, the rate of intereſt on produce, on beaſts of burden and the like, is different; and the rate aſſumed is that, which is propounded by HA'RI'TA for reeds, graſs and the reſt; ſince it is a rule, that a conſtruction of law, eſtabliſhed in one caſe, is alſo applicable to other caſes, unleſs there be a *ſufficient* objection. As an accumulation raiſing the debt eight fold at the cloſe of one year is declared to be the limit of intereſt on clarified butter and the reſt, ſo five fold *is the limit* on produce, beaſts of burden and the reſt. But, in fact, ſince there is no law to ſerve as authority for ſuch an inference, the rate of an eightieth part, and ſo forth, on produce, *beaſts of burden* and the reſt, ſhould be received from men of mixed claſſes, as well as from *Brâhmanas* and the reſt. Such is the principle *of the law*.

BUT, in the caſe of *Brâhmanas* and the reſt, three times, four times, and five times the principal (to be eſtabliſhed according to the qualities of the debtor), at the ſame periods, in which intereſt may accumulate at the rate of an eightieth part and ſo forth ſo as to double the principal which has been lent to men of mixed claſſes and made payable at the time of harveſt, fall under the deſcription of ſtipulated intereſt, and are therefore immoral. Not being ſtipulated in a time of extreme diſtreſs, would it not be intereſt which need not be paid? It might be ſo; but it would be paid by the debtor, that he may be able to borrow again. Such is the principle *of the law*. In fact,

having

having been ſettled by many former debtors, it muſt be *now* paid, though not ſtipulated in a time of extreme diſtreſs; as has been already mentioned. When the borrower himſelf fixes the rate of intereſt, then only is it required, *as a condition*, that it ſhould be ſtipulated in a time of extreme diſtreſs.

But Misra expounds the text of Hárí'ta (XLIV 2), ſince "a year" may ſuggeſt other periods, ſuch as fifty months and the like, if the principal *lent in kind* be alone conſidered, it may be doubled or trebled, or, as ſtated by other ſages, quadrupled or quintupled; the intereſt is regulated by the price. As an inſtance of the variation of intereſt with the difference of price, he adduces the text of Menu (XXXIII); and he reads the text of Hárí'ta (XLIV 2) grain may be doubled, "if the principal *alone* be *conſidered*" *(mulé)* inſtead of grain may be doubled "at the time of harveſt" *(tulé)*.

On this ſome remark, that with all *debtors* grain is doubled at the time of harveſt, that is, when new grain is gathered; by this ſpecial rule the rate of an eightieth part and ſo forth is barred: but intereſt for one or two months muſt be regulated by proportionate ſubdiviſions; and the higheſt intereſt makes the debt three fold. Such is Hárí'ta's meaning; and the *apparent* contradiction to the texts of other ſages muſt be reconciled as before. "So wool and cotton;" intereſt on theſe alſo doubles the principal, and precludes the rate of an eightieth part and ſo forth. To the queſtion, when *does the principal become doubled?* the ſage replies "in one year." He ſubjoins the limits of intereſt on graſs, reeds and the like; "but graſs &c. may be increaſed eight fold."

That is not *accurate;* for men of the commercial claſs and the like would be liable to repay grain doubled at the time of harveſt. Thus, were ſuch the rule, a mercantile man, borrowing grain in the month of *Aſhád'ha* to the quantity of a hundred thouſand *praſt'has*, for the purpoſes of commerce, would be ſubject to commercial loſs by repaying twice the grain borrowed; which is contrary to reaſon. But there is no objection to the rule, ſo far as it concerns men of mixed claſſes not qualified for trade, although unable to ſubſiſt by other modes. To eſtabliſh a different rate of intereſt on grain, wool and cotton from that preſcribed on all *other* articles, is contrary to reaſon.

Accordingly

Accordingly this gloſs is ſtated in the *Retnācara* on the text of MENU (LXI); "any ſuch debtor, who has borrowed grain or horſes, valued at a hundred pieces of money, on intereſt at the rate of two in the hundred, &c." At the time of harveſt, grain, wool and cotton is doubled; at the expiration of a year, it is only trebled. By the particle "only" the rate of an eightieth part and the like is prohibited. But graſs and the reſt may be increaſed eight fold. Although the limits of intereſt, extending to four and five times the principal, might be reconciled in the ſame mode, by expounding the text as relating to debtors of mixed claſſes only, and by diſtinguiſhing moral and immoral exactions; yet, not having been ſtated by any author, this cannot be admitted.

IT muſt, however, be examined how the limits can be regulated on the cheapneſs or dearneſs of grain. This difficulty is *thus* reconciled; ſince it is ſhown by the particle "only," in the text of HÁRĪTA ("or trebled only," XLIV 2), that the natural limit of intereſt is the accumulation which trebles the principal; and ſince an accumulation raiſing the debt to four or five times the principal is ſubordinate thereto; a debt is quadrupled and quintupled in that period only, which ſhould *naturally* treble the debt: for, whatever were the value of the grain lent, three times that value is due at the period of repayment: if thrice the quantity of grain be *ſufficient*, the grain is trebled; elſe, it is quadrupled: ſhould that alſo be inſufficient, it is quintupled; but if this again be inſufficient, MENU forbids any further demand (LXI). Even though three times the value could be liquidated with twice the quantity of grain in conſequence of a great advance in price, double the quantity of grain ſhould not be paid; for no law *authorizes this reduction*.

THE qualities of the debtor ſhould be underſtood of his adherence to his own regular mode of ſubſiſtence, his adherence to the modes of ſubſiſtence authorized in times of diſtreſs, his following the dictates of his own *perverſe* will, and ſo forth. According to the gloſs delivered in the *Dípacalicā*, the accumulation depends on the length or ſhortneſs of the period elapſed; if the period be ſufficient to treble the debt, it is trebled; if the period, in which a debt is increaſed four fold, be complete, it is quadrupled; if the period be ſufficient to make the debt quintuple, it is quintupled. To this very rule of

adjuſtment the *Retnácara* alludes in ſuggeſting diſtinctions according to the difference of time. Although there be no gloſs of authors on the texts of ſages *fully explaining this adjuſtment*, inferences may be drawn by the wiſe, through a ſimple exertion of their own intellect.

A RULE of adjuſtment may be formed on circumſtances of *particular* diſtreſs affecting the debtor, or on the circumſtance of general dearth.

The *Mitácſharà*.

To this it may be objected, when are thoſe limits of intereſt to be admitted according to this opinion? Whether all theſe modes, ſanctioned by very learned authors, ſhould be received, or which ſhould be ſelected, the wiſe themſelves muſt determine.

THE ſeaſon of gathering new grain muſt be extended to wool. But in fact intereſt on grain doubling the principal at the time of harveſt appears to be merely ſtipulated intereſt; for it has been ſtated by CHANDÉSWARA when treating of ſtipulated intereſt. This has been already noticed. Accumulation of intereſt raiſing the principal three fold, four fold or five fold, which are in the nature of limits of intereſt, muſt be regulated on the difference of countries. In this province the rates of an eightieth part and ſo forth occur not in practice on loans of other things than ſilver coins and the like; but intereſt on grain and the reſt, ſimilar to the ſtipulated intereſt deſcribed by HÁRÍTA, occurs *in practice*. In ſuch caſes, when the debt has long remained *due*, thrice the value is ſometimes, and in ſome places, adjudged by arbitrators. We think the text of NÁREDA (XLV), as expounded in the *Retnácara*, ſufficient authority to maintain local uſages.

SOME think it a ſimple conſtruction, that the creditor ſhould receive his principal doubled, trebled, quadrupled, or quintupled, in the order of the claſſes, from *Bráhmanas* and the reſt. This conſtruction is almoſt *literally* ſtated in the *Viváda Chintámeni*. It would be vain to offer more numerous interpretations of the text.

IN reſpect of cloth, CÁTYÁYANA ordains, that intereſt ſhall make the debt

debt double; VRĬHASPATI, treble; YÂJNYAWALCYA, quadruple. The ſeeming contradiction ſhould be reconciled, as in the caſe of grain.

LXVII.

VRĬHASPATI:—ON pot-herbs the intereſt may make the debt quintuple; on ſeeds, and ſugarcane, ſextuple; on ſalt, oil, and ſpirits, octuple;

2. So on molaſſes and honey, if the things lent have remained during a long period.

"SEEDS;" ſeed of corn and the like: on that and on ſugarcane, *ſextuple*. Intereſt may make the debt octuple, if the things lent have remained for a long period; that is, for ſuch a period as duly increaſes the debt eight fold.

LXVIII.

CÂTYÂYANA:—FOR all ſorts of oil and ſpirituous liquors, for meaſures of clarified butter, for molaſſes and ſalt, the intereſt is held legal, though, *with the principal*, the debt be made octuple.

LXIX.

VRĬHASPATI:—FOR graſs, wood, bricks, thread, and ſubſtances from which wine or ſpirits are extracted, for leaves, bones, *ivory or ſhells*, and leather, for weapons, *common* flowers and fruits, no intereſt is ordained *without agreement*.

"SUBSTANCES, from which wine or ſpirits are extracted;" *alluding to* a ſubſtance, from which an inebriating liquor is drawn, and which is commonly named *cut'h*. "Bones;" teeth, conchs and the like. "Leather;" the hide of the black antelope and the like. "Weapons;" arms. The apparent contradiction to the intereſt ſpecially ordained on flowers and fruits is reconciled by ſuppoſing rare flowers and fruits in one inſtance, and

and common flowers and fruits in the other. To this gloſs the *Retnácara* ſubjoins the following text.

LXX.

VISHNU:—ON ſubſtances from which wine or ſpirits are made, on cotton-thread, on leather, armour, weapons, bricks, or charcoal, which are not liable to loſs, *the intereſt* may make the debt double.

THERE the mention of conchs ſuppoſes the countries in which they are common: and the ſame obſervation may be made on other ſubſtances Since the text of VAS'ISHT'HA (LXVI) propounds intereſt ſpecially ordained and trebling the debt, whence ariſes an apparent contradiction, therefore the commentator, on the grounds of this text, holds, that intereſt accrues on rare fruits and flowers, ſuch as nutmegs and cloves, which are meant in the rule of VISHNU; but none on common fruits and flowers, which fall under the general deſcription of "graſs and the like." On cotton, as in the text of CA'TYA'YANA (LX), intereſt makes the debt double; but according to HA'RI'TA it may treble the debt: this is connected with the difference of borrowers; or may be regulated on the commonneſs or rarity of the thing, and on the different ſorts of cotton, in the ſame manner with *intereſt on* grain, or *in proportion to riſk*. "Which are not liable to loſs;" on which, when lent, intereſt doubling the principal is not *probably* loſt.

BUT MISRA, citing the text of VR'IHASPATI (LXIX), adds, "this is intended to forbid intereſt not agreed on, but intereſt *on theſe articles* may be promiſed through the exigency of affairs: accordingly CA'TYA'YANA and VAS'ISHT'HA (LX and LXVI) propound intereſt doubling and trebling the debt." It is thereby intimated, that on other articles, if it be not ſpecially declared when the debt is contracted, either that it bears intereſt or is free of intereſt, the creditor cannot afterwards receive intereſt.

BHAVADE'VA reads *tuſha*, bran or chaff, inſtead of *iſhṭacá*, bricks; and inſtead of *cinwa*, a ſubſtance from which wine or ſpirits are extracted, he reads *cit'ta*, which he explains dirt, meaning cowdung and the like.

HERE

HERE both opinions (MISRA's and CHANDE'SWARA's) ſeem right: thus, if intereſt have been promiſed on any thing however common, it ſhould be paid; and intereſt on rare things, even though not expreſsly promiſed, ſhould be paid, for they are ſimilar to gems, *gold* and the like. Both inductions are conſiſtent with reaſon. Where intereſt accrues, becauſe the articles are acknowledged ſcarce, on cloves, *fine* cauries, conchs, rhinoceros' horn, ſtones of great virtue and price, vitreous ſubſtances and the like, the limits of intereſt muſt either be taken at three times the debt or the like, under the texts of VAS'ISHT'HA and others (LXVI &c.), or at twice the debt, under the general texts of GO'TAMA and others (LIX &c.).

"OF intereſt on loans this is the univerſal and higheſt rule &c." (XLV); this rate of an eightieth part and ſo forth is univerſal, for it is preſcribed by the law.

The *Retnácara.*

AND the ſubject of limited intereſt is conſidered in codes of law. But the rate cuſtomary in the country may be different; that is, may be contrary to the univerſal rate. The ſage deſcribes cuſtomary rates (XLV 2); "country" is there a mere inſtance, ſuggeſting uſage founded on ſeaſons, on difference of claſs and ſo forth. "Double, treble" and the like are mere examples; more or leſs is therefore comprehended in the text. This text is accordingly cited as authority to prove ſpecial intereſt payable by debtors of mixed claſſes as ſtated in the *Retnácara.* In ſome provinces the principal is either repaid with intereſt amounting to half the principal, or is doubled, in others *the uſual intereſt is different.*

IF the borrower, being diſtreſſed, promiſed ſtipulated intereſt, when he received the loan, at ſix or ſeven in the hundred, his debt is doubled in a few days more than ſixteen months; after that period, does intereſt ſtop, or does it continue to the end of fifty months? It is anſwered, ſince the law does not authorize more than double the principal, intereſt then ceaſes. Is it not ſolely when the rate of intereſt is the eightieth part of the principal, that the debt can be only doubled; but when a higher rate of intereſt is ſettled, may not ſo much be taken as is the accumulation of intereſt in fifty

months: elſe ſtipulated intereſt and the like would not exceed the rate preſcribed by law? Intereſt on a debt ſecured by a pledge is declared to run ſix years and eight months, becauſe the principal may be doubled in that time; *on the above ſuppoſition*, a loan, for which neither pledge nor ſurety had been received, would alſo bear intereſt for the ſame period, and ſages would hold, that it might be trebled or quadrupled: for what purpoſe then has it been declared, that intereſt ceaſes after fifty months. Conſequently, no particular period is fixed for the ceſſation of intereſt, ſince fifty months and eighty months would be mutually contradictory: but on ſuch and ſuch ſubſtances lent, ſuch and ſuch accumulation of intereſt is limited. Thus the whole *law* is conſiſtent.

AGAIN; if a debt have been contracted on a pledge given, and by the caſual loſs of the pledge the debt become unſecured by pledge or ſurety, in that caſe alſo intereſt ſhould be taken ſo long as twice the principal have not been received by the creditor; but, after that *has been received*, intereſt ceaſes. It is evident, that ſtipulated intereſt and the reſt may exceed the intereſt allowed by law, if the debt be diſcharged, *in the caſe propoſed*, within ſixteen months.

ARTICLE

ARTICLE III.

ON DEBTS BEARING NO INTEREST.

LXXI.

NAREDA:—A COMMODITY, the price *of a commodity*, wages, a depoſit and *the like*, a fine to *the king*, a thing clandeſtinely taken *without a deſign to ſteal it*, a thing idly promiſed, and a ſtake played for, carry no intereſt *before demand* without a ſpecial agreement.

THE text is read *panya múlyam*, the price of a commodity ſold: *but* a commodity purchaſed *and not received* falls under the deſcription of a depoſit. On the other reading, *panyam múlyam*, the ſenſe is, a commodity ſold *but not delivered*, and the price *of a commodity purchaſed but not received*. Thus, if a thing ſold happen to remain with the firſt owner, it carries no intereſt without a ſpecial agreement. "Wages;" hire. "A depoſit;" a bailment. Intereſt after ſix months on the price of a commodity, and on a depoſit not delivered after a demand (LVI), has been already declared; therefore intereſt is only prohibited before a demand. More on this ſubject ſhould be ſtated in the chapter on depoſits.

"A FINE," ſuch as the higheſt amercement and the reſt. "A thing clandeſtinely taken;" obtained by fraud or the like.

The *Retnácara*.

FOR inſtance, one has received money from another, pretending that he will deliver him from ſome preſent or future danger of oppreſſion by the prince; but afterwards, the condition being broken either by non-performance of his undertaking, or becauſe the danger was merely pretended, and repayment of the money being therefore required, it need not be paid with intereſt. Again; a hundred pieces of money have been extorted by ſome rogue, threatening a man of ſubſtance to accuſe him of a crime before the prince or his kindred, unleſs he give him a hundred

dred pieces of money; in that caſe they muſt be received back without intereſt. Such caſes are meant by the expreſſion, "obtained by fraud or the like."

"A THING idly given or promiſed;" given on no religious conſideration and not delivered. From the term "idly" it appears to be the ſage's meaning, that, if a gift made on a religious account be not forthwith delivered, intereſt ought to be paid at the rate preſcribed by law: ſince it is declared by a text cited in the *Malamáſa tatwa* to be a theft, when gold, *given but* not delivered, is loſt. If it be loſt through *ſlight* negligence, ſo much only *as is its value* muſt *the giver* make good; but, if gold, *given but* not delivered, be loſt and *not made good*, the giver would be guilty of theft. By parity of reaſoning, if it be not loſt, it muſt bear intereſt *ſo long as it is withheld*. It ſhould not be objected, that this concerns gold alone. The theft is not denied in the caſe of other articles; or, ſuppoſing it to concern gold alone, the term "idly" muſt likewiſe except the caſe of gold only. However, intereſt is not now paid, any more than on amicable loans.

SOME man of ſubſtance in a time of diſtreſs, or when going to a foreign country, diſtributes his property; for inſtance, *he aſſigns* certain hundred *ſuvernas* to his ſpiritual preceptor, *conſecrates* eighty *ſuvernas* to a certain deity, *aſſigns* ſixty *ſuvernas* to a certain prieſt, thirty *ſuvernas* to a certain dancer, five *ſuvernas* to a courteſan formerly enjoyed, and diſtributes the remainder of his property in due ſhares *according to the law of ſucceſſion:* but, from the preſſure of affairs, the ſums given away have not been delivered. In that caſe, when he happens to be relieved from that diſtreſs, or when he returns from abroad, and intereſt is propoſed on thoſe gifts as debts demandable on his aggregate wealth, the ſums given on religious conſiderations muſt be delivered with intereſt, but the principal only of the ſums given to dancers and the like ſhould be paid. This alſo ſome lawyers hold *to be intended by the text.*

"A STAKE played for;" money won in gaming. "Without a ſpecial agreement;" not expreſsly declared by both parties to bear intereſt. "Carry no intereſt;" do not bear intereſt.

SOME

Some perſon, having ſold a thing, tells the purchaſer, " let this your property be a loan to me; I will pay intereſt for it." Or an indigent perſon, employing a ſervant on neceſſary work, but unable to pay his wages, tells him, " I will borrow money elſewhere and pay thy wages; or let them be *forborne*, and I will pay thy wages with intereſt." In ſuch caſes of poſitive agreement, there may be intereſt promiſed on a commodity ſold, on wages and the reſt: and then only is intereſt due. But, if there be no ſuch agreement for intereſt, this text is intended to forbid intereſt in that caſe.

1ſt. If any thing be given by ſome perſon to another as a loan, as a complimentary preſent and the like, or as a gift on a religious conſideration, and by reaſon of the donee's abſence it be committed to another, and long after received by the donee, it ſeems to be ſimilar to a depoſit: does, or does it not bear intereſt while remaining in the hands of the intermediate perſon? This is one doubt *which may be propoſed.* 2dly. *In the caſe of ſale without ownerſhip* the buyer is juſtified by producing the ſeller, and the owner recovers his property (Book II, Chapter II, v. XXIX): when the owner recovers his property after the lapſe of a long period, muſt, or muſt not, intereſt be paid? This is a ſecond doubt *which might be propoſed.* 3dly. Some money has been obtained for the king or his officer, from ſome perſon accuſed of a crime; afterwards, the accuſation being diſproved, the money muſt be refunded by the king or his officer; or, if it be true in forenſick practice, that it ſhould be made good by the accuſer, muſt, or muſt not, intereſt be paid thereon? This is a third doubt, *which might be propoſed.*

On the firſt doubt,

LXXII.

Samverta: — There ſhall be no intereſt on the property of women *lent amicably by them to their kinſmen*, nor on intereſt itſelf, nor on a depoſit, *nor on any thing* ſo committed *in truſt*, nor on a ſum which is dubious *or unliquidated*, nor on a ſum due by a ſurety, unleſs it be mutually ſtipulated.

"COMMITTED;" placed with an intermediate perſon.

SU'LAPA'NI in the *Dípacalicá.*

THIS text is found in the treatiſe of YA'JNYAWALCYA, but its inſertion there is not approved by SU'LAPA'NI and others.

"ON a depoſit ſo committed;" *or ſo remaining with the depoſitary:* not detained after a demand.

The *Retnácara.*

THUS, a thing committed to an intermediate perſon is merely a ſort of depoſit: and "committed" is an epithet of depoſit; elſe, the circumſtance of its not being detained after a demand would be unmeaning, ſince intereſt is not ordained on a thing committed *in truſt*, after the lapſe of ſix months: but even on a thing ſo committed, and not reſtored on demand, intereſt accrues, after a demand, at the expiration of ſix months. But, if the word depoſit be there taken in a general ſenſe, it is proper to do the ſame alſo in the preſent inſtance (*that is, allow intereſt after the lapſe of ſix months, if the thing have been demanded*).

BUT how can intereſt be allowed in that caſe after the lapſe of ſix months, according to the interpretation of SU'LAPA'NI? It is anſwered, the word "and" in the text of CA'TYA'YANA (LVI 2) connects *the ſentence* with what is not mentioned. More on this ſubject we ſhall deliver in the chapter on depoſits.

"ON the property of women," as deſcribed of ſix ſorts: *on ſuch property* taken by their *huſbands or other* protectors, there ſhall be no intereſt.

The *Retnácara.*

HERE "protector" is a general term comprehending ſons and the reſt. CA'TYA'YANA propounds a diſtinction.

LXXIII.

CA'TYA'YANA: — NEITHER the huſband, nor the ſon, nor the father,

father, nor the brothers, have power to uſe or to alien the legal property of women.

2. If any one of them ſhall conſume the property of a woman againſt her conſent, he ſhall be compelled to pay *its value with* intereſt *to her*, and ſhall alſo pay a fine to the king.

3. But, if he conſume it with her aſſent, after an amicable tranſaction, he ſhall pay the principal only, when he has wealth *enough* to reſtore it.*

By the expreſſion, "againſt her conſent," or forcibly, unamicable tranſactions *are* ſuggeſted: conſequently, ſhould he conſume her property not amicably lent to him, intereſt muſt neceſſarily be paid; but there is no intereſt on the property of a woman amicably lent *to a kinſman*. The text of Samverta muſt be applied to that caſe only. From the term (protector) uſed in the *Retnácara*, *it appears*, that intereſt muſt only be paid by others than her huſband, her ſon, her father, or her brother. For in the third verſe of Cátyáyana an agent muſt be ſought for the act of conſuming her property after an amicable tranſaction, and that agent occurs in the preceding verſe (LXXIII 2), "any one of them." A daughter, a mother and a ſiſter are entitled to borrow the ſeveral property of a woman on amicable terms, without intereſt; for the affinity is the ſame, the *conſiderations of* duty the ſame, and natural affection the ſame. But intereſt muſt be paid by the huſband's father or mother. Yet, what objection there could be to place the father-in-law and the reſt on the ſame footing with a brother, muſt be determined by the wiſe.

On this ſubject ſome affirm, that the phraſe, "neither the father nor the brother," intends the father's lineage generally; "neither the huſband nor the ſon," intends the huſband's lineage generally: and the ſame ſhould be argued in reſpect of the mother's family. When it has been expreſsly declared by the woman, at the time the loan was made, that no intereſt ſhould

* Book V, Chapter IX.

be

be paid, in that caſe none need be paid by any perſon. The phraſe, " when he has wealth *enough* to reſtore it," intimates, that the property of a woman, borrowed by a kinſman involved in diſtreſs, muſt only be paid when he is relieved from diſtreſs.

THE term " property of women," in the text of SAMVERTA above cited (LXXII) has been already expounded. *He proceeds*, " nor on intereſt :" here alſo the circumſtance ſuppoſed in the caſe of a depoſit muſt be underſtood, " not detained after a demand ;" for it is declared, that the balance of intereſt bears intereſt (LVI 2). But *this can only be claimed* after the principal has been diſcharged. Accordingly BHAVADEVA ſays, " the balance of intereſt on a ſum paid."

IN the ſecond doubt propoſed, is it queſtioned whether intereſt ſhall be paid for ſo long a period as the thing remained in the thief's poſſeſſion, with or without the knowledge of the owner, before it was adjudged ; or whether it ſhall be paid for the period, during which the thing remains unreſtored through the wiles of the thief, after the owner's property has been adjudged in a judicial proceeding or the like ? As to the firſt ſuppoſition, it is provided in the text of SAMVERTA (LXXII), " nor *any intereſt* on a ſum which is dubious *or unliquidated*, nor on a ſum due by a ſurety, unleſs it be mutually ſtipulated."

" A SUM, which is dubious or unliquidated ;" of which it was firſt queſtioned whether it were due or not : *on ſuch a ſum*, even though ſubſequently adjudged to be due, there is no intereſt.

The *Retnácara.*

BUT, if it be adjudged to have been originally not due, of courſe there can be no intereſt ; *for the greater includes the leſs*, as the ſtaff *is impure, if it can defile* the bread.

IN fact the conſtruction of the text (Book II, Chapter II, v. XXIX) gives this *ſenſe*, " the buyer is juſtified by producing the ſeller, and the owner recovers his property by the production of the ſeller." Before the

ſeller

ſeller or thief be produced, the owner's property is not revived. Accordingly RAGHUNANDANA, in the *Práyaſchitta tatwa*, ſays, "the owner of property loſt." If his property ſubſiſted at that time alſo, the gloſs, "owner of loſt property," would be irrelevant. If a ſtolen bull be ſold to a YAVANA, and caſtrated by him or the like, expiation muſt be performed *by the owner* on account of ſome negligence *which gave opportunity for the robbery*.

THE production of the ſeller is proof, which juſtifies the buyer by eſtabliſhing the ſale: the owner recovers his property by the detection of the theft. Thus the buyer is juſtified by producing the ſeller for proof of the ſale; and the owner recovers his property by proof of the theft. Hence the owner has not *actual* property, even while the cauſe is pending. Or, if the text be explained, "from him, by whom the thing was ſold, the owner recovers his property, the king receives a fine, and the buyer receives the price," ſtill the owner's property is only revived on the reſtoration of the thing by the thief or other perſon; and it is only reſtored afer the judicial proceeding. Accordingly it is declared by a text of the *Viſhnu dhermóttera* (Book II, Chapter II, v. XXXII), that theft creates property: hence, if ſuch property be lent, the robber may receive intereſt; and ſome benefit may ariſe from ſuch *ſtolen* goods applied to religious uſes.

VÁCHESPATI BHATTÁCHÁRYA admits the robber's property in ſtolen goods. According to his opinion the import of SAMVERTA's expreſſion, "what is dubious," is thus ſtated: a man, requeſted by another to give him a ſilver coin, and thinking that he aſks it as a loan, gives the money by way of loan; but he, who receives it, entertains a doubt, "I have done him a benefit; he is a friend and is rich; does he give me this money for conſumption, or does he lend it to me?" The matter being afterwards conteſted, intereſt, even though it be adjudged to be payable, need not be paid for the period preceding that *adjudication*.

SOME hold, that by ſaying "the owner recovers his property," his ownerſhip is fully eſtabliſhed. The gloſs, "owner of loſt property," is intended to indicate the former owner, as a ſolution of the doubt, whether ownerſhip was then veſted in the buyer, or in the former owner: it ſigni-

fies him, whoſe property was miſſing; who did not exactly know where his chattel was. If a ſtolen bull be caſtrated or the like, the owner muſt perform penance to expiate his want of ſufficient care. Accordingly in the *Práyaschitta Vivéca*, after deſcribing as theft the act of one, who reſolves to diſpoſe at his pleaſure of what he well knows to be the property of another, SŬLAPĀNI ſays, a robber has not property in ſtolen goods. Hence a ſale made by him, being a ſale without ownerſhip, is invalid; and YĀJNYAWALCYA's expreſſion, "the owner recovers his property," is accurate.

ON the ſecond caſe of the ſecond doubt *(does it bear intereſt after adjudication?)* it is ſaid, there can be no opportunity for fraudulent detention, ſince the king immediately compels reſtoration of the chattel. But, if a long period elapſe in conſequence of inability *to enforce the demand*, or the like; then, ſince the man is guilty of an offence, and the caſe is not ſpecified under the title of prohibited intereſt, therefore intereſt muſt be paid; and ſince no particular period is directed under the head of intereſt without a ſpecial agreement, it is proper, that intereſt ſhould commence from the date of the demand. This might be further diſcuſſed under the title of theft.

"NOR *any intereſt* on a ſum due by a ſurety" (LXXII); *literally for ſuretiſhip*: the act of a ſurety is ſuretiſhip, as the act of a thief is theft: and that *act of a ſurety* is *an undertaking* for *the* payment *of a debt*. Thus, if a debtor die or be reduced to the utmoſt poverty, the debt, with the intereſt *which has accrued*, muſt be paid by the ſurety. In that caſe the whole amount of principal and intereſt due by the *original* debtor is the ſame with the principal due by the ſurety; for he cannot be ſolely liable for the original debt. The text of SAMVERTA reſolves the doubt, whether the ſurety muſt give further intereſt if he delay payment.

LXXIV.

CA'TYĀYANA:—No intereſt is ever *due* on leather, on *ſtraw or* produce, on pale wine, on a ſtake played for, on the price of commodities, on a woman's fee, nor on what is due on account of ſuretiſhip.

"ON

"On leather" intereſt is only forbidden without a ſpecial agreement; or on common leather: for the rule of VISHNU (LXX) ordains intereſt on leather, making the debt double. "Straw *or produce*" (*ſaſya*); the ſtems of corn. In reſpect to this alſo the rule is ſimilar. "Pale wine" (*áſava*); a particular ſort of wine. Intereſt on wine or ſpirituous liquors has been propounded by CA'TYA'YANA and VRIHASPATI (LXVIII and LXVII): although this might be reſtricted to other kinds of inebriating liquors except pale wine (*áſava*), yet as the word "all" in the text of CA'TYA'YANA (LXVIII) muſt be extended to ſpirituous liquors, intereſt on all ſorts of inebriating liquors, pale wine and the reſt, is *thereby* ſuggeſted. Hence the adjuſtment muſt be the ſame as in the caſe of leather.

"A WOMAN's fee;" a nuptial gift payable on an *Aſura* marriage and ſo forth: a gratuity payable to a courteſan or the like falls under the deſcription of things given on a falſe *or immoral* conſideration, as ſtated by NA'REDA (LXXI). "What is due on account of ſuretiſhip;" what is become due from a bondſman on account of his ſuretiſhip.

IT is here implied, that no intereſt is due on leather and the reſt without a ſpecial agreement.

The *Retnácara*.

THE uſe of this reſervation, "without a ſpecial agreement," has been explained in reſpect of leather, ſtraw or produce, and pale wine. In reſpect of a ſtake played for, the price of a commodity, and a woman's fee, it is founded on the coincidence of the text of NA'REDA (LXXI); and in reſpect of what is due on account of ſuretiſhip, on its coincidence with the text of SAMVERTA (LXXII), "nor *any intereſt* on a ſum due by a ſurety, unleſs it be mutually ſtipulated." Here the inferible ſenſe is, that common leather and the reſt, on which intereſt had not been ſtipulated, do not, like depoſits and the reſt, carry intereſt, even though withheld after a demand.

CA'TYA'YANA and SAMVERTA (LXXIV and LXXII) prohibit intereſt generally on a ſum due by a ſurety; if a debtor die, his ſurety being therefore

fore liable for payment, would he not be liable for the payment of the principal only without intereſt? On this objection VYA'SA propounds a rule concerning intereſt upon the original ſum lent.

LXXV.

VYA'SA: — A SUM, for which a man is *merely* a ſurety, a ſum ſecured by a pledge *to be kept only yet* uſed, a debt not received from a debtor tendering it, part of a loan remaining in the hands of the creditor, a fine impoſed, a nuptial gift, and a ſum *only* promiſed, carry no intereſt.

ON a ſum, for which a man is merely a ſurety, he ſhall pay intereſt only to the amount of double the principal: it is not again doubled while due by the ſurety. MISRA.

A SUM, ſecured by a pledge to be kept only yet uſed, bears no intereſt; for in the caſe of uſing a pledge, which may be uſed, the uſe of the pledge is intereſt; and in the caſe of the unauthorized uſe of a pledge liable to be uſed, half the intereſt only is forfeited, as will be ſhown. It is accordingly declared by YA'JNYAWALCYA, "there ſhall be no intereſt if a pledge for cuſtody only be uſed" (LXXXIV).

"A DEBT not received *by the creditor* from a debtor tendering it;" thus a debtor offers payment within two or three months after the receipt of the loan, but the creditor refuſes *to accept* payment; in ſuch a caſe the ſum bears no *further* intereſt.

LXXVI.

YA'JNYAWALCYA: — PROPERTY lent, which the creditor will not receive back, when tendered, muſt be depoſited with a third perſon, and bears no intereſt afterwards.

A SUM tendered by the debtor, which the creditor will not receive, bears no intereſt afterwards, provided it be depoſited with a third perſon.

The *Dípacalicá*.

CONSEQUENTLY,

CONSEQUENTLY, if the debtor wiſhes to pay no further intereſt, he muſt place in the hands of a third perſon the debt *tendered by him and* refuſed by the creditor; unleſs it be ſo depoſited with a third perſon, it carries intereſt. Accordingly CHANDÉSWARA cites the text of YÁJNYAWALCYA with this remark, "a debt not received from a debtor tendering it carries no intereſt; on this ſubject the ſage declares a *proviſional* condition:" here the condition is, that the ſum be depoſited with a third perſon. In the text of VYÁSA alſo (LXXV) concerning a debt not received from a debtor tendering it, a bailment to a third perſon muſt be underſtood; for it has the ſame import with the text of YÁJNYAWALCYA.

LXXVII.

VISHNU:—PROPERTY lent bears no further intereſt after it has been tendered, but refuſed by the creditor.

HERE alſo the condition, that it be depoſited with a third perſon, ſhould be underſtood: and it muſt be admitted by the followers of CHANDÉSWARA, that this concerns a debt contracted for no ſpecifick period; elſe the limitation, "let no lender receive intereſt beyond the year" (XLI), would be irrelevant *to the caſes ſuppoſed by* CHANDÉSWARA. It ſhould not be affirmed, that the text may be thus applied, "receiving the principal within the period, let him take intereſt to the end of the period ſtipulated." If no intereſt be received even though the debt remain, it is an ill conſtruction, that intereſt can be received when no debt is due. According to other opinions, the ſame rule ſhould be underſtood even in the caſe of a loan for a ſpecifick period. A diſtinction, however, will be mentioned in reſpect of loans for a ſpecifick period ſecured by a pledge.

"PART of a loan remaining in the hands of the creditor" (LXXV); the term is expounded in the *Retnácara*, what is under the influence of the creditor. This gloſs may alſo be explained in the form of appoſition called *bahubríhi*; that, of which the creditor is influenced. A creditor is influenced by the humble ſolicitations of the debtor; thus, if a creditor, influenced by great ſubmiſſion and the like, ſay, "henceforward I will exact no intereſt," then the debt carries no intereſt. It is the ſame if the appoſition be in the form called *tatpuruſha*.

"A FINE" (LXXV); *a mulct*, ſuch as the higheſt amercement and the reſt. Although paid after long delay, it carries no intereſt.

"A NUPTIAL gift" (LXXV), which is promiſed, or undertaken to be paid. The *Retnácara*.

THE commentator conſiders "promiſed" as an epithet of "nuptial gift."

"A NUPTIAL gift;" money due on account of marriage. "A ſum promiſed;" undertaken to be paid: and this concerns a thing given on a falſe *or immoral* conſideration, for it is eaſy to ſuppoſe the ſame grounds for this and for the text of NÁREDA, which has that import (LXXI). The *Chintámeni*.

THE commentator conſiders "promiſed" as an independent term. Ultimately there is no difference, for, ſince the donee has no property in a thing promiſed, there can be no intereſt. But it may be queſtioned, why it is ſaid in the *Chintámeni*, "this concerns a thing given on a falſe *or immoral* conſideration." In the gloſs of the *Retnácara* alſo "nuptial gift" aſſumed as the ſubject, of which "promiſed" is the epithet, is liable to objections; for in other caſes of things only promiſed there is no intereſt. Some expound the text, "a nuptial gift and a ſum *only* promiſed bear no intereſt." Promiſed; that is, promiſed to be given. It ſhould not be affirmed, that a ſum, promiſed as a gift on ſome religious conſideration, muſt be paid with intereſt. It could only be right to affirm it, if there were an expreſs law of ſuch import.

VISHNU alſo declares exemption from intereſt, if a pledge be uſed.

LXXVIII.

VISHNU:—BY the uſe of a pledge *to be kept only*, the intereſt is forfeited.

"BY the uſe of a pledge;" by the uſe of a pledge to be kept only. The *Retnácara*.

BY

By the uſe of a pledge to be kept only, ſuch as a copper caldron and the like. If a pledge for cuſtody only be uſed a ſingle day, muſt intereſt be paid or not? The anſwer to this queſtion is, it does not follow from the text, that intereſt need not be paid, if the pledge be uſed even a ſingle day; for that would be inconſiſtent with reaſon; and there is no difficulty in explaining the text, "by ſuch uſe of a pledge as is equivalent to the whole intereſt." Conſequently the proportion of intereſt ſhould be ſettled after deducting a ſum equivalent to the uſe of the pledge. This anſwer may be given.

Such being the caſe, if the uſe of the pledge be more *than equal to the principal and intereſt*, would not the principal be forfeited? It may be ſo: and Ya'jnyawalcya accordingly ſays, "the pledge muſt be releaſed on the double ſum being paid, or having been received from the uſe of a pledge" (XLVI). Elſe, ſince Vishnu propounds the forfeiture of intereſt only by the uſe of a pledge, the principal muſt be paid. With ſo much as has been received, according to the value ſettled by arbitrators for the hire of the pledge, ſuch as the price of milk or the like, or the waſte of copper veſſels and ſo forth, the intereſt is in the firſt inſtance diſcharged; if there be an exceſs, it is applicable to the liquidation of the principal. This form of adjuſtment ſhould be obſerved in the preſent caſe.

The moderns ſo expound the law. But the *Mitácſhará* ſtates, that by the uſe of a pledge, however inconſiderable, intereſt is forfeited, however great, becauſe the pledgee has violated the terms of the agreement. The queſtion on the difference of theſe two opinions muſt be determined according to reaſon.

Some money has been intruſted by one man to another, and is delivered by the depoſitary, with or without the conſent of the owner, to another perſon, by way of loan; in that caſe to whom does intereſt accrue; to the depoſitary, or to the owner? This queſtion will be diſcuſſed in the chapter on depoſits; but it may be here examined, what is the rule when the depoſitary himſelf uſes the money as a loan.

Is it uſed as a loan with, or without, the aſſent of the owner? If uſed without

without his aſſent, was it done on the preſumption of aſſent, or without ſuch preſumption? The firſt caſe occurs in the following inſtance; a thing was firſt depoſited with ſome perſon; afterwards the depoſitary, needing a loan for the ſupport of his family, aſks the loan of the depoſitor. In that caſe the loan authorized by him is alone valid; for, in compariſon with a loan, a bailment, conſiſting in *an agreement for* cuſtody only, is a weaker contract. This may be explained when examining the comparative force of civil contracts. Hence (*ſince the loan prevails over the depoſit*) the principal muſt be repaid with intereſt, unleſs there be a ſpecial agreement to exempt it from intereſt. The ſecond caſe occurs when ſuch a depoſitary needing a loan, and confidently preſuming on the tacit aſſent of the owner, either on account of his indolence, or his remote abſence, publickly executes a written contract of debt, and expends the money. This alſo becomes a debt, but ſecondary *only;* for it is not delivered *as a loan* by the owner: if the firſt method can be obſerved, the laſt ſhould not be practiſed. In the preſent caſe the principal muſt alſo be repaid with intereſt: if the owner of his own accord relinquiſh intereſt, then only can the principal be repaid without intereſt.

THE form of repayment in either caſe is this; what became a debt with the aſſent of the owner, muſt be repaid to the owner himſelf, and intereſt muſt be paid for the intermediate period. If the owner again make it a depoſit, then only does it become a depoſit. But if the owner, when aſſenting to the loan, ſaid, "when you receive money, diſcharge the debt and keep the money in your poſſeſſion; my conſent is not requiſite;" in that caſe, the borrower ſhould publickly execute a written declaration of payment with an acknowledgement of his holding the ſum as a depoſit, and lodge the money in a place of ſafety: from that moment intereſt ſtops.

BUT, in the caſe of tacit aſſent, ſuch aſſent is alſo preſumed when the debt is paid. This is founded on the leſs degree of confidence in the former caſe, and the greater degree of confidence in the laſt caſe. If the depoſitary ſaid, when the depoſit was made, "I ſhall ſometimes uſe this as a loan, ſometimes lend it to perſons who may aſk a loan, ſometimes keep it;" in that caſe, whatever the owner may have authorized, ſuch only muſt be the proceeding *of the depoſitary;* for, if the owner ſaid, "it muſt only be lent and repaid

repaid with my knowledge," in that case it can only be repaid with his assent; and interest must be paid until that assent be given: but if he said, "the loan may be advanced and repaid according to your judgment of what is right; there is no occasion for my *special* consent;" in this case the depositary may, of his own authority, discharge the debt or receive payment from another person, to whom the money has been lent: in the interval between the payment of one debt and the contract for another, interest is suspended: should the proprietor subsequently claim interest until he consented to repayment, he shall not obtain it. If the owner said, "it must not be lent, nor otherwise employed," the depositary is guilty of an offence, if he use it as a loan. Should he do so in breach of such an injunction, then interest at legal rates, to which the depositary has tacitly assented, must be paid until the owner consent to repayment.

THE third case occurs, when a depositary expends the money, unknown to the proprietor, and executes no writing declaratory of debt. This is an offence, and should be discussed under the title of theft. Although there be no text of any sage, nor commentary of any author, on this subject, it appears so from the reason of the thing. Thus

VRĬHASPATI*, cited in the *Vyavahára tatwa*:—A DECISON must not be made solely by having recourse to the letter of written codes; since, if no decision were made according to the reason of the law, or according to immemorial usage (for the word *yucti* admits both senses), there might be a failure of justice.

Yucti; ratiocination. RAGHUNANDANA.

LXXIX.

GŌTAMA: — A LOAN secured by a pledge, *to be kept only, yet* used, bears no interest, nor money tendered, nor a sum, *of which part is undelivered by the lender, or* of which he disturbs the possession.

* Book II, Ch. IV, v. XVII.

" MONEY tendered;" the term may ſignify a debtor willing to pay the debt. " Of which he diſturbs the poſſeſſion;" the pledge for which *debt* he attaches in the hands of the creditor. In ſuch a caſe the loan carries no intereſt. For example, a debtor is willing to pay the debt, but the creditor refuſes to accept payment; the debtor depoſits the ſum with a third perſon, and attaches the pledge: in this caſe the loan bears no intereſt. Becauſe he has attached the pledge, intereſt ceaſes. But, if he attach a pledge, which is liable to be uſed, without tendering the debt, intereſt muſt be paid; and not, if he tendered the debt. The text of GŌTAMA ſuggeſts this diſtinction. *

SOME explain the text, when the king, on the application of ſome creditor of that creditor, attaches the debt in the hands of the debtor, and makes it as it were a depoſit in his hands, no intereſt ſhall in that caſe be paid. Others ſay, the meaning is, when the perſon of the debtor is attached by the creditor to enforce payment of the debt; when he is reſtrained from going where he liſts; when he is confined in priſon, and ſo forth, as ſtated in texts which will be quoted: in ſuch caſes the debt carries no intereſt during the period of reſtraint.

A LOAN ſecured by a pledge, to be kept only, yet uſed, bears no intereſt. By one, who has tendered the money, no intereſt is payable. By a debtor, who is diſturbed in the uſe of the loan received, no intereſt ſhall be paid from the time of diſturbance.

The *Retnácara.*

NO intereſt is payable, provided the ſum be depoſited with a third perſon; this muſt be ſupplied, for it coincides with the text of YA'JNYAWALCYA.

" HE ſtates another caſe." That is, when a creditor has granted a loan of a hundred *ſuvernas* depoſited in the hands of a banker, and the whole ſum has not been taken by the debtor, but a few *ſuvernas* only, and the

* A ſubſequent gloſs, more conſiſtent with the literal ſenſe of the text, is followed in the tranſlation.

remainder

remainder left with the ſame banker; afterwards, the creditor diſcovering his inſolvency, and apprehending that the debt would not be diſcharged, attaches the money in the banker's hands. In ſuch a caſe the whole ſum carries intereſt until the attachment; but after the attachment, ſo much only as has been received, and not the whole ſum. Or *the other caſe alluded to may be*, when money depoſited ſometimes becomes a loan in the mode above-mentioned, and the creditor in ſuch a caſe attaches *the depoſit and inſiſts on immediate payment*. Again; a man has lent a horſe or the like to be uſed for burden; after two or three months the creditor, through *other* perſons, forbids the uſe *of the cattle*: it happens, that the horſe, or other beaſt, is *only* reſtored two months afterwards. In ſuch a caſe intereſt muſt be paid until *the uſe of the cattle was* forbidden, but not later; and no hire ſhall be paid for the horſe, ſince he was originally received as a loan. Such is the opinion intimated in the *Retnácara*. According to the gloſs of MISRA "a loan bears no intereſt, if it be attached, *withheld* or the like."

OF theſe interpretations one may be conſidered as the true ſenſe of the text, and the reſt as founded on the reaſon of the law. Or all may be conſidered as intended by the text, expounding it equivocally. But *at all events*, the ſeveral inductions muſt be admitted.

CHAPTER

CHAPTER III.

ON PLEDGES, HYPOTHECATION, AND MORTGAGES.

SECTION I.

ON THE NATURE OF A PLEDGE; AND ON PLEDGES LOST OR DAMAGED.

LXXX.

VRĬHASPATI:—A PLEDGE *(ádhi)* is called *bandha*, and is declared to be divisible into four *pairs;*

2. MOVEABLE, *or personal*, and fixed, *or real;* for custody only, and for use; unlimited, and limited as to time; with a written contract, and with a verbal attested agreement.

Bandha is derived in the passive form, "that, which is bound *or pledged* (*badhyatè*)." A male slave or the like, being bound or confined, is then unable to perform service for his master; a horse also, being bound or tied, is then unfit for his owner's use. By acceptation, the sense of the word "*bandha*" is a thing remaining in the creditor's possession by an agreement on the part of the debtor in this form, "this *chattel* shall remain in thy possession, so long as I do not repay thy money." Accordingly it is said by

eminent logicians, *that the meaning of* words *is* apprehended by grammar, by analogy, by dictionaries, by *original* inſtruction, and by practice or acceptation.

Adhi is the very ſame thing with *bandha*. It is diviſible into four *pairs*; it is of four kinds or forms, *which are again ſubdivided*. Thoſe forms are the properties *of a pledge*, conſidered by the author of the *Calpateru* as connected with the nature of the thing *pledged*, the form *of hypothecation*, its period, and *the* evidence *of the tranſaction*. Of how many ſorts again are each of theſe properties *of a pledge?* The ſage, ſatisfying that queſtion, enumerates them; "moveable &c." (LXXX 2). Conſequently, in regard to its nature, a pledge is of two ſorts; moveable, as kine, horſes, or the like; and fixed, as land, or the like.

HAVING explained the *diſtinctions on the* nature *of the pledge*, the ſage notices the form: "for cuſtody only, and for uſe;" for cuſtody, or ſafeguard, and for uſe, or employment. Theſe two direct the propereſt *(pracrĭſhta)* conduct of the creditor, and hence are called the forms *(pracára) of a pledge*: and thus, in reſpect of form, a pledge is of two kinds. "A pledge for cuſtody only;" to be merely kept: a thing, which may be injured by uſe, or one, which cannot be uſed. That, which is not *probably* injured by uſe, is a pledge "for uſe:" as will be explained further on.

THE ſage ſubjoins *the diſtinctions* reſpecting the period of the pledge; "unlimited and limited." "Unlimited;" *literally* ſubject *to redemption* at pleaſure; that is, to be releaſed at no ſpecifick time. "Limited;" to be releaſed at a ſpecifick time. "On payment of the principal at ſuch a time, this *pledge* ſhall be releaſed;" in this and ſimilar forms a period is ſpecified. Thus the diſtinction in reſpect of time is alſo two fold.

THE ſage notices the evidence of a pledge: "with a written contract, and with a verbal atteſted agreement." If it be queſtioned whether "this horſe be pledged to that man or not," the evidence may be a writing or a witneſs. Thus evidence is alſo two fold. Hence the diſtinctions are eight fold, as is obſerved by CHANDE'SWARA.

BEING

BEING divided into four pairs, moveable or fixed, and ſo forth, it is of four kinds: four fold, diſtinguiſhed according to the nature of the thing *pledged*, the form of *hypothecation*, its period, and the evidence of the tranſaction; and eight fold, by the ſubdiviſion of theſe.

The author of the *Calpateru*.

MOVEABLE and fixed compoſe the firſt pair relative to the nature of the thing *pledged*; for cuſtody only, and for uſe, the ſecond pair relative to the form *of hypothecation*; unlimited, and limited *as to time*, the third pair relative to the period *of the mortgage*; with a written contract, and with a verbal atteſted agreement, the fourth pair relative to the evidence *of the tranſaction*. By the ſubdiviſion of theſe, by their mutual differences, by the relative diſtinctions of moveable and fixed, and ſo forth, the ſubject becomes eight fold: conſequently each of the four ſorts contains two ſpecies.

THE enjoyment of the pledge, and the debtor *himſelf*, and ſo forth, are ſecondary evidence of hypothecation proved by enjoyment or made by the party himſelf *without writing or atteſtation*. They are not conſequently excluſive of this ſubdiviſion. Or theſe are the diſtinctions of pledge, as approved by law. But a pledge unauthenticated by atteſtation or written contract, or authenticated by an atteſted writing, not being noticed in codes of law, is not approved by *poſitive* law. Such is the interpretation according to CHANDE'SWARA.

OR a pledge, whether moveable or immoveable, is of four ſorts; to be merely kept, to be uſed, redeemable at pleaſure, or at a ſpecified time. This four fold diſtinction *of pledges* concerns moveable *property*, and *alſo concerns* fixed *property*. A pledge is ſometimes authenticated by a written contract, ſometimes by a verbal atteſted agreement. Such may be the conſtruction *of the text*. This is ſtated generally: ſometimes alſo a pledge is proved by enjoyment, or has been delivered with a verbal unatteſted agreement.

LXXXI.

NA'REDA:—THAT, to which a *ſecondary* title is given *(adhicriyaté)* is *(ádhi)* a pledge.

2. IT

2. IT has two forms, to be releaſed at a fixed time, or to be retained until payment be tendered. It is again declared to be of two ſorts, for cuſtody only and for uſe;

3. EVEN ſo muſt it be diligently kept: on its loſs or deſtruction by the negligence of the lender, the intereſt *on his loan* is forfeited; and even if it be only ſpoiled or altered.

IT has two characters or forms. *One*, to be releaſed, or given up, at the period which has been fixed or ſettled. For example; *the pledgeor ſays*, "a loan has been received from you on the mortgage of this land; when twice the amount of the debt has been realized, you muſt ſurrender the mortgage." Or *he ſays*, "a loan is now received by me and a pledge is given; paying the debt at the cloſe of the year, I will redeem the pledge: elſe this pledge ſhall become your abſolute property." When a time has been ſettled in theſe or other forms, the pledge is "to be releaſed at a fixed time." This has been named by VRĬHASPATI, a pledge "limited as to time."

THE ſenſe of the *other* phraſe completed is, "until the time of payment *tendered*;" until payment be tendered. In the caſe of an agreement in this form, "whenever the debt ſhall be diſcharged, then only ſhall the pledge be releaſed," it is a pledge for no ſpecifick period and this is named by VRĬHASPATI a pledge "unlimited as to time," or redeemable at pleaſure; for the payment of the debt and ſurrendry of the pledge depend on the will of the party.

"IT is again declared to be of two ſorts" (LXXXI 2); the two kinds being ſubdivided, the diſtinction is four fold. But CHANDE'SWARA thus expounds "two forms" (LXXXI 1); a pledge, whether fixed or moveable, is unlimited or limited as to time, *a diſtinction deſcribed by the phraſe* "to be releaſed at a fixed time, or to be retained until payment be tendered;" and it is for cuſtody only or for uſe: theſe are the two diſtinctions. It muſt alſo be underſtood, that it may be authenticated by a written contract, or by a verbal atteſted agreement.

THUS

THUS the texts of VRĬHASPATI and NA'REDA coincide. According to this interpretation, it is proper to expound the phraſe "it is again of two ſorts," with a written contract or with an atteſted verbal agreement. Here the text of NA'REDA is expounded in conformity with the text of VRIHASPATI; or the text of VRĬHASPATI may be expounded in conformity with the text of NA'REDA. Ultimately there is no difference.

"THAT, to which a title is given" (LXXXI 1); that, which is made ſimilar to his own abſolute property. In this inſtance there is only a ſecondary title, conſiſting in the cuſtody or occupation of another's property. As that, to which a man is entitled, is kept or uſed like his own property, ſo is a thing received in the form of a pledge, though it actually belong to another: and the word *ádhi* acquires the ſame meaning with *bandha* from practice and uſe. Or the derivation of the word *ádhi* may be, that, in right of which (*adhicrĭtya*) a loan is made or the like. It may be any how underſtood *by ſuppoſing the intervention of ſome term*, as in *the epithet* fawn-waiſted, *where the term expreſſive of ſimilarity is dropped.*

"EVEN ſo muſt it be kept" or preſerved (LXXXI 3); according to the difference in the forms of pledges. In ſuch form as ſuch things are kept, muſt the pledge be kept. Or, it muſt be kept in the mode of cuſtody, to which the debtor aſſented. "On its loſs or deſtruction," in caſe of its not being preſerved, intereſt is forfeited by the negligence of the lender. Such is the meaning *of the text*. If the pledge "be ſpoiled or altered," if it be broken or the like, the conſequence is the ſame; intereſt is forfeited as in the caſe of loſs or deſtruction. In this interpretation CHANDE'SWARA concurs.

LXXXII.

VISHNU:—BY the uſe of a pledge *to be kept only*, the intereſt is forfeited; and the creditor ſhall make good the loſs of a pledge, unleſs it was cauſed by the act of GOD or the king, *and without his fault.*

"BY the uſe of a pledge;" *already* expounded by the uſe of a pledge *to be kept only.**

* Gloſs on v. LXXVIII.

If the loſs of the pledge be cauſed by the act of God or of the king, without any fault on the part of the creditor, his recovery of the principal and intereſt will be propounded. For example; when a horſe or ox is pledged, and dies of diſeaſe notwithſtanding the beſt medicaments adminiſtered, or is forcibly ſeized by the king, though guarded with the utmoſt diligence, the loſs is cauſed by the act of God, or of the king. But the creditor muſt make good a pledge loſt without ſuch *inevitable neceſſity*; either by payment of its value *in money*, or by delivery of an equivalent *in kind*. But in the caſe of his not making good the pledge, Nárada ordains the forfeiture of the principal (LXXXIII). Such is the gloſs delivered in the *Retnácara*.

LXXXIII.

Nárada:—If a pledge be loſt, *and the creditor do not replace it*, the principal itſelf ſhall be forfeited; unleſs the loſs was cauſed *without his fault* by the act of God or of the king.

This caſe of a pledge not made good muſt be underſtood, where the pledge is not replaced by an equivalent, and is equal in value to the amount of the principal *debt* together with intereſt. It is alſo proper to apply *the ſame rule* when the creditor, in conſequence of his actual poverty, is unable to pay the exceſs of value, or when the value of the thing cannot be aſcertained.

The forfeiture of the principal implies the forfeiture of intereſt as well as principal. It would be inconſiſtent with reaſon, that the principal ſhould be forfeited, and the intereſt remain due.

LXXXIV.

Yajnyawalcya:—If a pledge for cuſtody only be uſed, there ſhall be no intereſt; nor, if a pledge for uſe be damaged: a pledge ſpoiled, *loſt*, or deſtroyed, unleſs by the act of God or of the king, ſhall be made good *by the creditor*.*

* The laſt hemiſtich only is cited in this place; the verſe at large is cited after v. XCI. I place it here becauſe reference is made to it before the latter citation.

" Spoiled

" SPOILED *or loſt;*" broken, ſtolen or the like, and become utterly unfit for uſe. " Deſtroyed;" annihilated or totally loſt. Both theſe pledges muſt be made good by payment of the value, or otherwiſe.

The *Retnácara.*

CONSEQUENTLY the term " deſtroyed " ſignifies dead, burnt or the like. It may be queſtioned how " ſtolen " can be ſuggeſted by the word loſt *or ſpoiled.* If a thing ſtolen be recovered, it is not loſt; if it be not recovered, it is *totally loſt, or ſimilar to a thing* deſtroyed; but the *intermediate* poſſibility of recovery does not juſtify the conſequence.

THE text of NÁREDA (LXXXI 3), as expounded by CHANDÉSWARA, " on the loſs or deſtruction of the pledge, intereſt is forfeited," is inconſiſtent with theſe texts. It ſhould not be affirmed, that, under the authority of both texts, the forfeiture of intereſt, and ſatisfaction for the pledge, are both ordained. This would be inconſiſtent with the text of VYÁSA.

LXXXV.

VYÁSA:—IF gold, or other *precious* thing, ſhall be pledged, and loſt by the negligence of the receiver, that creditor, on the principal and intereſt of his loan being paid, ſhall be forced to pay the price of the pledge.

HERE " receiver" *intends* the receiver of the pledge, or creditor; for the pledge, being in the creditor's poſſeſſion, cannot be loſt by the *immediate* fault of him, who received the loan. It may indeed ſometimes happen mediately: for example, the borrower, applying to the lender, with the intent of inducing his acceptance of the terms, conceals the proper food of the cow offered as a pledge, and deſcribes it otherwiſe; the creditor, confiding in his information, lends the money on ſuch a pledge: afterwards miſchief ariſes from change of food. In this and other caſes *the reader* may draw his own inferences. But, in the caſe ſuppoſed, it would be inconſiſtent with reaſon, that the creditor ſhould be liable to make good the value of that pledge.

In ſuch caſes, we hold, that the matter muſt be ſettled by learned men, diſcriminating the faults on both ſides. Since no rule is expreſsly declared by ſages, nor any thing particularly ſtated by ancient authors, *the caſe muſt be determined* by honeſt men of acute ſenſe. If any rule on this ſubject be declared in books of other countries, they, *who aſſert a ſettled rule*, have the advantage *in the debate*. Thus, when a pledge is loſt, if the creditor do not announce the loſs, he forfeits intereſt and muſt make good the pledge, under the authority of the texts of Na'reda and Vishnu (LXXXI 3 and LXXXII). In this caſe, his concealing the loſs of the pledge is a fault on the part of the creditor, wherefore intereſt is forfeited: and this is reaſonable; for the creditor concealed the loſs, from a deſire of receiving intereſt, reflecting, "if the loſs of the pledge were announced, the debtor, borrowing money elſewhere, would pay the debt and demand his pledge; by which my intereſt would be forfeited:" concealment therefore was a great offence. But intereſt only ſtops after the loſs of the pledge; the intereſt due before that loſs may be received.

The text of Vyasa muſt be applied to the caſe, where the loſs of the pledge was announced. Conſequently, the pledge being loſt by the fault of the debtor or of the creditor, and the loſs not being announced by the creditor, intereſt is forfeited. But if it be loſt by the creditor's fault, and the loſs be announced, he muſt pay the value of the pledge or give an equivalent, and may receive the principal and intereſt. In the ſame caſe, if he concealed the loſs, he receives the principal without intereſt.

Some are of opinion, that the text of Na'reda, "on the loſs or deſtruction of the pledge, intereſt is forfeited" (LXXXI 3), concerns a pledge to be uſed. For example; when the borrower, receiving the loan, gave as a pledge a boat or the like for uſe; then, ſhould the pledge be loſt, the creditor forfeits intereſt, and the debtor loſes his property: and this is reaſonable; for the loſs is imputable to both parties; to the debtor, becauſe he aſſented to the uſe *of the pledge*; to the creditor, becauſe he did uſe it. Hence the creditor forfeits intereſt, and the debtor loſes the thing pledged.

Here it ſhould be noticed, that, if the pledge be ſpoiled (that is, broken

or

or the like) in conſequence of uſe, then only ſhould this rule be applied: for, if a pledge be uſed, which ſhould only have been kept, the whole intereſt is forfeited; if it be ſpoiled, the principal is forfeited; if a pledge, liable to be uſed, be actually uſed, half the intereſt is forfeited; if it be ſpoiled, the whole intereſt is forfeited. This is accurate. However, this rule concerns only a pledge for uſe with *the* aſſent *of the pledgeor*. If the pledgeor have not aſſented to its uſe, the ſame rule ſhould be underſtood, which is directed in the caſe of a pledge for cuſtody only.

"THE uſe of a pledge," in the text of VISHNU (LXXXII), being expounded by CHANDE'SWARA, the uſe of a pledge to be kept only, it is proper to infer the loſs of a pledge for cuſtody only, in the phraſe, "the creditor ſhall make good the loſs of a pledge." VYA'SA, ſpecifying "gold or other precious thing," evidently intends a pledge for cuſtody only. YA'JNYAWALCYA (LXXXIV), ordaining the forfeiture of intereſt, if a pledge for uſe be broken or the like, adds, "a pledge ſpoiled muſt be made good;" that is, if a pledge for cuſtody only be broken or the like, an equivalent muſt be given. There is no impediment to this induction. Conſequently the text of NA'REDA, "if a pledge be loſt, the principal itſelf is forfeited" (LXXXIII), coinciding with the texts of other ſages, may be well expounded, "if a pledge for cuſtody only be loſt." Or, if "loſt or deſtroyed" be explained abſolutely loſt, or totally deſtroyed by mortality, fire or the like, this may be underſtood of a pledge to be uſed: accordingly YA'JNYAWALCYA, having ordained, with a view to pledges for cuſtody, that a pledge ſpoiled ſhall be made good, directs a pledge deſtroyed to be made good, as a rule concerning pledges for uſe. But this alſo concerns pledges for cuſtody; and thus the *true* ſenſe of the expreſſion, "a pledge ſpoiled ſhall be made good," is obtained. This they hold reaſonable.

OTHERS ſay, if a pledge for uſe be ſpoiled or rendered unfit for its purpoſes, intereſt is forfeited: the authorities are the texts above cited "on the loſs of a pledge intereſt is forfeited" (LXXXI 3), and "there ſhall be no intereſt if a pledge for uſe be damaged" (LXXXIV). If the pledge be abſolutely loſt, being burnt or deſtroyed, an equivalent muſt be given, or the principal is forfeited: the authorities are *other* texts; "the creditor ſhall

 make

make good the loſs of the pledge" (LXXXII); "if a pledge be loſt, the principal itſelf is forfeited" (LXXXIII); "a pledge deſtroyed ſhall be made good" (LXXXIV). If a pledge for cuſtody be ſpoiled or damaged by the negligence of the pledgee, even without the uſe of it, or if it be damaged by uſe, intereſt is forfeited under the text (LXXXI 3) "and even if it be only ſpoiled or altered." If it be *utterly* loſt and deſtroyed, the principal itſelf is forfeited, or an equivalent muſt be given, under the text (LXXXVI) "any pledge being wholly ſpoiled, the principal debt ſhall be loſt," and (LXXXIV) "a pledge ſpoiled or loſt muſt be made good."

HERE it muſt be underſtood, that, when the pledge is loſt by the fault of both parties, one forfeits intereſt, the other loſes the thing pledged. When it is loſt by the fault of the creditor alone, it muſt be argued, that the creditor ſhall make good the pledge or give other ſatisfaction according to circumſtances. The loſs cannot *eaſily* happen by the fault of the debtor alone: however, ſhould it any how happen *by his fault*, the loſs of the thing pledged falls ſolely on the debtor, as in the caſe of a loſs cauſed by the act of GOD or of the king.

LXXXVI.

VRĬHASPATI:—ANY pledge being uſed, and wholly ſpoiled *by the fault of the pledgee*, the principal debt ſhall be loſt, if the pledge be of great value in reſpect of the debt, and he muſt fully ſatisfy the pledgeor.

"WHOLLY ſpoiled;" rendered totally unfit for uſe. "If the pledge be of great value," in reſpect of the ſum due *to the creditor*.

The *Retnácara*.

ACCORDING to the laſt mentioned opinion this concerns only a pledge for cuſtody. But according to the former opinion there is no difficulty in referring it to both *ſorts of pledges*. "In reſpect of the ſum due to the creditor;" that is, in reſpect of the aggregate of principal and intereſt; for it would be improper to forfeit the principal while the intereſt remained *due*.

"HE

"HE muſt fully ſatisfy the pledgeor," by humble ſupplication and the like. If he be not ſo ſatisfied, the pledgee muſt pay a ſum not exceeding the value of the pledge. Under this law, if clothes, ornaments or the like, received in pawn, be wholly ſpoiled by the wear of them or otherwiſe, ſhould their value be equalled by the amount of principal and intereſt, then the principal and intereſt ſhall be forfeited; if their value be not equalled by the principal and intereſt, the value muſt be made good. When clothes worth ten *ſuvernas* have been pledged for a debt of four *ſuvernas*, in conſequence of the lender's obduracy, though the ignorance of the borrower or his want of any other effects, in ſuch a caſe it is underſtood, that the value cannot be made good out of the principal and intereſt.

MISRA expounds the text of VRĬHASPATI (LXXXVI) as intending a debt free of intereſt.

LXXXVII.

MENU:—A PLEDGE muſt not be uſed by force, *that is againſt conſent:* the pawnee ſo uſing it muſt give up his whole intereſt, or muſt ſatisfy the pawner, *if it be ſpoiled or worn out*, by paying him the original price of it; otherwiſe, he commits a theft of the pawn.

THIS text concerns pledges for cuſtody only: a pledge to be kept only, ſuch as clothes, ornaments or the like, muſt not be uſed. The pawnee, ſo uſing it, muſt give up his whole intereſt, or muſt ſatisfy the pawner; that is, if the pledge be worn out by uſe, he muſt ſatisfy the owner by paying the value, which the pledge bore when it was well conditioned. Otherwiſe, he would be guilty of ſtealing the pawn.

CULLŪCABHATTA.

THE text of VRĬHASPATI alſo (LXXXVI) has the ſame import; for that and the text of VISHNU (LXXXII) are expounded, "if the value of the pledge cannot be made good out of the principal debt, the pledgee muſt pay the exceſs, or give an equivalent."

LXXXVIII.

MENU:—THE fool, who ſecretly uſes a pledge without, *though not againſt*, the aſſent of the owner, ſhall give up half of his intereſt, as a compenſation for ſuch uſe.

THE fool, who, in breach of his agreement with the owner, uſes by ſtealth effects, which ſhould only be kept and which were not delivered for intereſt *by enjoyment*, muſt relinquiſh half his intereſt, to requite the uſe of *the pawn*. But, if he uſe the pledge by force, he muſt relinquiſh the whole intereſt (LXXXVII).

CULLŪCABHATTA.

IT is therefore held by CULLŪCABHATTA, that, if a pledge for cuſtody only be uſed by ſtealth, half the intereſt ſhould be relinquiſhed; but if uſed by force, the whole intereſt ſhould be relinquiſhed. A ſimilar gloſs i delivered by CHANDĒSWARA, *but* he does not ſpecify *whether the text ſingly intend* the uſe of a pledge for cuſtody or of a pledge for uſe, or *intend the uſe* of each. He adds to the gloſs on the laſt hemiſtich of the laſt verſe, "but, if the pledgee do not give up the intereſt, he muſt ſatisfy the debtor by *paying* the computed value of ſuch uſe." Thus arbitrators tell the creditor, who has uſed a pledge without authority, "thou muſt give up intereſt." In that caſe, if the creditor refuſe to give up intereſt, the value of uſufruct ſhould be aſſeſſed and deducted from the amount of principal and intereſt. The ſame form ſhould alſo be obſerved in the caſe where half the intereſt ought to be given up.

BUT VÁCHESPATI MISRA ſays, in every caſe, where the pledge is uſed againſt the will of the owner, the whole intereſt is forfeited; when a ſlave or the like, being pledged, is reaſonably employed, half the intereſt; but if a pledge for cuſtody be uſed, the whole intereſt ſhall be forfeited.

LXXXIX.

CÁTYÁYANA:—HE, who employs on work an unwilling *ſlave or other living* pledge without the aſſent *of the owner*, ſhall be compelled to pay the value of the work, or ſhall receive no intereſt on his loan.

ACCORDING

ACCORDING to all opinions this text does not ſolely concern a pledge for cuſtody; for it ſtates employment on work, and the unwillingneſs *of the living pledge; but* a pledge for cuſtody cannot be willing, nor can it perform work. The text concerns both a pledge for cuſtody, and a pledge for uſe. The ſenſe of the text is, "he, who employs in labour, without the aſſent of the owner, an hypothecated ſlave or the like, who is unwilling to work, ſhall be compelled to pay the value of his labour, or ſhall receive no intereſt."

The *Retnácara.*

ACCORDING to MISRA the interpretation is the ſame. "The value of the work;" whatever is the juſt hire for the work performed by the ſlave, or whatever has been gained through his labour. It may alſo be underſtood of the hire of boats or the like: but in this caſe employment on work is figurative. Although "unwilling" be a ſuperfluous term in reſpect of boats and the like, ſince it is only ſignificant in reſpect of ſlaves and the reſt, there is no objection *to a comprehenſive interpretation.*

IF a debtor, through anxiety for *the celebration of* a feſtival, or through generoſity, aſſent to the uſe of the pledge, and *alſo* ſtipulate other intereſt, in that caſe there is no forfeiture of intereſt: to make this evident it is ſaid, "without the aſſent of the owner." If a ſlave, *whoſe employment is* not authorized, be unwilling to work, *and be nevertheleſs employed,* intereſt is forfeited; therefore the ſage adds, "unwilling." Conſequently, if a ſlave be employed without his own conſent and without permiſſion from his maſter, the pledgee muſt give up his whole intereſt; with the ſlave's conſent, but without his maſter's permiſſion, half the intereſt (for this coincides with the text of MENU LXXXVIII); with the maſter's permiſſion, but againſt the ſlave's will, alſo half the intereſt: elſe, "unwilling," in this text would be inſignificant.

THIS text may, *however*, be reſtricted to pledges for cuſtody only. Thus the verb "do" ſignifies act or tranſact, as it is explained by thoſe who are converſant *with law*; "work," employment *or uſe of* a copper caldron or the like to hold or boil rice. He, who ſo uſes ſuch a veſſel, is meant *by the*

text. "Without the aſſent *of the owner*," as before explained. "Unwilling;" concerning which *pledge* it is not the will or intention *of the owner* that the creditor ſhould benefit by the uſe of that caldron. Such will *or intention* is preſumed, when the owner, ſeeing or hearing of the uſe of the pledge, manifeſts no diſpleaſure. It ſhould not be objected, that *the phraſe*, "without the aſſent *of the owner*," becomes unmeaning. Although it were againſt his wiſh, he may conſent through favour or the like.

When a ſlave, a cow, or the like, has been hypothecated, and intereſt has been ſeparately ſtipulated, food muſt be ſupplied by the pledgeor alone. In ſuch a caſe, if the creditor through tenderneſs ſupply their food, he ſhall receive intereſt, even though he employ them on work. If the debtor furniſh food, but the ſlave perform with good humour ſome trifling work for the creditor, there is no forfeiture of intereſt. When ſuch a contract is made, it muſt be attributed to the anxiety of the debtor for *the celebration of* ſome feſtival, *wherefore he ſubmits to ſuch terms.*

From the expreſſion "without aſſent," in the text of Ca'tya'yana, *it is inferred, that*, ſhould a ſlave be employed even with his own conſent, but without the ſanction of his maſter, half the intereſt is forfeited; if he be compelled by force, the whole intereſt is forfeited. But, ſhould a pledge for cuſtody be uſed, without the aſſent of the owner, the whole intereſt is forfeited, even though no force be employed; as is ſuggeſted by the term "for cuſtody only," in the text, "if a pledge for cuſtody only be uſed, there ſhall be no intereſt" (LXXXIV). This interpretation, conſiſtent with the gloſs of Misra, is beſt. However, ſhould the owner conſent to the uſe of a pledge, which *regularly* ought to be kept only, and ſtipulate other intereſt, there is no forfeiture.

If the pledgee maltreat a ſlave unwilling to work, he ſhall be fined.

XC.

Ca'tya'yana: — But he, who with words, or with blows ſtruck on a ſenſible part, inſults or pains a pledged *ſlave or the like* refuſing to work, ſhall *forfeit the intereſt of his loan*, and pay the firſt amercement.

THIS text, from the title, *under which it is introduced*, shows that he, who so abuses his pledge, shall receive no interest. The first amercement is here mentioned incidentally.

The *Retnácara*.

SINCE this text is inserted under the head of forfeited interest, the loss of interest is implied. The amount of the first amercement and other fines has been variously stated by MENU, NÁREDA and others; and it should be regulated, in the title of fines, according to the degree of the offence. The sense of the text is this; he, who hurts a slave or other *living* pledge, with blows of a staff or stick struck on a noble part, or who menaces him, shall pay as a fine the first amercement, and of course shall receive no interest. The word "staff" is used generally, intending any *instrument for inflicting* corporal pain.

DOES this text concern a slave or other similar pledge employed without the assent *of the owner*, or universally any slave or other living pledge? If it be said, the first alone is suitable; for, when the employment of a slave or the like has been authorized by the owner, he may be tasked by the creditor, as *if he were* his own slave; should he refuse to work, proper chastisement may be inflicted; and this is consistent with reason; the text is therefore properly referred to the unauthorized use "*of a pledged slave*:" that is denied; for he should only be bidden to work, although his employment have been authorized. The slave of another, who has amicably authorized his employment, should not be beaten: even though the usufruct were assigned in lieu of interest, the pledgee should only tell the owner, "your slave does not perform my work, you must assign other interest;" on this information the owner must do what is proper: if the creditor act otherwise, he incurs a fine. The last supposition is alone right. Accordingly it is said in the *Retnácara*, "this text, from the title, under which it is introduced, shows, that no interest shall be received." On any other construction, the forfeiture of interest is *already* suggested by *another text* (LXXXIX), and it would be therefore improper to establish an implied sense of this text.

MENU ordains that no interest shall be received even in the case of using a pledge which *regularly* may be used. XCI.

XCI. *

MENU :—IF he take a beneficial pledge, *or a pledge to be uſed for his profit*, he muſt have no *other* intereſt on the loan.

IF land, a cow, a ſlave, or the like, be delivered as a pledge to be uſed, the creditor ſhall not receive the intereſt already ordained on loans of money.

CULLU'CABHATTA.

BY this phraſe, "land, a cow, a ſlave, or the like," the reference to pledges, which *regularly* may be uſed, is made evident. It might be proper to ſay, "land, cows, ſlaves, gold or the like;" for all concur in the forfeiture of intereſt, if a pledge be uſed, which ought only to have been kept. By the expreſſion, "delivered as a pledge to be uſed," a loan bearing *that* intereſt, which conſiſts in the uſufruct *of the pledge*, is intimated. To remove the inconſiſtency of denying intereſt, the ſage adds "on the loan;" meaning no ſuch intereſt, as previouſly ordained by MENU in the form of *pecuniary* intereſt on loans at the rate of an eightieth part and ſo forth. CULLU'CABHATTA expreſſes the ſame in his gloſs, "already ordained." Conſequently, if the uſe of the pledge have been ſettled by way of intereſt, no other intereſt ſhall be received.

BUT CHANDE'SWARA expounds "beneficial" *actually* uſed. Having explained this text as denying intereſt generally, he cites, as a ſpecial rule, the text (LXXXVIII) which ordains the relinquiſhment of half the intereſt, "if a pledge be uſed without, but not againſt, the aſſent of the owner," prefacing *the text with the word* "ſo." Again premiſing "ſo," he cites the text of MENU (LXXXVII), and expounds it as ordaining, that, if a pledge be uſed by force, though its uſe be forbidden, the whole intereſt muſt be given up. Conſequently there is no difficulty in referring theſe three texts to pledges for cuſtody only. In this caſe the text *laſt quoted* (XCI) concerns a pledge of which the uſe has been ſtipulated, and ſo forth, *being intended* to prohibit intereſt according to circumſtances. It ſhould not be objected, ſince the uſe and profit of the pledge is *received as* intereſt, how is intereſt to be relinquiſhed? If the pledge be uſed, half the intereſt (that is half of the

* See v. CXVII.

legal,

legal, or of the ſtipulated, intereſt) muſt be given up becauſe *the uſe of the pledge was* not ſettled in lieu of intereſt. YA'JNYAWALCYA (LXXXIV) ordains the forfeiture of the whole intereſt, in every caſe where a pledge for cuſtody only is uſed.

IF a pledge to be kept only, as clothes, ornaments or the like, be uſed, there ſhall be no intereſt; *nor* if a beneficial pledge, as an ox or the like, be rendered unfit for uſe. The *Dípacalicá.*

THAT is, if it be rendered unfit for uſe, there ſhall be no intereſt. A ſimilar gloſs is delivered in the *Retnácara.* But, if a pledge, which *regularly* may be uſed, be *actually* uſed, ſince the relinquiſhment of half the intereſt is ordained, the *univerſal* prohibition of intereſt is unfit. As for a pledge to be kept only, if that pledge be uſed, the forfeiture of intereſt muſt be regulated in due proportion. For inſtance, both the value of the uſufruct and the amount of intereſt ſhould be aſcertained and compared; as has been mentioned under the head of prohibited intereſt.

BY the uſe of a pledge, however inconſiderable *the value of its uſufruct may be,* the intereſt is forfeited, however great *its amount;* becauſe the pledgee has violated the terms of the agreement.

THE author of the *Mitácſharâ.*

"TERMS of the agreement;" the bargain; a pledge delivered for uſe being a pledge to be uſed, and a pledge delivered for cuſtody only being a pledge to be kept.

BUT MISRA ſays, forfeiture of intereſt, if a pledge for cuſtody only be uſed, is one rule; forfeiture of intereſt on the *unauthorized* uſe of a pledge, which *regularly* might be uſed, is another rule; and forfeiture of intereſt, if the pledge be damaged, is again another rule. The meaning has been already explained. The meaning of the ſecond rule is, that half the intereſt is forfeited by the unauthorized uſe of a pledge, which *regularly* might be uſed; and the whole intereſt by the uſe of ſuch a pledge, if the profit were aſſigned in lieu of intereſt, or if it be uſed againſt the conſent of the owner.

XCII.

VRĬHASPATI:—IF the creditor through avarice uſe a pledge before intereſt ceaſe on the loan, or before the ſtipulated period expire, the debt ſhall bear no further intereſt.

2. LIKE a depoſit, the pledge muſt be carefully kept; intereſt is forfeited, if it be damaged.

IF it be agreed, that a pledge ſhall be uſed at a ſpecified time, it muſt not be uſed while the period is incomplete. This is declared *by the text.*

The *Retnâcara.*

FOR example; a borrower receives a loan on the ſecurity of a pledge, and makes an agreement in this form; "this pledge ſhall remain in your poſſeſſion, if I do not diſcharge the debt at the expiration of five years, the pledge ſhall be enjoyed by you:" and the borrower pays intereſt independent thereof. In this caſe the uſe of the pledge before the ſtipulated period is unauthorized; it ſhould not be taken. But, when the period has expired, then only ſhould the pledge be uſed; and intereſt is not thereby forfeited. If the debt were contracted with an agreement, "I will redeem the pledge when the principal is doubled;" then, if the pledge be not redeemed although the debt be doubled, the pledge may be uſed after notice given to the debtor's kinſmen. In that caſe alſo there is no further intereſt (CXIX).

THIS uſe of a pledge is legal; but how can amicable enjoyment *of a pledge*, which *it* is in the debtor's power *to forbid*, be juſtified by law. If a creditor uſe a pledge, without the aſſent of the owner, before the ſtipulated period expire, and before intereſt ceaſe on the debt, he forfeits the intereſt previouſly agreed on, and which had not been paid. But if the intereſt have been paid, a deduction muſt be made from the principal. This is deduced from the text of CA'TYA'YANA (LXXXIX), and from common ſenſe. If the owner, when the debt is contracted, amicably conſent to the uſe of the pledge, intereſt is not forfeited: this is reaſonable.

DOES the text of VRĬHASPATI (XCII) concern a pledge to be uſed, or

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a pledge to be kept only, or both? On the firſt ſuppoſition it would be wrong to ſay, that a pledge for cuſtody may not be uſed, when intereſt has ceaſed *on becoming equal to the principal*, and when the ſtipulated period has expired; for the uſe of a pledge given for cuſtody is authorized after the debt is doubled (CXXI 2). On the ſecond ſuppoſition, what is the rule in reſpect of a pledge for uſe? If it may be uſed from the date of hypothecation, there is a contradiction to reaſon, in *allowing both* the uſe of a pledge and the receipt of intereſt independent thereof. If it may not be uſed, even when the period has expired and the debt has ceaſed to bear intereſt, it is inconſiſtent with reaſon, that a pledge for cuſtody may be uſed, but a pledge for uſe may not be uſed. On the third ſuppoſition, the diſtinction of pledges for cuſtody and for uſe would be fruitleſs.

To this it is anſwered, the text concerns both; but the diſtinction has its uſe. The unauthorized uſe of a pledge for cuſtody only, even though not *expreſsly* forbidden *by the owner*, induces a forfeiture of intereſt (LXXXIV). If an employable pledge be uſed without the conſent of the owner, half the intereſt is forfeited; but againſt his conſent, the whole intereſt (LXXXVII and LXXXVIII). A pledge for cuſtody only (LXXXIV) ſignifies a pledge not delivered for uſe, and unlimited as to time. Such is the opinion of VA-CHESPATI MISRA. But according to CULLŪCABHATTA, the ſame muſt be affirmed of a pledge for cuſtody which is affirmed of a pledge for uſe; elſe it is a diſparagement to him, that he has not diſtinguiſhed them.

IF a pledge for uſe or cuſtody be ſpoiled or altered, the intereſt is forfeited (LXXXI 3); if it be loſt or deſtroyed, the principal itſelf and the intereſt are forfeited (LXXXIII, LXXXI 3, LXXXVII and LXXXVI); for the term uſed in the text (LXXXI 3) is explained in the *Retnácara*, "on the loſs or deſtruction of the pledge by the fault of the lender." It is ordained in the rule of VISHNU (LXXXII) and text of YA'JNYAWALCYA (LXXXIV), that the loſs of a pledge muſt be made good. An alternative is *thus* ſtated, the delivery of an equivalent in lieu of the pledge, or the forfeiture of principal and intereſt. A third caſe is ſtated; payment of the *pecuniary* value of the pledge (LXXXV). All this *muſt be explained* according to the fitneſs *of the thing for uſe*; ſince it is virtually the ſame, whether a thing be rendered wholly unfit for

uſe,

uſe, or be totally deſtroyed. But a pledge, though rendered unfit for uſe, becomes the property of the creditor; for that is reaſonable. By the mere uſe of a pledge for cuſtody only, intereſt is forfeited, as appears from the term "a pledge for cuſtody" in the text of YA'JNYAWALCYA (LXXXIV): but it is proper to aſſert, that intereſt is not forfeited by the authorized uſe of a pledge, which *regularly* ſhould only be kept. *In general* there is no forfeiture of intereſt by the authorized uſe of a pledge, which *regularly* may be uſed. Intereſt is forfeited by the employment of a ſlave or the like againſt his will, though authorized by his maſter (LXXXIX). Whether the employment of him be authorized or unauthorized, if an unwilling ſlave be beaten, a fine ſhall be paid (XC). If an employable pledge be uſed without the conſent of the owner, half the intereſt is forfeited (LXXXVIII). If it be uſed againſt his conſent, the whole intereſt is forfeited (LXXXVII).

IN the gloſs of CULLUCABHATTA it is ſtated, that the text concerns a pledge for cuſtody only. His meaning has been already explained. A pledge, whether ſuch as ſhould be kept only or ſuch as may be uſed, muſt not be uſed before the ſtipulated period expire, or before intereſt reach its limit. If it be uſed, intereſt is not valid againſt the price of its uſe. The value of the uſe muſt be diſcharged out of the intereſt due. This is conſiſtent with reaſon. If a pledge either for cuſtody, or for uſe, be rendered partially unfit for uſe, intereſt is forfeited in proportion to the injury and damage (XCII and LXXXIV). By ſtating forfeiture of intereſt in proportion to the injury or damage, the diſparity of forfeiting the whole intereſt for trifling damage is removed. But thoſe, who follow the opinion of the author of the *Mitâcſharâ*, muſt affirm, that the whole intereſt is forfeited, under the authority of the text, however inconſiderable the damage, as well by the uſe of a pledge to be uſed, as by that of a pledge for cuſtody. This is liable to objections. Others ſay, if the uſe of the pledge be ſtipulated by way of intereſt, there ſhall be no other intereſt (XCI). Otherwiſe, intereſt is allowed at the rate of an eightieth part and ſo forth.

IF the loſs be cauſed by the act of GOD or of the king, what ſhould be done? On this point,

XCIII.

VRĬHASPATI ordains: — IF a pledge be deſtroyed by the act of GOD or of the king, the creditor ſhall either obtain another pledge, or receive the ſum *lent* together with intereſt.

"BE deſtroyed;" become altogether unfit for uſe.

The *Retnácara*.

IF the debtor cannot immediately diſcharge the debt, he muſt deliver another pledge. If he cannot deliver another pledge, he muſt immediately diſcharge the debt: for, without ſupplying the word 'immediately,' the alternative of delivering another pledge or paying the debt would be ineffectual. But, if he be utterly unable to do either, the debt is from that period unſecured by pledge *or ſurety*; and the creditor ſhall receive the proper intereſt on ſuch debts.

XCIV.

VYÁSA: —IF the pledge be deſtroyed by the act of GOD or of the king, no fault is by any means imputable to the creditor; and, *immediately* after the loſs of that pledge, the debtor ſhall always be compelled to pay the debt *with intereſt*, or deliver another pledge.

"SHALL be compelled to pay the debt;" 'with intereſt' and 'immediately' muſt be ſupplied. The particle has the ſenſe of "or," ſince the text has the ſame import with that of VRĬHASPATI (XCIII).

"SHALL be compelled to pay the debt;" ſhall be required to pay the *debt*; for moſt correct ſpeakers admit the cauſal paſſive for certain verbs only, ſuch as go, uſe, know and the like; and the verb give or pay could not otherwiſe be employed in the cauſal paſſive: it could not be ſaid, the debtor ſhall be compelled to deliver another pledge. The ſame muſt be underſtood alſo in ſubſequent phraſes *of this ſort* uſed by authors.

XCV.

NÁREDA: —WHEN a pledge, though *carefully* preſerved, is

ſpoiled in *courſe of* time, another pledge muſt be delivered, or the amount *of principal and intereſt* muſt be paid to the creditor.

"SPOILED;" totally unfit for uſe. "The amount;" the ſum borrowed with intereſt: for the purport is the ſame with the preceding texts. If a pledged cow or the like in courſe of time become old, or otherwiſe *uſeleſs*, another pledge muſt be delivered.

XCVI.

YA'JNYAWALCYA:— BY the acceptance *or actual poſſeſſion* of a pledge *the* validity *of the contract* is *maintained.* If it be ſpoiled, though carefully kept, another chattel muſt be hypothecated, or the creditor muſt receive the amount *of principal and intereſt.*

"BY acceptance *alone;*" by *actual* occupancy alone. By acceptance and uſe of a pledge, not by mere indication.

The *Dípacalicá.*

"BY uſe;" alluding to a pledge delivered for uſe. This will be explained under the head of the validity of pledges.

"BY acceptance" of a pledge for uſe or cuſtody; by actual poſſeſſion or enjoyment, the hypothecation is rendered complete; not by the mere atteſtation or execution of a written contract and the like.

The *Retnácara.*

XCVII.

CA'TYA'YANA:—WHEN a pledge becomes unfit for uſe or periſhes, without any fault on the part of the creditor, the debtor ſhall be compelled to deliver another pledge; *for* he is not exonerated from the debt.

WHEN a pledge becomes unfit for uſe or periſhes, provided that detriment

or

or deſtruction be not cauſed by any fault on the part of the creditor, the debtor ſhall be compelled to deliver another pledge; in this caſe the debt is not cancelled by the mere loſs of the pledge. The ſage makes that evident. "Becauſe" ſhould be ſupplied. Becauſe the debtor is not in ſuch a caſe exonerated from the debt, therefore another pledge muſt be delivered, or payment be made. A ſimilar gloſs is delivered in the *Retnácara*.

As for what ſome affirm, that if a pledged cow or the like die by accident, the creditor's money and the pledgeor's property are loſt, that is only founded on approved uſage not inconſiſtent with divine law.

The *Retnácara*.

A SIMILAR remark is made in the *Chintámeni* and by BHAVADE'VA and others. The meaning is, that the creditor's loſs, when a pledge is deſtroyed without any fault on his part, is not confirmed by any ſage. But local uſage on this point ſhould not be aboliſhed.

XCVIII.

THE *Vámena purána*, cited by the modern VA'CHESPATI and by RAGHUNANDANA:—A MAN ſhould not neglect the approved cuſtoms of diſtricts, the equitable rules of his family, or the *particular* laws of his race.

XCIX.

IN whatever country, whatever uſage has paſſed through ſucceſſive generations, let not a man there diſregard it; ſuch *uſage* is law in that country.

HERE it ſhould be remarked, that, if ſome *Bráhmana* have borrowed money on a mortgage of his land ſituated near a river, and that land be afterwards waſhed away by the river, it is not ſeen in practice, that the creditor's money is loſt. Accordingly, it is ſaid in the *Retnácara*, "a pledged cow or the like." This is founded on the following practice. A cow of ſmall value dying, the debtor aſſerts, "he did not give ſufficient attention to her cure;" the creditor affirms, "I gave the propereſt remedies." On this

queſtion

queſtion a deciſion could not be paſſed without minute inveſtigation. Arbitrators therefore mediate and determine, that the loſs ſhall be borne by both parties. This practice appears to be the ground of the uſage.

FROM the expreſſion "periſhes" or dies, it is evident, that, when a pledged cow or the like dies, and from the expreſſion "becomes unfit for uſe," that, when it becomes totally unſerviceable, the debtor ſhall be compelled to deliver another pledge. Although a copper caldron or the like, and land or other *immoveable property*, cannot die, yet, as its total deſtruction is ſimilar to *the* death *of an animal*, the ſame rule ſhould be underſtood; for, although it be not expreſsly ſtated in the texts of VYA'SA and others, ſuch is the import of the texts. As the principal is forfeited, when the deſtruction of a pledge is cauſed by the fault of the creditor, becauſe it is *in effect* the ſame with ſuch a pledge vitiated; ſo, in this caſe alſo, another pledge muſt be given, becauſe both are *in effect* the ſame. This may be inferred from reaſoning.

WHY is "deſtroyed," in the text of VR'IHASPATI (XCIII), expounded rendered totally unfit for uſe? The anſwer is, to ſhow, that another pledge muſt alſo be given, if the pledge be rendered totally unfit for uſe. If it be not deſtroyed by the creditor's fault, from what cauſe does the loſs happen? It muſt be underſtood, that the loſs happens by the act of GOD or of the king; for the purport is the ſame with the text of VYA'SA (XCIV), and with the text of VR'IHASPATI (XCIII).

THE act of the king is *meant of* pillage by an army, and the like; the act of GOD *intends* the fall of a thunderbolt or the like: and this generally; comprehending the act of an enemy, the conflagration of a houſe or the like, the depredations of robbers and ſo forth. On this and other points the reader himſelf muſt deduce juſt inferences from reaſoning.

The *Retnácara.*

C.

YA'JNYAWALCYA:—MORTGAGED land being carried away by

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a rapid ſtream, or being ſeized by the king, another pledge *of land* muſt be delivered, or the ſum lent muſt be reſtored to the lender.

THIS text is applicable to the caſe of a pledge deſtroyed or loſt by fracture, theft, combuſtion, or the like.

"OR being ſeized by the king;" *in ſome caſes* it may be legally ſeized by the king, to ſell it for a fine impoſed on the debtor, or becauſe the king has not *actually* given the land, which he had declared *an intention of* giving to the debtor, who is a ſoldier or the like. Illegally it may happen in other caſes alſo.

"ANOTHER pledge;" of land muſt be underſtood. If he do not deliver that, the ſum *borrowed* muſt be repaid by the debtor with intereſt.

The *Retnácara.*

"ANOTHER;" that is, other than the pledge originally delivered. "A pledge of land;" this is reaſonable: but if other land cannot be delivered, any other pledge may be given. However, if the former pledge were delivered for enjoyment, he muſt now alſo give a pledge adapted to that *purpoſe.* Or, if that cannot be, he muſt give a pledge for confidence only, and pay a ſum equal to the value of the uſufruct of the former pledge until the debt be diſcharged. But if ſeparate intereſt be paid, and the uſe of the pledge be allowed through complacency, by theſe words, "you may uſe the pledge;" in that caſe the value of uſufruct need not be paid.

IT is thus evident, that, if mortgaged land be deſtroyed, the loſs falls on the debtor alone. "Land" is an inſtance only, ſuggeſting alſo kine, gold, and the like. "Carried away by a rapid ſtream" is merely illuſtrative of a loſs happening by the act of GOD; for it has the ſame import with *the following text.*

CI.

CÁTYÁYANA:—WHATEVER pledge has been loſt by the act

of GOD or the king, the debt, for which it was given, ſhall be paid by the debtor to the creditor with intereſt.

THE ſenſe ſuggeſted by this text is, " whatever pledge," whether for cuſtody only, as gold or the like, or for uſe, as land or the like, *has been loſt* " by the act of the king," or of his officers or the like; or by the act of GOD, as carried away by a rapid ſtream, or deſtroyed by fire, &c. Accordingly it is ſaid in the *Retnácara*, " carried away by a rapid ſtream is illuſtrative of a loſs happening by the act of GOD." This text (C) is not quoted in the *Mitácſharà* and *Dípacalicà*.

CREDITOR and lender ſignifying the ſame, the loſs of the pledge falls on the debtor. This text ordains payment of the debt with intereſt; there is not conſequently a *needleſs* repetition of the former text (XCVII). However, " loſt" is merely an inſtance of ſpoiled and ſo forth; for the text coincides with that of NA'REDA.

SECTION

SECTION II.

ON THE REDEMPTION OF PLEDGES.

WHEN the debtor, tendering the ſum due, claims the releaſe of the pledge, what ſhould be done by the creditor? A ſmall part only being tendered, ſhould it be accepted; or ſhould the whole amount of the debt *be alone accepted?* As to the firſt ſuppoſition,

CII.

VRĬHASPATI ordains:—THE whole amount due to the pledgee not being paid, he ſhall on no account be compelled to reſtore the pledge againſt his will, *nor ſhall it be obtained from him* by deceit or confinement.

"THE pledgee;" in the ſixth caſe, but with a dative ſenſe; to him, who has received the pledge; namely to the creditor. If the whole amount of principal and intereſt be not paid to the creditor, he ſhall not be compelled by the king to reſtore the pledge againſt his will. A pledge muſt therefore be releaſed by the creditor on receipt of the entire ſum *due*, not on receipt of a part only. If the greater part of the whole debt have been diſcharged, ſhall the pledge be retained on account of the ſmaller part, or not? In anſwer to this queſtion the preſent text is propounded. The ſage adds, he ſhall not be forced to reſtore it by *legal* deceit or any other of the modes of recovery.

"By deceit or confinement;" the firſt term is explained by ſome, deceit or fraud. "Confinement;" ſitting conſtantly at his gate, or the like, as will be explained. The word "or" is indefinite, alſo ſuggeſting a law-ſuit and the like. It ſhould not be objected, that from the terms of the definition of *lawful* confinement (CCXXXIX) its acceptation is reſtricted to payment obtained from a debtor. Such a definition, being merely explanatory, is not reſtrictive.

AGAIN; when a debtor, having delivered a pledge of great value to the creditor,

creditor, and repenting thereof, wiſhes to exchange it for one of leſs value, then alſo the exchange muſt depend on the conſent of the creditor. This muſt be underſtood from parity of reaſoning: as is obſerved in the *Retnácara*; 'when the whole ſum due and ſecured by the pledge is paid to the creditor, who holds that pledge, then only muſt the pledge be releaſed, however great its value may be.' *The debtor* ſaying, "receive ſome other pledge, and reſtore the coſtly pledge; with the delivery of the other pledge, I will give thee a written contract, or cauſe the delivery to be atteſted;" in this caſe alſo, the king ſhall not force the reſtoration of the pledge by the modes of deceit, confinement or the like. Nor ſhall the pledge be releaſed on payment of a ſmall part *of the debt* only. "Receive ſome other pledge &c." is a *ſuppoſed* ſpeech of the debtor. In this caſe alſo, the creditor ſhall not be compelled to reſtore the pledge againſt his will.

A DEBT has been contracted on the mortgage of a piece of land meaſuring a *króſa* in circumference; a part of the debt has been afterwards paid, *but* the land is accidentally carried away by a rapid ſtream: this *text* may be *expounded as* reſtraining a creditor, who in that caſe demands a mortgage of land meaſuring a *króſa* in circumference. But the reading is *(chitréna rachiténa)* by painting *or dying*, and by manufacture, inſtead of *(chitrénáchariténa)* by deceit and confinement. Thus, when a pledge of land or the like muſt be delivered to a creditor, who had already received a pledge, the debtor ſhall not be compelled to deliver a pledge for the whole value, ſimilar to the former pledge of valuable land or the like. In what caſe? To this the ſage replies, if the debt be not fully paid; that is, if the whole be not paid, but a part be paid: if a part be paid "by painting or dying or by manufacture." "By dying;" by the practice of the art of dying ſilk. "By manufacture;" by the practice of art in the conſtruction of a houſe or the like. "Or" is indefinite; and direct payment by the practice of any other art is thereby comprehended in the text. This is a very modern interpretation.

OR the word "its" may be ſupplied. Thus, a pledge being loſt by the act of GOD, another pledge ſhould be given to the creditor, who received the former pledge; but, if its amount or value have been made good by the debtor himſelf in the practice of ſome art, as dying or the like above-mentioned, the

debtor

debtor ſhall not be compelled by the king, againſt his will, to deliver a pledge for the whole value, that is, a freſh pledge of great value. It is not affirmed, that ſuch delivery is requiſite. Conſequently, the original pledge being loſt, and the debtor being unable to give another pledge of the ſame nature, or otherwiſe make good its value, a pledge of great price has, in the mean time, been delivered; the intermediate valuable pledge muſt be reſtored by the creditor to the debtor, who claims redemption of that pledge, having afterwards made good the value of the original pledge by the practice of his art.

THIS is general. The debtor immediately pays ſome part of the value of the former pledge, and will deliver another pledge at a future time; to give confidence therein, he delivers a writing or atteſtation: in that caſe alſo the rule is the ſame. This other expoſition follows the gloſs of CHANDÉSWARA. But on this conſtruction, "by painting *or dying*, or by manufacture, the amount being *partly though* not fully paid, *he ſhall not be compelled to deliver a pledge for* the whole *value*" *(swadatté'c'hilam,** inſtead of *adatté'rt'hé'c'hilé)* is exhibited as the proper reading in ſome books. To expatiate would be vain.

ON the other reading *(chitrénáchariténa)* the ſenſe may be the ſame; for the crude verb "*char*" bears the ſenſe of "act," *exhibited* in *its derivative* "*áchára*" uſage or practice, and in other inſtances. In either caſe ariſing on theſe two interpretations, it muſt be affirmed, that, if the debtor tender payment of a part only *of the debt*, the creditor need not releaſe the pledge: for no law ordains, that it ſhall be then releaſed. According to CHANDÉSWARA another text of VRÍHASPATI (CIII) ordains, that a pledge ſhall only be releaſed when the whole amount *of the debt* has been paid. This will be ſtated hereafter.

SIMPLE men attribute an active ſenſe to the word "pledgee" in the ſixth caſe. Thus the conſtruction is, "the amount, which ſhould be paid by the

* I TRANSLATE it "not well or fully paid," inſtead of, "paid by *the man* himſelf." The term is expounded both ways in preceding paragraphs, but why ſhould a new pledge of leſs value be given, if the debt have in the mean time been paid? T.

pledgee or creditor, not being delivered, the debtor ſhall not be compelled by the king, in any of the modes of recovery, by deceit, confinement, and the reſt, to deliver the pledge to the creditor." Conſequently, if the debtor, having executed a contract of hypothecation, has not received the whole loan, although he have demanded it, and has therefore obſtructed the enjoyment of the pledge, this text eſtabliſhes the rule of deciſion on ſuch a caſe. It will be mentioned, that hypothecation is not valid on a writing alone without enjoyment. Theſe interpretations are either founded on the text, or on the reaſon of the law. They ſhould all be admitted.

As to the ſecond queſtion, *(the whole debt being tendered, muſt it be accepted?)* if the debtor have contracted the debt on an agreement, that the pledge, conſiſting of land or the like, ſhall be enjoyed ſo long as the principal ſum remain undiſcharged, but that no intereſt ſhall be paid independent *of the pledge*, in that caſe, the principal alone *being tendered*, it muſt be accepted. The ſame ſage ordains it.

CIII.

VRĬHASPATI:—WHEN the debtor, tendering the principal ſum, demands the pledge, even then it muſt be releaſed; otherwiſe, the creditor is criminal.

THIS concerns a pledge to be uſed for an indefinite period.

The *Retnácara.*

"OTHERWISE;" that is, if he procraſtinate, coveting the enjoyment of the pledge; or if he covet *and demand* other intereſt. The following text declares an offence as well in regard to pledges for cuſtody as others.

CIV.

YA'JNYAWALCYA:—To the debtor, who comes to redeem his pledge, the creditor ſhall reſtore it or be puniſhed as a thief; and, if the creditor be *dead or* abſent, the debtor may pay the debt to his kinſmen, and ſhall take back his pledge.

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" WHO comes to redeem his pledge;" who approaches the creditor, bringing what is due to the creditor, *namely* the principal ſum with or without intereſt. To him the pledge ſhall be reſtored by the creditor, after receiving the money from the debtor. Otherwiſe, if he do not reſtore it, he is guilty of ſtealing *the pledge*; *that is*, *he ſhall be puniſhed*.

CHANDE'SWARA.

IF the creditor be dead, or have gone to another country, what muſt be done? The ſage replies, " if the creditor be *dead or* abſent, the debtor may pay the money to his kinſmen;" to his ſons and the reſt; to his heir, or to any perſon charged with the ſupport of his family: " and he ſhall take back the pledge" from the ſons and the reſt.

" To his kinſmen;" literally, to his family; that is, to his ſons and the reſt.

The *Retnácara*.

" To his family;" to his ſervant or agent.

The *Mitácſharà*.

SHOULD the ſon or other *competent* perſon refuſe to reſtore the pledge, then, by the ſame reaſoning as before, he is guilty of theft. If any diſpute ariſe concerning the receipt of his property by either party, that muſt be determined, and the delivery and receipt made *good*. If a falſe plea be ſet up, through avarice, by the creditor, he ſhall be puniſhed as a thief. If the ſon *of the pledgee* ſay, " I have not power to accept payment of the debt without my father's conſent," what muſt be done in ſuch a caſe, will be mentioned *in its place*. The debtor being *dead or* abſent, if his ſon or other heir come to the creditor or to his ſon, for the purpoſe of paying the principal ſum with intereſt, then alſo, as before, muſt the pledge be reſtored. Such is the unexceptionable method of CHANDE'SWARA.

To the debtor, who comes to redeem his pledge, it muſt be reſtored by the creditor on receiving the principal and intereſt.

The *Dípacalicá*.

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BUT HELA´YUDHA expounds the firſt half of the text of YA´JNYAWALCYA (CIV) and the text of VRĬHASPATI (CIII), 'having mortgaged a village or the like, on the next day he comes to pay the debt; but the creditor, coveting intereſt, neither accepts payment of the debt, nor relinquiſhes the mortgage; in that caſe, he ſhall be puniſhed as a thief.' Ultimately there is no difference. It is only neceſſary, that a pledge be reſtored by the creditor, on receiving from the debtor the amount then due, *namely* the principal ſum with or without intereſt. Or, if the creditor be not at hand, the debt muſt be paid to his ſon or other repreſentative; and from him muſt the pledge be received, as abovementioned. HELA´YUDHA, grounding his gloſs on that of CHANDE´SWARA, has in no reſpect contradicted it.

WHEN land is mortgaged on theſe terms, "this land ſhall be enjoyed by thee to the end of ſuch a period," the land ſhall be enjoyed to the end of that period; the debtor cannot compulſively redeem the pledge on the ſecond day after the debt was contracted: for there is no ſuch ſpecial law, and the texts of VRĬHASPATI and others ordain penalties for other caſes. This appears from the condition, that no definite period have been fixed, as ſtated in the gloſs of CHANDE´SWARA, "this concerns a pledge to be uſed for an indefinite period." By HELA´YUDHA's expreſſion, "on the ſecond day," it is intimated, that a debtor may redeem a pledge by the payment of the principal only on the ſecond day; on the ſubſequent day or later he muſt pay the debt with intereſt: but, if the ſtipulated period be unexpired, he cannot redeem the pledge: for that is ſuggeſted by the phraſe, "on the ſecond day," and by the condition, as ſpecified by CHANDE´SWARA, that it be unlimited as to time; and that is not contradicted in the work of HELA´YUDHA.

"THE ſecond day" is mentioned, becauſe a pledge may be redeemed on the ſecond day by a debtor tendering the principal only without intereſt; muſt not a pledge be alſo releaſed, when a debtor tenders the principal with intereſt, before the fixed period have expired? No; as it is directed, that ſtipulated intereſt exceeding the rates preſcribed by law ſhall be paid, when it has been *expreſsly* ſtipulated, ſo the enjoyment of a pledge is reaſonable for ſo long a period as has been *expreſsly* ſtipulated. On this reflec-

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tion CHANDE'SWARA has ſaid, "a pledge to be uſed for no definite period:" and this muſt be acknowledged even by HELA'YUDHA; for the following text is expounded, "what has not been held to the cloſe of its term."

CV.

VRĬHASPATI:—WHEN a houſe or field mortgaged for uſe has not been held to the cloſe of its term, neither can the debtor obtain his property, nor the creditor obtain the debt.*

HOWEVER two caſes have been ſtated by two authors, in which the debt may be diſcharged by payment of the principal only. Such is the difference.

IF the creditor be dead or abſent, YA'JNYAWALCYA has ordained, that the pledge may be redeemed by payment of the debt to his ſon or other repreſentative. The ſame *legiſlator* propounds another caſe.

CVI.

YA'JNYAWALCYA:—OR appraiſed at the value it then bears, it may remain with the creditor, exempt from intereſt.

THE pledged chattel, then appraiſed by men ſkilful in valuation, may be fixed in the creditor's poſſeſſion, with the atteſtation of witneſſes. Thence forward the principal, though not paid, carries no intereſt; for the debt is in a manner diſcharged by the appraiſement of the pledge. If the creditor be not at hand, the debtor may redeem the pledge from his ſons or other *repreſentatives* and pay the debt to them, or he may fix the pledge in the creditor's hands at the value it then bears: the particle "or" intends this alternative.

AN alternative is of two ſorts, optional or regulated by the law. "Optional" may be inſtanced in written contracts and atteſtation; at the option

* See the gloſs on this text cited again at v. CXVIII.

of the creditor the debt may be delivered with a writing or with an atteſtation: "regulated *by the law*" may be exemplified in *debts* quadrupled or octupled; quadrupled, if the loan conſiſted of cloths or the like; octupled, if clarified butter and the like were lent: and here an alternative ariſes in reſpect of *legal* regulation.

CHANDĒSWARA intends only a regulated caſe. For example; if the creditor be dead, and his ſon or other heir be preſent, the pledge may be redeemed by paying the debt to him only. By parity of reaſoning the ſame *may be done*, if the creditor reſide in another country, if he be confined by the king, have abſconded through fear of the king or the like, be afflicted with diſeaſe, be inſane or the like. Conſequently, when a competent creditor is abſent, and his ſon or other *repreſentative* is preſent, if the debtor can redeem the pledge from the ſon or other *repreſentative*, and the ſon or repreſentative can accept payment from the debtor, he may redeem the pledge by payment of the debt to that ſon or repreſentative. This is one caſe. But if the ſon or other heir reſide abroad with the creditor; or if the creditor be dead and his ſon or heir reſide in another country, or be confined by the king, or have abſconded; or if the ſon or heir ſay, "my father, who reſides in another country, knows all the circumſtances, I am totally uninformed;" or if the creditor or debtor diſpute the matter; in *all* theſe caſes the debtor muſt fix the pledge in the hands of the creditor, appraiſed at the value it then bears. This is the ſecond caſe.

IF he and his family reſide in another country, how ſhould mortgaged land or the like be fixed in the hands of the creditor? It is anſwered, 'through him, who tranſmits the produce of land or the like ſituated in one province, to a creditor reſiding in another province, ſuch a pledge is enjoyed: or, in whatever manner the pledge was previouſly poſſeſſed, even ſo it may be fixed in his hands'. But this caſe ſuppoſes the debtor's wiſh to part with the pledge by ſelling it, or *to redeem it* by borrowing money elſewhere.

THUS, if the creditor be not ſo circumſtanced, that he can reſtore the chattel, but the debtor, to ſell it, or having borrowed money elſewhere,

wiſhes

wiſhes to redeem the pledge, what muſt be done? For this YA´JNYAWALCYA provides, " or appraiſed, it may remain with the creditor."

CHANDESWARA.

SINCE the creditor is not preſent and competent, the debtor's wiſh cannot be gratified. But, if the debtor have no deſire to *redeem the pledge*, by whoſe deſire ſhould the pledge be redeemed? It muſt wait the debtor's wiſh: and his deſire to part with the pledge is ineffectual without ſome mode of payment of the debt. It muſt therefore wait his ſale of the pledge, or his borrowing money elſewhere. This, however, is merely illuſtrative; for the ſame rule is appoſite, if the debtor wiſh to redeem the pledge, having obtained money in alms, by commerce, or the like.

ALTHOUGH the pledge cannot be ſold to another while the debt remains undiſcharged, ſince redemption of the pledge without payment of the debt is denied by the text of VRĬHASPATI (CII), ſtill, if he could give confidence to the purchaſer by a ſurety or otherwiſe, the debtor may have received the price. To ſuch a caſe this rule is applicable. The two caſes, as mentioned by YA´JNYAWALCYA and connected by the word " or " which intends the regulated alternative, muſt be underſtood only when the creditor is preſent and competent.

IN the *Dípacalicá*, `SU´LAPA´NI obſerves, if the pledge for any reaſon be not reſtored to the debtor, the pledge, appraiſed at its then value, may remain in the houſe of the pledgee, exempt from intereſt. The expreſſion " for any reaſon" comprehends other caſes alſo, ſuch as that ſtated by CHANDE´SWARA. For example; the creditor is preſent and competent *to civil tranſactions*, but the pledge, either gold weighing a hundred *palas*, or a horſe which had been ſeen by many perſons, is at the creditor's houſe in another province, and he cannot immediately go thither; or a ſlave or the like, delivered as pledge, has gone to another country on buſineſs; in theſe caſes, the pledge ſhould be appraiſed by men converſant with the value of things, after learning both from the debtor and creditor, that the gold is unmixed with other metals and ſo forth, or that ſuch is the age or ſtrength of the horſe or ſlave, and ſo forth; and the debtor ſhould fix the pledge in the

hands

hands of the pledgee, declaring " the pledge aſcertained at ſuch a value by appraiſers " and witneſſes, or certified in writing, ſhall remain in thy poſſeſſion." So, in other caſes alſo. Ultimately there is no contradiction between thoſe *authors*. However, the appraiſement is made in ſuch a caſe by deſire of the creditor, or debtor, or both. This exhibits a portion *of the ſubject*, which CHANDÉSWARA alſo has treated partially.

BUT, if a period were *ſtipulated*, the creditor entertains no *ſuch* wiſh before the period expire; or, if he do, he has no right to the uſe of the pledge: and intereſt cannot be forbidden at the will of the debtor. When the period has expired, the debtor's *option* prevails. At his choice the pledge may be redeemed, or a value affixed to it; for, if he do not then redeem it, his property is deveſted (CXII). But in a caſe unlimited as to time, the redemption, or foreclosure, of the mortgage depends ſolely on the will of the debtor. To expatiate would be vain.

HERE the valuation of a pledge only is mentioned, not its ſale. In this caſe, the creditor returning from abroad may reſtore the pledge on receiving ſo much money *as was due when the pledge was valued.* Herein the *Retnácara* concurs. The ſame ſhould be underſtood in the *propoſed* caſe of a ſlave, and alſo in other caſes. It ſhould be here obſerved, that, if the pledged ſlave or other pawn, having grown old or the like, bears a leſs value when the creditor, returning from abroad, reſtores the pledge, than was the value at the time of appraiſement, the loſs muſt fall on the creditor alone; for a value was then affixed merely that the principal may bear no further intereſt. But if the value be enhanced by circumſtances of ſeaſon or the like, the profit does not accrue to the creditor; for YAJNYADATTA has no true property in the value of a chattel belonging to DÉVADATTA. But the loſs falling on the creditor is the conſequence of his fault in not then reſtoring the pledge. In this there is nothing incongruous.

IF the value of land or other mortgaged property, which is permanent, be reduced from the circumſtances of the times or the like, what is the rule? In that caſe alſo the loſs falls on the creditor; ſince the debtor may ſay, " the value is only now reduced in conſequence of a dearth or the like; when I offered

offered to redeem the pledge, it bore a greater value." By ſpecifying "the value it then bears," the ſage intimates generally a *poſſible* loſs falling on the creditor; *he does* not *ſtate* ſpecially, that in ſome inſtances no loſs falls on the creditor. But in fact all this muſt be underſtood of the natural price of commodities: if the debtor, redeeming the pledge from the creditor on his return from abroad, ſell it for a low price through the exigence of his affairs, he is not entitled to recover the difference of price from the creditor; but only when the juſt price *is reduced* by circumſtances of ſeaſon. This ſhould be held reaſonable.

WHEN mortgaged land or the like has been appraiſed, by whom ſhould it be enjoyed? And is a pledged ſlave or the like to be employed or not after the appraiſement? On theſe doubts it is ſaid; the uſe and profit of a pledge is the intereſt on it; intereſt ceaſing, it follows, that the *uſufruct* ceaſes. If the pledge were ſuch as might be uſed *without detriment (for inſtance*, a tree or the like), but if the uſe of it were not authorized, the uſe of it was previouſly unlawful; ſurely now, after the appraiſement, it is *unlawful* as before. The pledge being nevertheleſs uſed in the ſubſequent period, half the benefit muſt be paid to the debtor; but uſed though *expreſsly* forbidden, the whole profit muſt be made good to the debtor. If he aſſent to it, uſufruct muſt be admitted as authorized by him. But the expreſſion of YA'JNYAWALCYA, "may remain with the creditor," has been expounded, may be fixed in the creditor's *poſſeſſion or* enjoyment; ſuppoſing the caſe where the uſufruct is not forbidden. Accordingly SU'LAPA'NI has ſaid, 'the pledge may remain in the houſe of the pledgee, exempt from intereſt;' not, 'it may remain in the pledgee's *poſſeſſion or* enjoyment.' Thus may the law be conciſely ſtated.

YA'JNYAWALCYA (XLVI) propounds a form of redemption of a pledge when the creditor is preſent. This *text* concerns the caſe where the thing was pledged on theſe terms, "when the double ſum has been received from the uſe of the pledge, it ſhall be reſtored by thee." That is, provided intereſt were ſtipulated; elſe *the pledge muſt be reſtored* on payment of the principal only. This is called in the world a voidable pledge.

The *Retnácara.*

THE very ſame import is ſtated in the *Dípacalicá.* It may be thus explained;

plained; a pledge delivered on this ſtipulation, "I will redeem this pledge by paying the debt at the cloſe of two years," is a pledge to be releaſed at a ſpecifick term; namely, at the term of two years. In like manner, a pledge ſtipulated to be reſtored, when twice the amount of the ſum for which it is lodged ſhall be received from the uſe of it, is a pledge to be releaſed on a ſpecifick condition: this is called "a voidable pledge." "Provided intereſt were ſtipulated;" provided it bore intereſt; provided intereſt were agreed on. "Elſe," if no intereſt were ſtipulated, the pledge muſt be releaſed "on payment of the principal only," that is, when the ſingle ſum has been received. Or, if the agreement were in this form, "enjoy the pledge until the principal ſum be paid;" or in this form, "enjoy the pledge until twice the principal ſum be paid" (provided that *in the laſt caſe* the debtor pay intereſt out of other effects); the creditor ſhall enjoy the pledge ſo long as the principal ſum remain undiſcharged.

If the pledge be uſed, *the price of it* muſt alſo be paid.

The *Mitácſharà*.

The value of the uſe muſt be paid to the debtor. Such being the caſe, if the agreement run in this form, "enjoy the pledge until three times the principal be paid," what is the rule in that caſe? Twice the amount of the principal is alone approved by law: hence the ſubſequent uſe of the pledge is improper. If it be alleged, it is not improper, being of the nature of ſtipulated intereſt; the anſwer is, even in the caſe of ſtipulated intereſt, the law has not authorized the receipt of more than double the principal paid at once.

CVII.

Vishnu: — That immoveable property, which has been delivered, *reſtorable* when the ſum borrowed is made good, the creditor muſt reſtore when the ſum borrowed has been made good.

There is no difficulty in referring this text to a debt exempt from intereſt.

CVIII.

CVIII.

VRĬHASPATI:—WHEN land or other *immoveable property* has been enjoyed, and more *than the principal debt* has accrued therefrom, then, the principal and intereſt having been realized, the debtor ſhall obtain his pledge.

WHEN land or the like has been enjoyed, and by that enjoyment more than the amount of the principal, that is, intereſt, *has been received*, ſurely the principal *ſum* has been obtained: repeating this, the ſage propounds the law, "the principal and intereſt *having been realized*" &c. The appoſition is connective. CHANDE'SWARA delivers a ſimilar gloſs. This muſt be underſtood only when it was agreed, that the pledge ſhould be reſtored after the principal and intereſt have been realized; for it coincides with the text of YA'JNYAWALCYA above cited. The ſame *legiſlator* expreſsly declares it.

CIX.

YA'JNYAWALCYA:—WHEN a debtor mortgages land to his creditor, declaring and ſpecifying, "this ſhall be enjoyed by thee, even though intereſt ceaſe *on becoming equal to the principal;*"

2. That pledge ſhall be reſtored to the debtor, whenever the principal and intereſt ſhall have been received. This is declared to be the legal rule concerning pledges for loans on intereſt.

"SPECIFYING;" aſcertaining. "Although intereſt have ceaſed;" although it have reached the limit of intereſt, the pledge ſhall be nevertheleſs enjoyed until the principal and intereſt be paid.

The *Retnácara*.

IF the pledge be delivered with an agreement, that it may be uſed even after the period, in which intereſt accumulates to its higheſt limit, the enjoyment of it is reaſonable even after the period in which the higheſt intereſt accumulates. In anſwer to the queſtion, how long may it be uſed? This

text

text particularly ſtates, ſo long as the principal and intereſt are not acquitted by the uſe of the pledge, the creditor may uſe it. The import of the text may be thus ſtated on a full conſideration of the gloſs delivered in the *Retnácara*.

It ſhould not be affirmed, that this text concerns only the caſe of a ſpecial agreement, and the preceding text (CVIII) the caſe where no ſpecial agreement has been made: and thus, if no period have been ſtipulated, the creditor muſt releaſe the pledge when the debt is doubled; but, in the caſe of a ſpecial agreement, the pledge ſhall be enjoyed until the debt be diſcharged, and the text permits the pledge to be ſo long enjoyed. The following rule of Vishnu denies the redemption of the pledge without a ſpecial agreement, even though the debt be doubled.

CX.

Vishnu:—Even though the utmoſt intereſt have accumulated, *the creditor need* not *reſtore* an immoveable pledge, without a ſpecial agreement.

The meaning of the text (CIX) is this; when the debtor delivers a pledge declaring and ſpecifying, "this land ſhall be enjoyed by thee (the creditor) even though intereſt ceaſe *on becoming equal to the principal*," (for the intereſt has accumulated *to its utmoſt limit*, when intereſt ceaſes;) that pledge *ſhall be reſtored*, when *the principal has been* received. It is conſequently ſuggeſted, that a pledge may be uſed until the principal ſum be diſcharged, even though intereſt have *regularly* ceaſed. Or the text (as ſome remark) may be expounded in a different import. When a pledge is delivered with an agreement, that it ſhall be enjoyed even though intereſt ceaſe; in that caſe, when the intereſt has been received from the uſe of the pledge, it muſt be reſtored, if the principal be diſcharged out of other funds; but if not, the pledge may ſtill be retained.

CXI.

Ya'jnyawalcya:—But a pledge ſhall be enjoyed until actual payment of the debt. *

* See v. CCXXIX.

If a debt, amounting to one hundred *ſuvernas*, be nearly diſcharged, but five *ſuvernas* remain due, the ſenſe of the text is, *that* ſo long *as that remain unpaid, the pledge ſhall be retained.* No law directs, that the half or quarter of the pledge ſhall be reſtored. On the other hand, in the foregoing gloſs on the text cited from VRĬHASPATI (CII), it is not poſitively ordained, that it may not be reſtored. But this ſeems a great diſparity. If any particular practice ſubſiſt in certain countries, it ſhould be deemed ſatisfactory. This ſhould be held by the wife. In fact, it follows from the condition ſtated in the text of VRĬHASPATI above cited (CII), "againſt his will," that the pledge may be reſtored if the creditor conſent, and ſuch conſent is proper in this caſe; ſince the uſe of a pledge adapted to a large ſum is improper, when a ſmall ſum only remains due.

How is the principal or the intereſt liquidated from the uſe of the pledge? The form may be thus ſtated: when arable land has been mortgaged, and a debt contracted, in the month of *Srávana*, the produce being gathered in the month of *Pauſha*, and the intereſt due from *Srávana* to *Márgaśírſha** being liquidated from the price of that *produce*, if the amount exceed *the intereſt*, the principal may be liquidated; if it be deficient, payment will be *taken* from the value of the produce obtained in the following year. If it be annually deficient, the pledge may be enjoyed for a longer time than ſix years and eight months, even until the intereſt be fully diſcharged: afterwards, on payment of the principal, the pledge ſhall be delivered up. But when the *exact* amount of intereſt, neither more nor leſs, is obtained from land in the month of *Jyaiſht'ha* (the debt being contracted on the mortgage of inhabited ground, *the rent of which is payable in that month*; a period of thirteen years and four months muſt be completed: in that caſe the debt is diſcharged with intereſt, on receipt of half or a part only of the amount of rent for the current year.

THIS occurs in the caſe of legal intereſt at the rate of an eightieth part *of the principal.* But the uſe of a pledge, until the principal ſum be paid from other funds, occurs in the caſe of intereſt by enjoyment. If the principal be paid in the month of *Jyaiſht'ha*, the rent of the mortgaged ground

* *Agrahâyana.*

muſt be received in due proportions by both parties.* As a pledgee may not receive the whole rent in the month of *Pauſha*, when the owner, contracting the debt in the month of *Cártica*, mortgages land which affords *annual* rent in the month of *Pauſha*, but ſhall receive the proportion of rent for two months; ſo, if payment be made, after ſome years, in the month of *Srávana*, he ſhall receive the proportionate rent for ſeven months of the current year; that is ſeven parts of the whole rent divided into twelve parts. But if he receive the whole rent, inadvertently, in the month of *Pauſha* of the firſt year, then deducting a ſum ſufficient to diſcharge the intereſt, the ſurplus ſhould be applied to liquidate the principal. In ſuch circumſtances, the principal being annually diminiſhed, it is fully liquidated in a ſhort period. If the land cannot yield ſo much rent in a ſubſequent year, the debtor muſt make good the ſum from his own funds in conformity with the agreement. If it produce a ſurplus, that muſt be applied to the liquidation of the principal; and intereſt ſhall not ſubſequently be paid on that *part of the principal*.

YET, if the agreement bore, that the pledge ſhall be enjoyed until the principal be paid, the ſame rule prevails in the caſe of a mortgage of inhabited ground; for, ſince rent ſhould be daily receivable for the occupancy *of the ground*, it is proper, that the creditor ſhould receive the rent accruing from the date of the loan. If land or the like be mortgaged, which yields rent on account of the produce, receivable by cuſtom on a day certain, and if the payment be ſettled for the month of *Pauſha*, then, although the whole rent for that year would *otherwiſe* have been received, yet, if the debt be paid in the ſubſequent month of *Márgaśírſha*, it appears from the reaſon of the law, that the creditor ſhall not receive the rent of that year; ſince a day has been ſet for the payment of rent on account of produce, and the land was poſſeſſed by the creditor on that day in the year when the loan was made, but had been redeemed before that day in the year when the debt is paid. Still, however, as an inconſiſtency would occur in practice, becauſe no intereſt would be received, when a debt, contracted on the ſecurity of ſuch a mortgage in the month of *Mágha*, was diſcharged in the earlier month of

* BECAUSE the full amount of intereſt was realized in the eighth month of the ſeventh year.