beings." What is due to deities, holy ſages and progenitors, is a debt due to ſuperiour beings; debts due to men are due to inferiour beings. But HELAYUDHA, conſidering this as ſolely relating to debts due to human beings, expounds the terms, degrading debts *due* to creditors. In the *Retnácara* it is remarked, that they are degrading by reaſon of the extreme ſin conſequent to debts undiſcharged.

BUT MISRA cites the text of CA'TYA'YANA (Book III, Chapter IV, v. XV): it is therefore his opinion, that an independent ſon, or one who has neither father nor mother and is not under the age of ſixteen years, is liable for the payment of debts. It may be here noticed incidentally, that "until his ſixteenth year," ſignifies to the *neareſt* limit of his ſixteenth year: conſequently he is a minor until the cloſe of his fifteenth year. The conſtruction of the text is this; 'an adoleſcent is alſo called a minor.' But *ſtrictly* the term *(pógenda)* is applicable only to a child under the age of ten years, agreeably to the text cited by SRI'DHARASWA'MI'.

INFANCY extends to the fifth year, childhood is limited to the tenth; adoleſcence continues to the ſixteenth year, when puberty *commences*.*

"UNDER eight years," or before the commencement of his eighth year, he is an infant *(śiśu)*: and he alſo is a minor, *but* diſtinguiſhed *from an adoleſcent*. Another is alſo diſtinguiſhed, called a young infant *(cumára)* to the commencement of his fifth year; agreeably to the *ſame* text cited by RAGHUNANDANA, "infancy extends to the fifth year." The uſe of this diſtinction regards penance or expiation and the like. But here minority muſt be taken to the end of the fifteenth year; and this muſt be underſtood of a computation by vulgar or *ſávana* time, from the day of his birth. Afterwards he is adult or competent to affairs, as is expreſsly declared by CA'TYA'YANA. But a certain author has remarked, that, if a youth become converſant with

* APART only of the verſe was here cited. The diſtinctions may be thus recapitulated: a minor *(bála)* is in early infancy to the end of his fourth year and called *cumára;* in law he is an infant to the end of his ſeventh year and in this period of his life is called *śiśu;* he is called a boy *(pógenda)* from his fifth, to the end of his ninth, year; and his adoleſcence as *ciśóra* continues from the tenth, to the end of the fifteenth, year.

affairs

affairs before that age, in conſequence of auſpicious fortune merited in a former exiſtence, or if a youth remain unacquainted with affairs beyond that age, through ill auſpices, both theſe ſhould be conſidered accordingly *as adult or as under age*. But ſages have mentioned an age, near to which puberty may be expected.

FROM all this detail it appears, that the ſon ſhall alſo dwell hereafter in a region of horrour, if he do not redeem his father from debt.

CLXXXIX.

VRĬHASPATI:—A HOUSEKEEPER ſhall diſcharge a debt contracted by his uncle, brother, ſon, wife, ſervant, pupil, or dependants, for the ſupport of the family *during his abſence*.

IT is here implied, that a debt, contracted even by others for the ſupport of the family, muſt be diſcharged by the houſekeeper.

The *Retnácara*.

THE meaning therefore is, that, ſince the terms conclude in the plural number, which conveys the ſenſe of "and the like," *therefore* maternal uncles and the reſt, as well as other perſons, are comprehended in the text. The principle of the law may be here ſtated; ſhould a ſon competent to affairs be at hand, a debt, contracted by divided brethren or the like unauthorized by him, is not valid: but, in the caſe of parceners, if any one of five brothers forbids the contracting of the debt, and is able to ſupport the family by other means, the debt, contracted by another brother, is due by the borrower alone, and ſhall not be paid by him who oppoſed the debt. Yet, if the money *ſo* borrowed be uſed by him who oppoſed the debt, or by his dependant, being unable to ſupply ſufficient funds for the ſupport of the whole family or of his own immediate dependants, it muſt be diſcharged by him. A little has been thus mentioned on a wide ſubject. In fact the whole relates to fraudulent practice. Yet if he, who reſiſted the debt, maintain his dependants out of the money borrowed againſt his conſent, without any fraudulent practice, he muſt nevertheleſs diſcharge the debt.

CXC.

MENU:—SHOULD even a ſlave make a contract *in the name of his abſent maſter* for the behoof of the family, that maſter, whether in his own country or abroad, ſhall not reſcind it.

"A SLAVE;" a mancipated ſervant and the like. "That maſter," literally the ſenior, but here ſignifying his lord. The *Retnácara.*

BY the term uſed *(jyáyas)* is ſignified beſt, as well as eldeſt; but here metaphorically the maſter. This is expreſſed in the gloſs, "but here ſignifying his lord." In fact, he is beſt or preeminent, ſince he ſupports the family.

CXCI.

NÁREDA:—WHATEVER debt has been contracted for the uſe of the family by a pupil, an apprentice, a ſlave, a wife, or an agent, muſt be paid by the head of the family.

"AN agent;" one who acts *in his ſervice.* "A debt;" money taken up *on loan.* The *Retnácara.*

"A PUPIL;" one, who learns texts of ſcripture. "An apprentice;" a ſtudent *in general.* "A ſlave;" born in the houſe of his maſter or the like. "An agent;" a hired ſervant or other perſon, who has engaged in ſervice for a day, a month, or the like. By this text it is declared, that a debt, contracted for the behoof of the family, by any perſon whomſoever connected with that family, is valid.

CXCII.

VISHNU:—*A debt, of which payment has been* previouſly promiſed, or *which was* contracted by any perſon for the behoof of the family, muſt be paid by the houſekeeper.

"A DEBT" muſt be here ſupplied. A debt, even though contracted for the

the purpoſes of traffick, but of which payment has been promiſed by the houſekeeper, muſt be paid by him; but a debt, contracted for the benefit of the family by any perſon whomſoever, ſhall be paid by the houſekeeper. Such is the expoſition of the *Retnácara*. "Promiſed" here ſignifies "of which payment has been promiſed."

CXCIII.

CA'TYA'YANA:—WHAT has been borrowed for the benefit of the family, or during diſtreſs, (while *the principal* was diſabled, ſeized *by the king*, or afflicted with diſeaſe,) or in conſequence of a foreign invaſion,

2. Or for the nuptials of his daughter, or for funeral rites; all ſuch debts contracted by *one of* the family, muſt be diſcharged by the chief *of that family*.

"CHIEF" is in the ſixth caſe with an active ſenſe. It muſt therefore be diſcharged "by the chief" *of that family*.

The *Retnácara*, RAGHUNANDANA and others.

"DISABLED;" happening to be then incapable of earning wealth. "Seized, or afflicted with ſickneſs" *(grĭhíta-vyádhité)*; "ſeized," that is, ſeized by the king; the terms, "ſeized" and "diſeaſed," are joined in appoſition: the ſenſe therefore is, while the principal is confined by the king for ſome offence, or is afflicted with diſeaſe. Or the appoſition may be in the form named *carmadhárya*, the firſt term being *grĭhí* houſekeeper, and the laſt term, *itah* gone, as in the example, 'having bathed and being ſmeared *with ſanders wood*;' or in the ſame form of compoſition but reſolvable into this ſenſe, "and that houſekeeper be gone," that is, be abſent. By the import of the word houſekeeper, the religious anchoret is excluded; for an anchoret does not return to his houſe. Since he could not diſcharge a debt, the term taken generally would be unmeaning; therefore it is limited by the annexed term, houſekeeper.

OR the text may be read *grĭhita-vyàdhicè*, contracting a diſeaſe; an appoſition

ſition in the form called *bahubríhi*, inſtanced in the expreſſion "a monkey aſcending a tree." Should the principal be ſo circumſtanced, a debt, contracted by any perſon connected with him (the text muſt be ſo ſupplied), is *a debt* contracted during diſtreſs. All ſuch debts muſt be paid by the chief of the family: this conſtruction will be ſuggeſted by the ſubſequent verſe. A debt may alſo be contracted by a perſon unconnected with him, employed by one who is connected with him: ſuch is the practice.

"In conſequence of a foreign invaſion;" a debt, contracted for the purpoſe of expatriating by one who abſconds through fear of a foreign prince, is *a debt* contracted during diſtreſs. "For funeral rites;" for the obſequies of a parent or the like.

Consequently, the chief of the family being diſabled, a debt, contracted by any perſon connected with him, for the ſupport of that family, for guarding againſt the violence of a king, for the cure of a diſtemper, and (if *grĭhíta* be expounded abſent houſeholder) for defraying the travelling charges of one, who wiſhes to expatriate with the view of acquiring wealth, for relief from a general calamity, for the celebration of a daughter's nuptials, or for the performance of obſequies for a parent or the like, muſt be paid by that chief of the family. Such is the ſenſe. It is illuſtrative of a general meaning, and intends any debt contracted for the accompliſhment of ſome buſineſs, which being omitted even in conſequence of poverty, ſin or calamity muſt enſue.

Grĭhítam vyádhité is a reading found in ſome places, particularly in the *Dáyatatwa*: the ſenſe is obvious; "*contracted during ſickneſs.*"

The principle of the law ſhould be noticed: in the caſe of a daughter's nuptials, for ſo much expenſe only, as preſerves from infraction the uſage of the principal's family, may another contract debts; not for the celebration of ſplendid nuptials: the whole of what is borrowed for unauthorized expenſes, muſt be paid by the borrower; but expenſes, which are ſuitable to the uſage of his family, muſt neceſſarily be admitted by a maſter able to diſcharge them. Conſequently, ſhould he be ſeized with a diſtemper, or unwarily go to a foreign

reign land, a debt may be contracted by any perſon connected *with him*, to defray the expenſes required for ſuch a purpoſe, as eſtimated by five perſons. This may be apprehended by the wife.

MUST a debt, contracted for the behoof of the family, without the conſent of the principal, be paid by him or not? On this point CA'TYA'YANA propounds *a text already cited* (IX).

A DEBT contracted by a ſon, a ſlave, and the reſt, even without the aſſent of the abſent principal, for the maintenance of his family, that abſent principal muſt diſcharge: this BHR'IGU approves. Such is the conſtruction *of the text* (IX).

CHANDE'SWARA.

HERE it ſhould be noticed, that, in the expreſſion "even without his aſſent," the word "even" connects this caſe with that of aſſent. For inſtance; the chief of a family, intending a journey to a foreign country, thus addreſſes his ſon, ſervant, or the like; "the family muſt be maintained by thee, contracting debts, or otherwiſe obtaining funds;" or he went abroad with ſuch an intention *unexpreſſed:* in theſe caſes his aſſent is declared or implied. But, if it be not ſo, he does not aſſent; ſtill, however, the debt muſt be diſcharged by the chief of the family.

CXCIV.

NA'REDA:—A FATHER muſt equally pay the debt of his ſon, contracted either by his own appointment, or for the ſupport of his family, or in a time of diſtreſs.

"A TIME of diſtreſs;" a ſeaſon of calamity.

The *Retnácara.*

THIS ſhall be here diſcuſſed; when a father, afflicted with a diſeaſe, remains altogether at home; and his ſon, ſlave, or the like, contracts a debt for the ſupport of the family, but with the knowledge of the father; muſt the debt be in that caſe paid by the father or not? It is anſwered, three disjunc-

tive particles occurring in the ſentence, "either by his own appointment, &c." his own appointment and the reſt are ſtated as three grounds of payment, mutually unconnected. Conſequently, ſince *the borrowing* for the ſupport of the family is unconnected with the father's appointment, that debt muſt be diſcharged by the father in the caſe propoſed. In like manner "abſent," in the preceding text (IX), is illuſtrative of a general ſenſe.

It might be here obſerved, that, if the principal, when he went abroad, or when he was himſelf ſeized by a diſtemper or the like, forbad the contracting of debts, but his ſon or the reſt, ſlighting his commands, contract debts for the ſupport of the family, thoſe debts need not be paid in ſuch caſes by the father; for there can be no repreſentative in a matter expreſsly forbidden by the principal: and "unforbidden" muſt be ſupplied in the texts which notice debts contracted for the ſupport of the family. Let it not be objected, that inconſiſtence with approved uſage muſt follow, ſince a maſter, thus relieved from diſtreſs by money borrowed by his ſlave, even though forbidden by himſelf, would be exonerated from that debt. The money has been expended by the compaſſionate ſlave or lender, for a moral purpoſe. If the loan were made for the ſake of accumulating wealth, why did the party lend it in breach of an expreſs prohibition? For this fault, the loſs may fall on the ſlave or on the lender.

Again; if the maſter of the family forbid the contracting of debts by his ſon and the reſt for the ſupport of his family, and the ſon or other perſon, ſlighting that prohibition, do contract debts and ſupport the family, ſtill the ſame rule ſhould be affirmed. It muſt, however, be admitted, that the chief of the family is guilty of the offence conſequent on refuſing ſupport to his family. In fact, that debt ſhould in ſuch a caſe be diſcharged by the maſter of a family, who ſtrives to obſerve a virtuous conduct; but the king ſhall not compel him to pay it. Such in effect is the ſenſe. However, it is a great ſin on the part of him, who travels to a foreign country, *previouſly* forbidding the contracting of debts, without conſidering the neceſſary end of ſupporting his family. Here the fourth particle *(vá)* has a connective ſenſe, for it is declared that the particle *vá* denotes disjunction, compariſon and connexion. Conſequently the full meaning is, that the father ought to pay all ſuch debts.

CXCV.

CXCV.

CA'TYA'YANA:—WHAT a man has promiſed, in health or in ſickneſs, for a religious purpoſe, muſt be given; and, if he die without giving it, his ſon ſhall doubtleſs be compelled to deliver it. *

THAT, concerning which a man has declared, "this ſum muſt be paid by me to that man," or, in other words, what a man has promiſed, his ſon ſhall be compelled to deliver; but, if he die after delivering it himſelf, it ſhall not be *again* paid by his ſon: this the ſage declares, "if he die without giving it." It is intimated by the expreſſion, "for a religious purpoſe," that the ſon is under no neceſſity of delivering what has been promiſed to harlots or the like. The text is expounded by JÍMÚTA VA'HANA and others as relating to this ſubject.

BUT we thus expound it; the maſter of the family being gone to a foreign country, or diſeaſed, or the like, a debt contracted by his ſon, his ſervant or the like, and made known to him, muſt be paid by the chief of the family when he returns from that foreign country, or recovers from the diſeaſe. But, if he die without paying it, the debt muſt be diſcharged by his ſon, or by the ſucceſſor to the eſtate, or other perſon liable to the payment *of it*; on failure of the firſt reſpectively, by the next in ſucceſſion. "For a religious purpoſe," or from a religious motive; that is with a view to the ſtrict obſervance of duty: the conſtruction is, he muſt pay it on that account; meaning, that otherwiſe duty is violated.

BY all this detail the obligation on a ſon to diſcharge his father's debt has been propounded. The payment of a debt contracted for the ſupport of the family has been incidentally mentioned. A diſtinction in regard to the payment of debts by a grandſon ſhall be now delivered.

CXCVI.

CA'TYA'YANA:—A DEBT of the paternal grandfather, which is proved, or which is partly liquidated, muſt be diſ-

* Cited in Book IV, Chapter IV, at v. III, and there expounded as relating to gifts.

charged

charged *by the grandſon;* but never ſhall a debt, contracted for immoral uſes, or which was conteſted by his father, be paid *by the grandſon.*

"PROVED;" eſtabliſhed by evidence. "Which is partly liquidated;" which his father had begun to pay, but of which a balance remains due. "Contracted for immoral uſes;" incurred for loſſes at play, for ſpirituous liquors or the like. Sums due for loſſes at play, for ſpirituous liquors and the like, ſhall be ſubſequently noticed. "Conteſted by his father;" which he diſputed, averring that it was not due by him. Such a debt need not be paid by the grandſon, according to the *Retnácara.*

"OR which is partly liquidated;" the particle may here bear a connective ſenſe. It conſequently connects the debt partly liquidated with that, which is proved to be due. But, in fact, "partly liquidated" is mentioned as confirming the certainty in reſpect of the debt. Accordingly another text, cited in the *Retnácara,* omits the terms "balance of a debt liquidated."

CXCVII.

CA'TYA'YANA: — BHR'IGU ordains, that a debt, devolving from the grandfather, which was proved, and acknowledged by the father, muſt be diſcharged by grandſons, if it were not contracted for immoral uſes, nor *already* paid by the ſons.

2. THE rule ſhall be the ſame in regard to the debts of the grandfather, which have not been diſcharged by *other* grandſons, nor by his *own* ſons: but a debt of the grandfather ſhall be paid by his grandſons without intereſt.

"PROVED;" eſtabliſhed by evidence. "Not contracted for immoral uſes;" not incurred for loſſes at play, for ſpirituous liquors and ſo forth. "Nor *already* paid;" not *already* diſcharged.

A DEBT of his grandfather, not paid by the ſons of the eldeſt ſon, nor

by

by his own father or uncles, muſt be diſcharged by another grandſon. Such is the ſenſe of the ſecond verſe. But a certain author propoſes a reading on the ſecond meaſure of this verſe, *na dattam vápi tat ſwatah* inſtead of *na dattam vápi tat ſutaih*, and expounds it, a debt of the grandfather, which has not been already paid or acquitted by the grandfather himſelf nor by his ſons,* the father and uncles *of the perſon in queſtion*, muſt be diſcharged by the grandſon. "*Swatah*" has the ſenſe of the third caſe.

CXCVIII.

CA'TYA'YANA: — AFTER the death of his father, debts *of his grandfather* muſt be carefully diſcharged by the grandſon; but a debt contracted by an anceſtor is not recoverable from the fourth in deſcent.

A DEBT, which was originally contracted by the fourth anceſtor or great grandfather, reaching his deſcendant, namely the great grandſon, recedes *or is not recoverable:* the great grandſon or remoter deſcendant need not diſcharge it. Such is the *literal* ſenſe according to the *Retnácara*. It follows of courſe, that the ſon or grandſon muſt diſcharge it.

CXCIX.

NA'REDA: — AN undiſputed debt of the grandfather, which has been ſucceſſively due by him and his ſons, but has remained undiſcharged by them, ſhall be paid by his grandſons; but it is not recoverable from a perſon, who is fourth *in deſcent from the debtor.*

"SUCCESSIVELY due;" due by the grandfather and father conſecutively. The *Retnácara.*

A DEBT, contracted by the grandfather, affects him in the firſt place, next his ſon, and laſtly his grandſon. "Proved," which occurs in pre-

* We muſt therefore read in the firſt meaſure "*putraih*" by ſons, inſtead of "*pautraih*" by grandſons.

ceding texts, has been explained 'eſtabliſhed by evidence.' In what does the proof conſiſt?

CC.

CA'TYA'YANA:—BUT, ſhould a conſiderable ſum be claimed, ſo much only as the creditor or claimant may prove by the evidence of witneſſes, ſhall he recover as a juſt debt.

IF a conſiderable ſum be claimed; if the claimant aver, "ſo much was borrowed of me by this man, or by his father, or his grandfather," and the borrower, his ſon, or grandſon, anſwer *the plaint* by denying its truth, ſo much only as the creditor juſtifies by the evidence of witneſſes, or proves to be due, ſhall he recover from the debtor; not the whole ſum, which he claimed *but does not prove*. Such is the explanation according to the *Retnácara*. Hence, if a large ſum be claimed, and part be proved and part unproved, it is not right to affirm, that the whole claim is falſe, becauſe it was partly falſe. This is declared *by the text*.

"BY the evidence of witneſſes;" a mere inſtance of evidence in general.

CHANDE'SWARA.

SINCE it is not ſpecified from whom it ſhall be recovered, it follows, that the whole of what is proved muſt be paid by him, whoever he be, by whom ſuch debts ought to be paid. But it muſt be paid without intereſt by a grandſon, as has been already noticed. On failure of a grandſon, the great grandſon or other perſon, who ſucceeds to the eſtate, muſt be underſtood in the regular order of ſucceſſion to heritage. VA'CHESPATI MISRA here obſerves, that ſuch debts only, as would be payable by a ſon, ſhall be paid by another heir and the reſt: but it ſhall be paid by theſe without intereſt; for intereſt has not been ordained in this caſe. Such only is the diſtinction.

WHAT debts of the father ſhould be paid by a ſon, MENU declares by excepting others (CLI).

"MONEY

"MONEY due by a ſurety;" this is reſtricted to ſureties for appearance or for honeſty. The *Retnácara.*

CONSEQUENTLY ſurety in the ſecond verſe denotes alſo *the ſurety for good behaviour.*

"IDLY promiſed;" an unprofitable gift *promiſed.*

The *Retnácara.*

IT in effect ſignifies a gift promiſed with no view to a moral purpoſe.

MENU:—FOR religious purpoſes gifts are made to prieſts; for the ſake of fame, to muſicians and actors.

"LOST at play (CLI);" due in conſequence of gaming. It conſequently ſignifies any debt contracted for a ſtake in playing with dice, or for the purchaſe of things uſed in gaming. If a fine to the king be incurred by gaming with dice, and that fine cannot be paid without contracting a debt, ſhould the offender contract a debt for that purpoſe, ſhall it be diſcharged *by his ſon* or not? The anſwer is, although that debt be occaſioned by gaming with dice, yet, being contracted in a time of diſtreſs, it muſt be diſcharged. "Due for ſpirituous liquors;" in conſequence of drinking ſpirituous liquors; borrowed for the purpoſe of *buying* intoxicating liquors, and ſo forth.

THIS is reſtricted to money due on theſe accounts by perſons not authorized to game or drink ſpirituous liquors.

The *Retnácara.*

GAMING is authorized by the ſyſtem of law on the feſtival called *dyútapratipet;* and the uſe of ſpirituous liquors is authorized by law on the celebration of the ſacrifice named *Sautrámeñi;* to certain mixed claſſes the *conſtant* uſe of ſpirituous liquors is allowed by cuſtom: a debt contracted by the father for theſe purpoſes, in ſuch circumſtances, muſt be paid by his ſon. Such is the notion ſuggeſted in the *Retnácara.*

"WHAT

" WHAT remains unpaid of a fine or toll;" for inſtance, a fine being due to the king for ſome offence, if the father die after paying half the amount of that fine, the balance ſhall not afterwards be paid by his ſon. 'Nor what remains unpaid of a toll.' Toll ſignifies a duty of cuſtom payable at wharfs and the like. For example; the father, having obtained indulgence on the grounds of friendſhip or the like, has only diſcharged half of the regulated cuſtoms, which are paid to the king's officers by traders reſorting to markets or the like on the buſineſs of traffick; returning home he happens to die: in that caſe, the remainder need not be paid by his ſon. The ſame term *(śulca)* alſo ſignifies a nuptial preſent given to a bride at the time of her marriage, and the like.

CCI.

VRĬHASPATI:—THE ſons are not compellable to pay ſums due by their father for ſpirituous liquors, for loſſes at play, for promiſes made without any conſideration, or under the influence of luſt or of wrath; or ſums, for which he was a ſurety, *except in the caſes beforementioned;* or a fine, or a toll, or the balance of either.

SUMS due for ſpirituous liquors, or loſſes at play, money idly promiſed, and the balance of a fine or toll, have been already explained. A promiſe made under the influence of luſt, or under the influence of wrath, ſhall be ſubſequently explained.

The *Retnácara.*

MISRA expounds preſents idly made, preſents idly promiſed. He conceives, that, were they actually given, they muſt neceſſarily be delivered, becauſe the property of the father is deveſted.

CCII.

GOʹTAMA:—MONEY due by a ſurety, a commercial demand, a toll, the price of ſpirituous liquors, a loſs at play, and a fine, ſhall not involve the ſons *of the debtor.*

DEBTS

DEBTS originating in ſuretiſhip, commerce and the reſt ſhall not involve the ſons; they ſhall not be paid by the ſons of the debtor.

The *Retnácara*.

THIS appears on a curſory view to be the purport of the gloſs; a debt incurred by becoming a ſurety (for inſtance, a man has become ſurety, and, the debtor dying, the ſum becomes due by the ſurety; a debt ſo incurred), a debt contracted for commerce, for a toll, for ſpirituous liquors, for a loſs at play, for a fine, need not be paid by the ſon of the debtor; he ſhall only diſcharge a debt incurred on a moral conſideration, or for an uſual cauſe, or for the ſupport of the family.

VA'CHESPATI MISRA expounds "ſums for which he was a ſurety," ſums due by a debtor, for whoſe appearance or honeſty he was ſurety; theſe, and ſums become due by the father in commerce or the like, ſhall not involve the ſons. He expounds the text, ſums due by a ſurety for the appearance or honeſty of the debtor, becauſe he thinks the ſon of a ſurety for payment muſt neceſſarily diſcharge the debt, under the text of MENU (CL). Money due in commerce may be thus inſtanced: ſome perſon, making a contract with this man's father, delivered certain ſums of money to him, as the price of barley or the like, on an agreement in this form, "I ſhall receive an advantage above the quantity which may be equivalent to the ſum advanced at a price to be arbitrated by five perſons;" the vender dies, after delivering to the buyer goods equivalent to the advance at the arbitrated price; the remainder need not be delivered by the ſon. Again; the price of ſpirituous liquors, the coſt of dice and the like, a ſtake at play, a fine originally ſmall, or the balance of a large fine, need not be paid by a ſon after the death of his father.

BOTH theſe opinions ſhall be diſcuſſed: and firſt, the gloſs of the *Retnácara*. Since the word "debt" does not occur in the text of GOTAMA, what ſhould ſuggeſt "a debt contracted in conſequence of ſuretiſhip?" It would be inconſiſtent with the reaſon of the law. If the father were ſurety for payment, the debt, though contracted by a ſtranger, muſt be paid by his ſon; as is ordained in the ſyſtem of juriſprudence: how can it be reaſonable,

that the ſon ſhould not in this caſe diſcharge the debt though actually contracted by his father? It is alſo ſaid, that a debt, contracted on a commercial account, need not be paid by the ſon: how can that be pertinent? Why ſhould not the debt be paid by the ſon, who participates in the benefits of that traffick, or is *at leaſt* naturally competent to benefit by it? If the term *(śulca)* be explained a nuptial preſent inſtead of a toll, it has been already mentioned, that a debt, though contracted by another on this account, muſt be admitted by the maſter of the family; why ſhould not the ſon admit ſuch a debt contracted by his father? If it be explained a toll payable at a wharf or the like, that is a cauſe conſiſtent with uſage *and good morals;* it appears therefore, that it ought to be paid. Why ſhould not a debt, contracted for the payment of a fine, be diſcharged by the ſon? Since a man atones for his crime by paying the fine, a debt, contracted to diſcharge a fine, is contracted on a moral account. Let it not be objected, that this text, being placed under the title of debt, poſitively concerns debt alone; and, ſince it is a rule not to ſtrain a text, even money borrowed, or otherwiſe due, on account of a fine need not be paid by a ſon. In his gloſs on the text of MENU above cited (CLI), CULLŪCABHATTA ſays, after the death of his father a ſon is not liable for the payment of a fine or toll, or the balance of either, which was demandable from his father. He does not ſay, that a debt, contracted on account of a fine, need not be paid.

CCIII.

VYĀSA alſo declares:—NEITHER a fine, nor a toll, nor the balance due for either, ſhall be *neceſſarily* paid by the ſon of the debtor; nor any debt for a cauſe repugnant to good morals.

ON this text the authors of the *Retnácara* comment; ſince the balance of a fine is ſuggeſted by the *general* term "a fine," and is nevertheleſs repeated, the ſenſe muſt be, that, if the amercement be great, it muſt be paid, but not the ſmall arrear of ſuch a fine; but, if the amercement be ſmall, no part of it need be paid *by the ſon:* conſequently "fine," in this text, ſignifies an inconſiderable fine; and "toll," an inconſiderable toll. In like manner, ſince VYĀSA and MENU have noticed, under the title of debt,

fines

fines and the like which are not debts, it is not reaſonable to explain the words fine and toll, which occur in the text of GŌTAMA, as ſignifying debts contracted for ſuch cauſes. Conſequently "debt," in the gloſs of the *Retnācara*, ſignifies *money due*, *or* ſums ſimilar to debts. It therefore coincides with the gloſs of MISRA. Or the text of GŌTAMA may be expounded in this manner. The terms *may be connected* and ſignify a commercial toll, or duties payable at wharfs and the like. "Commercial toll" may nevertheleſs intend nuptial preſents alſo.

THE expreſſion in the text of VYĀSA (tranſlated, "any debt for a cauſe repugnant to good morals") is explained by MISRA, 'excluded from uſual cauſes.' Conſequently that debt, which is contracted for ſome civil purpoſe conſiſtent with the preſcriptive uſage of good men, muſt be paid by ſons and the reſt; but if it be the reverſe, it need not be diſcharged.

IN fact, the import of the expreſſion uſed by VYĀSA is this; after the death of the father, a fine due by him need not be paid by his ſon; ſurely the balance of a fine need not be paid: but, if the ſon, erroneouſly paying a fine to the king, have left ſome part of it undiſcharged, and be now impleaded by any man, that fine, due by the father, was not payable by the ſon, and therefore he ſhall not diſcharge the balance of it. Nor ſhall he receive back what he had paid to the king: the ſecond term is only propounded to forbid the payment of a mere balance. The difficulties, which will be noticed, may be accordingly removed.

THEY are as follow. Among the many various fines aſcending to the higheſt amercement, it is difficult to determine, which ſhall be deemed conſiderable, which inconſiderable: and no reaſon appears, why an inconſiderable fine ſhould not be paid, and why a conſiderable fine ſhould be paid. Again; if a very ſmall part of the greateſt fine have been paid by the father, it is agreed on all hands, that his ſon ſhall not be compelled to diſcharge the remainder: but in another caſe, he muſt diſcharge the whole fine due by the father, amounting to ſomewhat leſs than that *greateſt fine*; which forms a great diſparity. This and other *objections may be urged*. A debt, contracted for the making of a garden, pool, or the like, undertaken on religious conſiderations, muſt

be

be conſidered as incurred for religious purpoſes. It appears, that a debt, contracted for the ſtructure of a houſe, a garden or the like, to be enjoyed by future generations, or for increaſe of wealth *by commerce*, muſt be paid by a ſon, who enjoys the benefit of it, or is competent to enjoy it. Even a debt, contracted for the ſake of wearing delicate apparel and the like, muſt be paid by a ſon, ſince it has not been enumerated among debts which he need not diſcharge. This is right. Some, however, think, that this, like money idly promiſed, need not be paid by the ſon.

HERE an incidental obſervation may be made: when a man, unable to make immediate payment of tolls due at wharfs or the like, gives a ſurety to the king's officer, and both the merchant and ſurety afterwards die, it ſhall not in that caſe be paid by the ſon of the ſurety; for there would be great diſparity in requiring from the ſon of the ſurety payment of that, which need not be paid by the ſon of the merchant himſelf. Conſequently whatever muſt be diſcharged by the ſon of a debtor, that only need be diſcharged by the ſon of a ſurety for payment.

CA´TYA´YANA explains promiſes made under the influence of luſt or of wrath.

CCIV.

CA´TYA´YANA:—WHAT a man has promiſed, with or without a writing, to give to a woman who had another huſband before, let the judge conſider as a debt contracted under the influence of luſt:

2. But what has been promiſed to gratify reſentment by hurting *another* or deſtroying *his* property, let the judge conſider as *a debt* incurred under the influence of wrath.

HENCE the rule cannot be ſtrained.

MISRA.

CONSEQUENTLY, when the expreſſion, "incurred under the influence of luſt,"

luſt," is taken in its literal ſenſe; what is promiſed by a man to his own wife, might be conſidered as a debt incurred under the influence of luſt: to prevent ſuch wreſt, CA'TYA'YANA has propounded this particular explanation.

WHAT has been promiſed, with or without a written engagement, to a woman who had another huſband before, or, if that ſuffice not, what has been borrowed and given to her, is a debt contracted under the influence of luſt. The expreſſion, "a woman who had another huſband before," intends only a woman not *legally* married to the giver.

The *Retnácara*.

Is not that, which is promiſed to a woman who had another huſband before, alone conſidered as granted under the influence of luſt; why ſhould the author add "borrowed and given to her?" The objection is ill founded, ſince "debt" would be unmeaning. "Not legally married" ſignifies not legally married to the party himſelf. Conſequently whatever is promiſed, or borrowed *and given*, for the abduction of a woman, with whom intercourſe is criminal, muſt be conſidered as a debt incurred under the influence of luſt.

THE ſecond verſe is explained in the *Retnácara*; what is borrowed to give away for the purpoſe of deſtroying another's property, or injuring another man, through reſentment, is a debt incurred under the influence of wrath. Here debt muſt be underſtood, to complete the ſimilarity between engagements made under the influence of luſt and of wrath. The conſtruction therefore is, "that, which has been ſo promiſed, let the judge conſider as a debt incurred under the influence of wrath." It was firſt promiſed, and afterwards borrowed and given. Hence, reſentment being rouſed by mutual contention in reſpect of ſome effects, one promiſes them to prieſts, declaring, "I will give this to a prieſt;" not being able to give away thoſe effects, he wiſhes to give the value of them, but, unable to give it out of his own property, contracts a debt; that debt might be conſidered as incurred under the influence of wrath. To prevent ſuch wreſt, CA'TYA'YANA has propounded this explanation.

THESE alone are called promiſes made under the influence of luſt or of wrath before the debt was contracted.

The *Retnácara*.

THE meaning of the gloſs may be thus explained: when money has been promiſed to an adultereſs, or promiſed to gratify reſentment by injuring another or the like, it is curſorily explained, that ſuch are promiſes made under the influence of luſt or of wrath. Conſequently a debt contracted to fulfil ſuch a promiſe, and money ſo promiſed, need not be paid by the ſon or other heir. But we explain "a debt contracted under the influence of luſt," an obligation ſimilar to a debt ſo *incurred*; the ſimilarity conſiſts in the contract of payment. Conſequently that only, which was promiſed for the ſake of enjoying an adultereſs, conſtitutes an obligation incurred under the influence of luſt. Accordingly ŚU'LAPA'NI has delivered the following comment on a text of YA'JNYAWALCYA.

CCV.

YA'JNYAWALCYA: — A SON need not pay in this world money due by his father for ſpirituous liquors, for luſtful pleaſures, for loſſes at play; nor what remains unpaid of a fine or toll; nor any thing idly promiſed.

DEBTS of his father incurred on account of ſpirituous liquors, or for the enjoyment of another's wife, or undertaken on account of gaming, for a fine, or for duties at wharfs and the like, a ſon need not pay. "Father" is here illuſtrative, ſuggeſting alſo his mother.

ŚU'LAPA'NI.

HERE the expreſſion, "incurred for the enjoyment of another's wife," excludes a debt contracted from a moneylender; elſe the author would have ſaid, money borrowed for the ſake of obtaining another's wife.

THE author of the *Mitácſhará* has this gloſs: a debt incurred by a drinker of ſpirituous liquors, or under the influence of luſt for the ſake of enjoying a woman, or cauſed by loſſes at play, what remains due of a fine or toll,

toll, and money idly promiſed, that is, promiſed to impoſtors, bards, or wreſtlers, (for it is declared, "Fruitleſs is a preſent given to an impoſtor, a bard, a wreſtler, a quack, a flatterer, a knave, a fortuneteller, a ſpy, or a robber.") All ſuch debts incurred by the father, his ſon, or other heir, need not pay to the vintner and the reſt.

It appears from the expreſſion, "to the vintner and the reſt," that the price of ſpirituous liquors and the like, due by the father, need not be paid by the ſon to the vintner and the reſt. But in fact the interpretation ſuggeſted in the *Retnácara*, that even a debt contracted for ſuch purpoſes need not be paid by the ſon, ſhould be admitted; for the phraſe, which occurs in the text of Vya'sa, "nor any debt for a cauſe repugnant to good morals," ſhows, that ſuch debts need not be diſcharged by the ſon. But Misra has ſaid nothing expreſsly on this ſubject.

Yet a debt contracted by a father, for the payment of a fine to the king, ought to be diſcharged by his ſon; for the laſt term, in the following text, is expounded dominion over the ſenſes and a fine impoſed by the king; and becauſe a fine has a moral purpoſe ſince it expiates guilt.

CCVI.

Menu: — By open confeſſion, by repentance, by devotion, and by reading the ſcripture, a ſinner may be releaſed from his guilt; or by almſgiving, by dominion over the ſenſes, or by a fine to the king (for the word *dama* admits both ſenſes).

If a fine be an atonement, even the balance of a fine ought neceſſarily to be paid by a ſon; why have ſages ordained, in contradiction to the reaſon of the law, that it ſhall not be paid? The objection is ill founded; for the fine is cancelled by becoming a religious anchoret on the approach of death, and by other means. All authors have directed penance, not the payment of amercements, to expiate guilt, which is inferred from an actual diſeaſe to have been contracted in a former exiſtence. Accordingly the fourth meaſure of the text cited (CCVI) is in ſome copies read, "or by alms-

giving

giving in caſe of his inability *to perform the other acts of religion.*" It is, however, reaſonable, that the balance of a fine ſhould be paid by the ſon, if his father be abſent; but, ſince the ſon is not his own maſter, the king cannot exact it by forcible means or the like. This is a demonſtrated inference.

IN general it is ſettled, that a debt contracted by a father ſhall be paid by the ſon with intereſt, or, on failure of him, by the grandſon without intereſt. But all agree, that only ſuch debts, as have not been excepted by any ſage, need be paid. Therefore a debt contracted for an immoral purpoſe, and money promiſed for ſuch a purpoſe, or idly promiſed, or promiſed to the king or other perſon for the liquidation of a fine or the like, and ſo forth, need not be paid. Such is the full meaning of the law. Other debts muſt be paid by the ſucceſſor to the eſtate, and the reſt, in order, on failure of perſons firſt liable. But MISRA holds, that they ſhall be diſcharged without intereſt; he aſſigns as a reaſon, becauſe it has not been declared in this caſe, as in that of a ſon, that intereſt ſhall be paid. CHANDÉSWARA, SÚLAPÁNI and the reſt have not expreſsly noticed this point. To that *inference* it may be *therefore* objected, that every ſage, who ordains the payment of debts by a grandſon, declares, that they ſhall be diſcharged without intereſt; but ſome ſages have directed, that a debt ſhall be paid with intereſt by the ſon *of the debtor;* others have not noticed the queſtion of intereſt: conſequently, as no legiſlator has ordained payment with intereſt by ſucceſſors to the eſtate, ſo none have ordained payment without intereſt; the rule being therefore general, what then ſhould inhibit payment with intereſt. This ſubject has been ſufficiently diſcuſſed.

CCVII.

YÁJNYAWALCYA:—NEITHER ſhall a wife or mother *be in general compelled to* pay a debt contracted by her huſband or ſon, nor a father *to pay* a debt contracted by his ſon, unleſs it were for the behoof of the family; nor a huſband *to pay* a debt contracted by his wife.

CCVIII.

VISHNU:—NEITHER ſhall a wife or mother, *be in general compelled*

pelled to pay the debt of her huſband or ſon, nor the huſband or ſon *to pay* the debt of his wife or mother.

CCIX.

NÁREDA:—A DEBT, contracted by the wife, ſhall by no means bind the huſband, unleſs it were *for neceſſaries* at a time of great diſtreſs: a man is indiſpenſably bound to ſupport his family.

2. A WIFE or mother ſhall not *in general* pay the debt of her huſband or ſon.

THIS laſt hemiſtich is cited on the authority of MISRA.

UNLESS it were contracted for the ſupport of the family at a time of great diſtreſs, a debt incurred by a wife ſhall not bind her huſband: that is, it need not be paid by her huſband.

The *Retnácara.*

BOTH theſe texts of VISHNU and the other *legiſlator* relate to a wife of unequal claſs: but a wife of equal claſs muſt pay a debt contracted by them even though experiencing no diſtreſs. Wives of unequal claſs are prohibited in the *Cali*-age; a text concerning the wife of equal claſs will be cited under the title of inheritance.

BHAVADÉVA.

THIS is liable to objection. Why is the general term "wife" taken in a limited ſenſe? Since it is a rule, that "what might be ſuppoſed is excepted," what might be propoſed generally in reſpect of any perſon or thing, is alone ſpecially excepted as relating to that perſon or thing. For inſtance; it being ſtated generally that a father's debt ſhall be diſcharged by his ſon, an exception is made, that a debt, contracted on account of gaming, ſhall not be paid. But in this caſe there is no ſuch ſuppoſition. Why then is an exception propounded? It is anſwered, that ſages have excepted theſe caſes, apprehending the haſty ſuppoſition, that payment might be required becauſe theſe perſons

are not unrelated to the debtor, and are naturally competent to take his assets. For example; the text above cited (CLXVII 2) is illustrative of a general sense and comprehends great grandsons, daughter's sons and the rest. Consequently a debt shall not in general be paid by any other than a son or a son's son; yet it must be discharged by heirs of every description, if they have received assets. YĀJNYAWALCYA propounds an exception.

CCX.

YĀJNYAWALCYA:—A DEBT, acknowledged *by her husband*, or contracted by her jointly with her husband or son, or contracted by the woman herself, must be paid by a wife *or mother*; no other debts shall a woman be compelled to pay.

"ACKNOWLEDGED;" fully acknowledged.

The *Dípacalicá*

IT consequently signifies a debt admitted by her husband at the point of death.

"WITH her husband or *son*:" the particle is connective, and includes her son also: hence a debt, contracted jointly with her husband or son, must be paid by a wife or mother. For instance; her husband and son being incompetent *to the management of affairs*, and the woman herself being very active, she contracts a debt jointly with them: such a debt is meant. Or, the husband and son being incompetent, or being unable *to act* by reason of other occupations, she uses their names, or contracts debts in her own name from a moneylender: in either of these cases, the debt is contracted by the woman herself.

CCXI.

CĀTYĀYANA:—A DEBT contracted jointly with her husband or son, or singly by the woman herself, shall be paid *by a wife or mother*: in such, and in no other cases, shall the debts contracted by them be paid by her.

CCXII.

CCXII.

NA´REDA:—IF a wife be thus addreſſed by her lord at the point of death, *or juſt before a long journey*, "ſuch a debt muſt be paid by thee," ſhe muſt pay it, however unwilling, if aſſets were left in her hands.

"DEBTS contracted by them;" debts contracted by her huſband and ſon.

The *Retnácara.*

IF the aſſets of the huſband have been received by his wife, ſhe muſt pay the debt, "however unwilling;" that is, even though ſhe do not promiſe to pay it. But if the wife, ſo inſtructed by her huſband at the point of death, in theſe words, "my debt muſt be paid by thee," do promiſe to diſcharge it, ſhe muſt then pay it even though aſſets were not left in her hands. Such is MISRA'S opinion; and he expreſsly declares it: 'a debt, acknowledged by her huſband, muſt be paid by a wife; and ſo muſt a debt be paid by a childleſs widow, who has accepted the care of the aſſets, even though ſhe have not accepted the burden of the debts: for ſhe is ſucceſſor to the eſtate.' It muſt be therefore underſtood, that the debts of her huſband muſt be diſcharged by the widow, who has accepted the care of the aſſets, under the text of YA´JNYAWALCYA (CLXXI).

THIS appears alſo to be the opinion of CHANDE´SWARA; *for he ſays* in the *Retnácara*, "at the point of death" is illuſtrative of a general meaning. It therefore comprehends alſo one, who intends a journey to another country, or retirement in another order. But even an inſtruction incidentally addreſſed to the wife, by her huſband, though not diſeaſed or the like, requiring her to pay this debt, muſt be conſidered as given with a view to *the probability of* deceaſe. This and other points muſt be conſidered.

CCXIII.

NA´REDA:—A CHILDLESS widow muſt pay the debt of her ſiſter enjoining payment; or whoever receives the aſſets left by that *ſiſter*, muſt pay her debts.

ON

On the death of one of two ſiſters left as coparceners in the houſe of their father who had no male iſſue, the debt of that ſiſter muſt be diſcharged by the ſurviving ſiſter enjoined to pay it. Such is the ſenſe of the firſt hemiſtich. Or any other, who takes the ſucceſſion, muſt pay that debt.

The *Retnácara.*

Vrĭhaspati alſo directs, that a father *ſhould* pay a debt contracted by his ſon.

CCXIV.

Vrĭhaspti:—A debt, contracted by a ſon, ſhall be paid by the father, if he promiſed payment; or he may pay it from affection to his ſon; but, unleſs he promiſe, he cannot be compelled.

"If he promiſed payment," *or authorized the contracting of the debt:* for inſtance, if the father told the creditor "lend money to my ſon;" or if he told his ſon "borrow money to maintain your own grandmother."

"From affection to his ſon:" having contracted a debt unauthorized by his father, the ſon dies; if his father, reflecting, "ſhould the debt remain unpaid, my ſon will go to a region of horrour," be diſpoſed to diſcharge the debt through affection to his ſon, he may pay it. But otherwiſe he need not pay it: conſequently a debt contracted by a ſon, need not be paid by his father, unleſs ſpontaneouſly, or in conſequence of a promiſe.

CCXV.

Cátyáyana:—By the general rule of law, a father need not pay the debt of his ſon; but he muſt pay it, if, either at the time of the loan, or afterwards, he promiſed payment.

"Promised" here ſignifies ſtipulated at the time of receiving the loan; but promiſed after receiving the loan is conveyed by the expreſſion "ſubſequently agreed to," or promiſed afterwards. Son is here taken illuſtratively.

The *Retnácara.*

These

THESE terms conſequently fall within the ſenſe of the expreſſion uſed in text of VRĬHASPATI, and the texts therefore coincide. "Illuſtratively;" even a debt contracted by a wife or the reſt, muſt be paid by her huſband and the reſt, if he gave previous or ſubſequent aſſent, and the wife or other debtor be unable to diſcharge it or die. Here the word "ſon" being conſidered as illuſtrative of a general ſenſe, it may comprehend preſumptive heirs of the ſame perſon, who live together and partake of the ſame food.

IT is reaſonable, that the debt of a wife ſhould in ſome caſes be paid by her huſband.

CCXVI.

YA'JNYAWALCYA:—IF the wife of a herdſman, a vintner, a dancer, a waſherman, or a hunter contract a debt, the huſband ſhall pay it; becauſe his livelihood chiefly depends on the labour of ſuch a wife.

CCXVII.

VRĬHASPATI:—THE huſband, being a vintner, a hunter or fowler, a waſher, a herdſman, a ſhepherd, or the like, ſhall pay the debt of his wife: it was contracted in the concerns of the huſband.

THESE huſbands ſhall be compelled to pay the debts of their wives. "Becauſe" ſhould be here ſupplied; and the conſtruction is, becauſe thoſe debts were contracted by them in the concerns of their huſbands. Conſequently a debt may be contracted by a wife in the concerns of her huſband, if they require ſuch a debt.

CCXVIII.

NA'REDA:—EXCEPT the wife of a waſher, hunter, herdſman, or vintner; for the livelihood of ſuch a huſband, and the ſupport of his family, depend on her.

THIS muſt be connected for interpretation with the text above cited

(CCIX 1), in this manner; a debt contracted by a wife, excepting the wife of a waſher &c. ſhall not be paid by her huſband. The reaſon is ſubjoined; and here again "becauſe" muſt be ſupplied: or the ſecond particle has the cauſal ſenſe.

HERE "waſher" and the reſt are mentioned indeterminately. In fact, whatever be his claſs, if the huſband's livelihood depend chiefly on the labour of his wife, he muſt diſcharge a debt contracted by her, whether he be a prieſt or a waſher: but he, whoſe livelihood does not depend on his wife, whether he be a waſher or a prieſt, ſhall not pay his wife's debt. This is noticed by MISRA: *he ſays*, 'in other caſes alſo, wherever the wife has the chief management, there is no reſtriction of claſs; the wife alone conducts all affairs, the huſband is abſolutely ignorant of every tranſaction.' Accordingly it is obſerved, that, in the province of *Cámarúpa*, almoſt every civil tranſaction is now conducted by women.

BUT this is merely a vague deſcription; for a debt contracted by the wife of a *Brāhmana* and ſo forth, for the ſupport of the family, muſt alſo be paid by the chief of that family. From the reaſon aſſigned, "becauſe his livelihood chiefly depends on the labour of ſuch a wife," it appears, that any other perſons, of whom the livelihood depends on the labour of their wives, muſt pay the debt contracted by thoſe wives. This is admitted in the *Mitācſharā*. CHANDÉSWARA alſo makes the ſame obſervation; 'the circumſtance of his livelihood depending on the labour of his wife is particularly intended; not any reſtriction of claſs.'

HERE it ſhould be remarked, that they are only mentioned approximately; for, the huſbands being conſtantly occupied in waſhing clothes, attending cattle and the like, and therefore unable to provide neceſſaries for conſumption, and ſuch being the practice of certain *other* perſons, the providing of neceſſaries, like *other* houſehold buſineſs, is conducted by their wives alone. It is the ſame alſo in reſpect of huſbandmen and the reſt. However, a debt contracted by any married woman, who preſides *over her huſband's houſehold*, for the ſupport of her own brother's family, need not be paid by the huſband, any more than the debt of a father contracted under the influ-

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ence of luſt; but other debts, contracted by his wife, muſt be paid by the huſband.

CCXIX.

CA'TYA'YANA:—A DEBT, which is contracted by a wife or mother for the behoof of the family, when her huſband or ſon is gone to a foreign country, after authorizing *the loan*, muſt be paid by the huſband or ſon.

IF a huſband or ſon, intending a journey to a foreign country, and being aſked by his wife or mother for food and raiment, tell her, "contract debts;" the debt contracted by her muſt be paid by him when he returns to his own home. "After authorizing the loan" is an approximate expreſſion; for, even though he did not authorize it, the reaſoning would be the ſame.

The *Retnácara*.

THE meaning is, if he go abroad without making proviſion for her food, veſture and the like. "When he is gone to a foreign country," is alſo illuſtrative of a general ſenſe; the ſame rule ſhould be admitted, even though he remain at home. As is mentioned in the *Retnácara*; 'if he remain at home, or go abroad, without aſſigning any ſubſiſtence to his wife or mother.' This again is merely illuſtrative; hence ſuch a debt, even though contracted by a minor ſon or daughter, muſt be diſcharged.

HERE an obſervation may be made: a debt, contracted by a mother for religious purpoſes and the like, muſt be diſcharged by her ſon. Suppoſe a man, whoſe ſon is an infant, and whoſe wife has contracted a debt jointly with her huſband, but he dies, and his ſon inherits his property; in that caſe by whom ſhould the debt be paid? By the ſon alone, for he is under a double obligation to diſcharge the debt; *under a civil obligation*, becauſe he holds aſſets; *under a moral obligation*, becauſe he is ſon *of the deceaſed*. But, if the debtor leave no aſſets, what ſhould follow? It is replied, the ſon nevertheleſs ought to pay the debt; for redemption from debt is ſtated as the benefit ariſing from male offſpring alone, ſince the

text

text of NA'REDA (CLXXXVIII) deſcribes the wiſh for male offspring as originating in the wiſh to be liberated from debt: ſenſual delights and male offspring are deſcribed as the benefit accruing from a wife, by a text of the *Cálicá purána*, " a wife affords delight and male offspring;" conſequently, if there be a ſon produced by her, why ſhould the wife, who has afforded other benefit, diſcharge the debt? It is accordingly remarked in the *Mitác-ſharà*, that 'a debt, contracted by a wife jointly with her huſband, muſt, on failure of the huſband, be paid by the wife, if ſhe have no male iſſue.'

THUS the divine CA'LIDA'SA ſays in the *Raghuvanſa*, " Bliſs in another world, and purity in this, ſpring from devotion and alms; but progeny of a pure race contributes to proſperity in the other world as well as in this." And again, in the ſame work; " thinking oblations will be hardly obtained after me, *the manes of* my anceſtors taſte the water, which I regularly offer, warmed by their ſighs." * Of thoſe paſſages the meaning is this; in another world, proſperity or auſpicious fortune, that is, the bliſs of heaven, is attained; in this world, auſpicious fortune, that is, the diſcharge of debts, is obtained: meaning debts to the deities, to progenitors, to holy ſages, and to men. The ſecond verſe is a ſpeech of a mighty king named DILI'PA, who was childleſs. It has this meaning; water has been preſented in the form of oblations to anceſtors by me DILI'PA; but my anceſtors taſte the water warmed by their ſighs: he aſſigns the cauſe of their ſighs; after me DILI'PA it will be difficult to obtain *oblations of* water: reflecting, " by whom will it be preſented, ſince he has no ſon," they emit warm ſighs. Therefore, wanting progeny, anceſtors alſo ſigh with ſorrow. It is hereby indicated, that *the birth of* a ſon relieves *anceſtors* from this miſery.

IF there be both a great grandſon who has ſucceeded to the eſtate, and a widow, what ſhould be ruled? There is no difficulty in that caſe, becauſe whoever takes the eſtate of the deceaſed, muſt alſo maintain thoſe whom the deceaſed was bound to ſupport. Since food and raiment muſt neceſſarily be furniſhed to the widow; from parity of reaſoning, money ſufficient to diſcharge the debts of her huſband, which are payable by her, muſt alſo

* The verſes are only quoted in part; I inſert the tranſlation at large.

be

be ſupplied. But, if the debtor leave no aſſets, his great grandſon does not ſucceed to any eſtate; the widow, however, has ſeveral property, ſuch as jewels and the like; the debt ſhould in that caſe be diſcharged by her out of that property, for ſages have declared her liable to the payment of debts. This and other points may be reaſoned by the wife. VISHNU alſo declares, that debts muſt be paid by thoſe, who take the aſſets.

CCXX.

VISHNU: — HE, who takes the aſſets of a man leaving no male iſſue, muſt pay the ſum due *by him*; and *ſo muſt* he, who has the care of the widow left by one who had no aſſets.

"SUM" *(dhana)* here ſignifies debt; the ſame term in the ſubſequent phraſe, "who had no aſſets" *(adhana)*, ſignifies wealth. The *Retnácara.*

Two ſons have ſucceeded to the eſtate on the death of the father; in his life time the father had commanded one ſon to pay a certain debt; what is the rule of deciſion in that caſe? Although both be equally ſucceſſors and ſons of the deceaſed, that ſon only, who received the injunction, muſt pay the debt; for he is bound to fulfil his father's commands. But if the other ſon, conſidering it as a moral duty, ſpontaneouſly give his proportionate ſhare, it ſhould be accepted; elſe, how could the moral obligations of that other ſon be fulfilled? For he, who received the injunction, ſhould fulfil his father's commands without diſtreſſing the ſecond ſon. Yet, if the ſecond ſon delude his brother by this declaration, "I am my father's ſon as well as he, I therefore will pay my proportionate ſhare of the debt," and do not pay *his ſhare of* the debt to the creditor, it muſt be fully diſcharged by him who received the command; for his father, dreading immoral conſequences, gave the order through apprehenſion of ſuch deceit or the like. If a father, in ſuch a caſe, give land or ſimilar property to any one ſon with ſuch an inſtruction, ſurely the debt muſt be diſcharged by him alone; and he ſhall take the whole property given by his father *on this conſideration*, and his proportionate ſhare of other property left by his father. The ſubject has been further diſcuſſed already.

On failure of perſons holding aſſets, he, who has the care of the wife, muſt pay the debt, under the rule of Vishnu (CCXX) and text of Yājnyawalcya (CLXXI). Nāreda declares it with a particular explanation.

CCXXI.

Nāreda:—He, who poſſeſſes the laſt of diſloyal wives, or the firſt of twice married women, muſt pay the debt contracted by her huſband.

The ſenſe is this; of four ſorts of women wilfully libidinous, or diſloyal, her, who is laſt or fourth in the enumeration; and of three twice married women, her, who is firſt deſcribed; he, who takes *either of* theſe two women, ſhall pay the debt contracted by the huſband; and not the debt contracted by the huſband of any other woman. Chandēswara.

Consequently he, who takes a twice married woman of the ſecond, or third deſcription, or a diſloyal wife of the firſt, ſecond, or third deſcription, ſhall not pay the debt contracted by her huſband. The *ſame* legiſlator propounds the diſtinctions of twice married women and diſloyal wives (Book IV, v. CLVIII.)

If a man wed a girl, whoſe marriage has been already celebrated but not conſummated, he muſt pay the debt of her firſt huſband, becauſe he has taken in marriage a girl already eſpouſed by another.

That girl, who is tacitly or expreſsly contracted to one man by her parents, conſidering the laws of the diſtrict, or reflecting, "the laws of our country are not violated by giving the damſel to that man though ugly;" ("laws" are in the plural number with a comprehenſive ſenſe, including the laws of families and laws in general;) if ſuch a girl contract an affection for another man, handſome or rich, *and wilfully accede to him*, ſhe is conſidered as the ſecond twice married woman. The text (Book IV, v. CLVIII 3) is alſo read *utpannasáhesà* inſtead of *utpannásahesá*; this reading the author of the *Mitácſharà* explains, "becoming diſloyal."

If

If the ſame kinſmen, tacitly or expreſsly affiancing a damſel to one man, but deluded by beauty or the like, give her in marriage to another, ſhe is conſidered as the third twice married woman. The diſtinction between the ſecond and third ariſes from this difference, *that in one inſtance the ſecond marriage is* the act of her kinſmen, and *in the other it is* not the act of her kinſmen. In theſe caſes, ſince the firſt huſband had not *actually* received the damſel, the debt contracted by the firſt huſband ſhall not be paid by her ſecond lord. By "parents" and "kinſmen" muſt be here underſtood her father, paternal grandfather, or other perſons, who have a right to diſpoſe of her in marriage.

Whether ſhe have borne children or be childleſs (intimating generally one, whoſe marriage has been conſummated), a woman, who clings to another man during her huſband's life, through luſt (or avarice, or any irregular appetite), is the firſt diſloyal wife.

Her huſband being living, ſhe, who deſerts him, and gives herſelf to another man, ſaying "I am thine," but afterwards returns to her firſt huſband, again ſaying "I am thine," is the ſecond. She is diſtinguiſhed from the fourth, becauſe, in reſpect even of her wedded huſband, ſhe is a woman previouſly enjoyed by another.

After the death of her huſband, a woman, living in his family, whether unguarded or guarded, who receives the careſſes of another, through carnal deſire, is the third diſloyal wife. In fact ſhe is ſimilar to the firſt, but diſtinguiſhed by the circumſtance of her huſband's deceaſe, whereas the huſband of the firſt was living. "Leaves his brother or other kinſmen" (Book IV, v. CLVIII 7); that implies, that ſhe ſo acted, though oppoſed by her huſband's brother and the reſt: it denotes her ſinning in ſecret.

Or the phraſe, "leaves his brother or other kinſmen," may intend the caſe of troth verbally plighted; and the term "brother or kinſman" may comprehend every *ſapinda* of equal claſs. Thus, if the affianced huſband of a girl, who was tacitly or verbally given in marriage, die, and ſhe receive

ceive the embraces of a ſtranger, or a perſon not related within the degree of a *ſapinda*, ſhe is conſidered as the third diſloyal wife; not as a twice married woman. This may be underſtood from the ambiguous terms of the text. But if ſhe receive the embraces of a man of equal claſs on failure of *ſapindas*, ſhe is a twice married woman of the ſecond deſcription. For in the definition of the third twice married woman (Book IV, v. CLVIII 4) the terms "*ſapinda* of equal claſs" occur. Thus ſome expound the texts.

On this we remark, that, after the death of her huſband, if a woman, previouſly authorized by him, receive the embraces of his brother for the ſake of male offspring, there is no offence: hence it is ſpecified, "through carnal deſire," and, "who leaves his brother or kinſman." If ſhe paſs by his brother or kinſman, and receive the embraces of another man of equal claſs, in conformity to the directions of her huſband, there is no offence: therefore does the ſage ſpecify, "through carnal deſire." But, if ſhe receive the careſſes of her huſband's brother or kinſman, being impelled by luſt or the like, *and not ſolely guided by the duty of raiſing up offspring*, ſtill there is no offence: this is alſo intimated by the text, "who leaves his brother or kinſman." Such a practice actually ſubſiſts among ſome people in particular diſtricts. Yet, in fact, the procreation of a ſon on the wife of a kinſman is forbidden in the *Cali* age.

["The procreation of a ſon by the brother of a *deceaſed* huſband muſt in the *Cali* age be avoided."]*

In this text alſo, "carnal deſire" is an inſtance denoting likewiſe avarice and other irregular appetites.

"She, who, having received *injunctions*" (Book IV, v. CLVIII 8); who has been told by her kinſmen, receive the embraces of ſuch a man; if ſhe take as a huſband any other man than him whom her kinſmen aſſigned, is the fourth diſloyal wife: and ſo is one purchaſed for money, or impelled by hunger or thirſt. Conſequently the ſeveral phraſes, "having received injunc-

* The text, here partially quoted, is no where cited at large. Similar texts are cited in the fifth book. See likewiſe Book IV, v. CLVII, and a general note to the tranſlation of Menu (V 3).

tions"

tions" &c. may be taken either conjointly or ſeparately. This ſenſe is denoted: a woman, having loſt her huſband, but deſirous of wedlock, gives herſelf to ſome man; ſhe is the fourth diſloyal wife: and if a woman, whoſe huſband is living, deſert him and cling to another, but do not return to her *firſt* huſband, ſhe alſo may be conſidered as a diſloyal wife of the fourth deſcription. This text not ſpecifying, "after her huſband's deceaſe," and the preceding text expreſſing (Book IV, v. CLVIII 6) "but returns to the houſe of her lord," there is no confuſion.

SINCE he enjoys with a previous title this woman, who is another's wife, he muſt pay the debts contracted by her huſband: and this muſt be conſidered as excluſive of an unmarried harlot.

CCXXII.

CA'TYA'YANA:—A DEBT, which has been contracted by indigent and childleſs vintners and the reſt, muſt be paid by him, who has the care of their wives.

UNDER the term "and the reſt" are comprehended *all* perſons whoſe livelihood depends on their wives. MISRA.

"WIVES" being here mentioned in the plural number, diſloyal wives of every deſcription are ſuggeſted. Conſequently he, who poſſeſſes the wife of a deceaſed vintner or the like, aſſimilated to property becauſe ſhe is able to ſupport the family, muſt pay the debt of her huſband. This is ordained by the text, and ſhould not be controverted. Accordingly the following text of NA'REDA has a ſuitable import; otherwiſe it would be a needleſs repetition of the preceding text (CCXXI).

CCXXIII.

NA'REDA:—HE, who approaches the widow of an indigent man leaving no male iſſue, muſt pay the debt of her huſband; ſhe is conſidered as his property.

AND this ſeems to have been the opinion of CHANDESWARA. Accordingly

he ſays, " this text of NA'REDA alſo has the ſame import with the text of CA'TYA'YANA" (CCXXII). That again is a proper conſtruction; for in the texts of CA'TYA'YANA (CLXXIII 2) of NA'REDA (CLXXII) and of VRĬHASPATI (CLXXIV) the expreſſion, " he, who takes the widow" (*ſtríhárì*), exhibits the verb *hrĭ* in the ſenſe of poſſeſſion; and in the text of YA'JNYAWALCYA (CLXXI) and rule of VISHNU (CCXX) the ſimilar expreſſion (*ſtrígrâhì*) exhibits the verb *grah* in the ſenſe of caption or occupancy: but here (CCXXII and CCXXIII) the verbs *bhuj* and *in*, preceded by the inſeparable particle *upa* (in the words *upa bhóctà*, and *upaiti*) ſignify enjoyment and approach. The preceding text of NA'REDA (CCXXI) does not propound the obligation on him, who takes the widow, to pay the debt of her huſband; but, the obligation on him to pay the debt, on failure of heirs and ſons, having been already ſtated (CLXXII), it propounds a ſpecial rule. There is conſequently no objection to take the radical *aś* (of the word *ſamaś nuté*) in the ſenſe of enjoyment or poſſeſſion (CCXXI). Accordingly NA'REDA adds, " ſhe is conſidered as his property" (CCXXIII); he benefits by the wife of the deceaſed, through the wealth brought with her. Or the relative, uſed adverbially in that phraſe, denotes the woman. But he, who enjoys the widow, is only liable on failure of a guardian of the widow, and on failure of ſons and grandſons not competent *to the management of affairs*. However, it is held in the *Retnácara* and other works, that this rule of deciſion concerns only thoſe women on whoſe labour their huſbands depend chiefly for their livelihood. The ſame opinion is almoſt expreſsly delivered by the author of the *Mitácſharâ*. In the laſt caſe and in this, the difference between him, who takes the widow *or becomes her guardian*, and him, who enjoys the widow *or becomes her paramour*, is evidently the ſame as between a man who has the care of another's land, and one who has the enjoyment of it.

BUT ſome hold, that one text (CCXXIII) propounds generally the payment of debts by him who takes the widow; the other text (CCXXI) ordains ſpecially the payment of debts by him who takes the widow *under particular circumſtances:* there is conſequently no *vain* repetition. CA'TYA'YANA directs payment by him, who has taken the widow, if there be a ſon living but incompetent *to the conduct of affairs* (CLXXIV 2); in another text (CCXXII) he directs, that the debt of one, who had no male iſſue, or whoſe

ſon

ſon is deceaſed, ſhall be paid by him, who has the care of the widow: there is conſequently no *vain* repetition. It follows, that he, who enjoys a diſloyal wife of another deſcription, need not pay her huſband's debt.

THAT is liable to objection; for the preceding text of NA'REDA (CLXXII) would contain a needleſs repetition of the text laſt cited (CCXXIII). That point ſhould be examined. This deſcription of women is greatly blamed by legiſlators. That the wives of *Bráhmanas*, and other virtuous women, do not ſo act, may be learnt in the diſcuſſion of the duties of man and wife.

WHEN a ſon competent *to the management of affairs* is living, and there is alſo a guardian of the widow, the debt muſt *in general* be paid by the ſon alone, as has been already mentioned. From this rule CA'TYA'YANA propounds a particular exception.

CCXXIV.

CA'TYA'YANA:—SHOULD a widow, who has ſeveral property, take the protection of another man without the aſſent of her ſon, her property may be ſeized by that ſon, if there be no daughters:

2. He may ſeize it to diſcharge debts, but never for his own gratification, ſince he cannot compel his parents to pay any thing for an improper cauſe.

3. OF that woman, who has male iſſue, but deſerts her ſon though opulent, MENU declares, that her ſon may take the peculiar property and diſcharge therewith his father's debts.

"WITHOUT the aſſent of her ſon;" or againſt his conſent. "Who has ſeveral property;" who has conſiderable female property. "If there be no daughters;" on failure of daughters.

The *Retnácara*.

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THE meaning is this; if a woman, poſſeſſing ſeveral property, take the protection of another man againſt the conſent of her ſon, that ſon may ſeize her property; but he can only do ſo when he is unable to diſcharge debts out of his own property, and not for his own gratification, ſince he cannot compel his parents to pay any thing for an improper cauſe; that is, he cannot poſſeſs himſelf of the property of his father or of his mother for the accompliſhment of an unfit purpoſe. Here the diſcharge of debts is merely an inſtance of indiſpenſable duties. The debts may be his own or his father's. But he can only do ſo, if there be no daughter; for, ſhould there be daughters, they are entitled to their mother's ſeveral property: and this ſuppoſes female property, ſuch as preſents given at the bridal proceſſion, and on other occaſions: the diſtinctions *of ſuch property* will be noticed in the chapter on the property of women, under the title of inheritance. It may be here noticed, that her recourſe to another man muſt be conſidered as equivalent to the natural deceaſe of the mother. But, at the option of the ſon, her title to ſeveral property may depart or ſubſiſt, under the authority of the text (Book V, v. CCCCV 1 and 2).

IF a woman, deſerting her ſon though capable *of protecting her*, take her ſeveral property and recur to another man without the conſent of her ſon, that ſon, ſeizing even her ſeveral property, may diſcharge debts therewith: ſuch is the ſenſe of the third verſe (CCXXIV 3).

BY the expreſſion "though opulent" it is ſhown, that, if ſhe deſert an indigent ſon, aſſuredly that ſon may ſeize her ſeveral property.

The *Retnácara.*

"WHO has male iſſue" deſcribes the woman. From the particle in the phraſe "ſeizing even her ſeveral property," it follows, that, if any part of his patrimony have been taken, aſſuredly he may ſeize that. The debt *to be paid* ſhould be the debt of his father; for the text ſpecifies "his father's debts". *The commentator ſays*, "aſſuredly that ſon may ſeize her ſeveral property;" here "for the payment of debts" ſhould be ſubjoined: and this is evident from the text. The term *tranſlated* "opulent," but literally ſignifying "capable," here imports poſſeſſing wealth; "incapable" ſignifies moneyleſs.

moneyleſs. The difference is this; if ſhe deſerted an opulent ſon, he can only ſeize her ſeveral property for the diſcharge of his father's debts; but, if ſhe abandon an indigent ſon, he may ſeize it for payment even of his own debts. But, if the woman have no ſeveral property, the ſon alone muſt diſcharge the debt. This NA'REDA declares.

CCXXV.

NA'REDA:—BUT, *if* a woman, who has male iſſue, *but no ſeveral property*, deſert her ſon and recur to another man, her ſon alone muſt pay the whole debt of her *deceaſed* lord.

IF ſhe deſert an opulent *or capable* ſon, and take the protection of another man, without *carrying* any former property, her ſon alone muſt pay the debt contracted by her *deceaſed* lord. The *Retnácara*.

CONSEQUENTLY the conſtruction is, her ſon is liable for, and muſt pay, the debt of her lord: and that, provided the ſon be competent *to the conduct of affairs*; elſe he, who takes the widow, would be liable for the payment of debts: hence the commentator adds "capable *or opulent*." It has been declared (CLXXII), that a ſon, not competent *to the management of affairs*, muſt diſcharge the debt on failure of a guardian of the widow; by this text it is declared, that a ſon competent *to conduct affairs* muſt diſcharge the debt, although a man have taken the widow: conſequently there is no vain repetition. The debtor being dead, his ſon competent *to manage affairs* muſt pay the father's debt out of the ſeveral property of his adulterous mother, or out of his own property, whichever may be practicable: this is ſhown by what has preceded.

CCXXVI.

NA'REDA:—BUT if a woman take the protection of another man, carrying her riches and her offspring, he muſt pay the debt of her huſband, or abandon ſuch a woman.

"CARRYING her riches;" poſſeſſing conſiderable wealth. "Her huſband;"

band;" her wedded lord. Or, to avoid the payment of the debt, he muſt abandon ſuch a woman, who brings her offspring and her wealth.

The *Retnácara.*

CCXXVII.

CA'TYA'YANA:—IF a woman, having an infant ſon and much wealth, ſeek another protector, he, whoſe protection is taken, muſt pay the debt *of her huſband:* this law is declared in reſpect of women, who have infant ſons.

HERE the term employed *(bhartrĭ)* ſignifies one who maintains her, *not one who marries her.* "Seek," or recur to, 'for ſupport:' the texts ſhould be ſo ſupplied. Conſequently the guardian, to whom the mother of an infant ſon, but poſſeſſing much wealth, recurs for the ſupport of her ſon and herſelf, muſt, if he accept the truſt, pay the debt of her huſband out of her property; or, paying it out of his own property, he ſhall afterwards obtain reimburſement. Such is the ſenſe of the text: and he muſt alſo maintain both the mother and ſon. There is no vain repetition of the preceding text (CLXXIII). And in this caſe, the guardian does not take the aſſets; for the woman alone has the care of the goods. Thus we explain the law.

WHEN the debtor is living, but is mad, has been long abſent in a foreign country, is an idiot or the like; in a word, is incapable of diſcharging debts; in that caſe, his debt ſhall be paid by his ſon alone, as has been already mentioned: but, if he have no offspring, what ſhould be ruled? On this point the ſame legiſlator propounds a law.

CCXXVIII.

CA'TYA'YANA:—THE debts of men long abſent in a foreign country, of idiots, madmen, and the like, who have no male kindred, and of religious anchorets, muſt be paid, even during their lives, *but without intereſt,* by ſuch as have the care of the *debtor's* wife and goods.

BY ſuch as have taken the wife and the goods appertaining to a man long abſent

abſent in a foreign country, and ſo forth: and this muſt be underſtood, according to circumſtances, as intending alſo outcaſts and the like.

MANY ſages have declared generally, that the debt muſt be diſcharged by him, who takes the wife of the debtor; a ſpecial rule is here propounded. A man has two wives; one, taking her offspring and her wealth, gives herſelf to another man ſaying, "I am thine;" and the other, who poſſeſſes no wealth, takes the protection of a guardian; what is the rule of deciſion in this caſe? It is anſwered, ſince he, who takes the wife with effects, in fact holds aſſets, the debt muſt be diſcharged by him; but, if both be in the ſame ſituation, it muſt be paid in equal proportions by both. This is the import of the former text (CCXXVI). But, if the receipt of effects were previouſly unknown, and the creditor exacted immediate payment from him, who had the care of his debtor's wife, after which the receipt of effects is diſcovered, then indeed the payment made by the guardian of the wife is not legal, becauſe it was exacted from a perſon not juſtly liable; he may therefore recover his money from the creditor; and the creditor ſhall obtain his due from him alone, who holds aſſets: the holder of aſſets may be compelled to reimburſe the guardian of the wife. Such is the proper mode of adjuſtment in forenſick practice.

A CASE may be here ſtated. A certain diſhoneſt ſurety for payment aſked a loan of a moneylender, in the name of a certain borrower; and the lender, fixing ſtipulated intereſt at the rate of two *paṅas*, ſent the loan to the borrower through the hands of the ſurety. Bringing the ſum borrowed, the ſurety told the borrower, "he will not lend the money without ſtipulated intereſt at the rate of four *paṅas*." Urged by diſtreſs, the borrower agreed to that intereſt and accepted the loan. At the time of payment, the debtor delivered to the ſurety the ſum due on a computation of intereſt at the rate of four *paṅas*; but the ſurety paid the creditor at the rate of two *paṅas*. After a few days the whole circumſtances were diſcovered. The creditor therefore demands the greater intereſt from the ſurety; the debtor alſo claims the exceſs from the ſurety; and the ſurety refuſes to pay it to either of them. What ſhould be the rule of deciſion in this caſe? The anſwer is, the creditor can have no right to receive greater intereſt than ſuch

as

as he ſtipulated when he made the loan; the ſurety is not entitled to obtain intereſt on another's money; it is therefore reaſonable, that the debtor ſhould recover the ſum erroneouſly paid.

It ſhould not be aſked objectively, why ſhould not the debtor pay the intereſt ſtipulated by him, for the ſake of preſerving uprightneſs *in his dealings?* Deceived by the ſurety's words, the debtor made the promiſe before the ſurety, not before the creditor. That promiſe only, which was made by the ſurety, as his repreſentative, in the preſence of the creditor, is efficient; not the promiſe originating in errour cauſed by the ſurety's fallacy. Again; the creditor may have accepted leſs intereſt through tenderneſs excited by the appearance of diſtreſs in the debtor; in that caſe, the remainder ſhall benefit the debtor alone, for it was in a manner relinquiſhed to him. Yet, if the debtor voluntarily pay it, the other ſhall receive it by his voluntary act. But, when an intermediate perſon himſelf borrows money and lends it to the *ultimate* debtor, he is not a ſurety, but debtor to one and creditor of another: in ſuch a caſe therefore, he is entitled to the intereſt at the rate of four *paṅas*.

If a debtor had no ſon born to him, and leave no widow, nor aſſets, by whom ſhall his debt be paid? By no one. But, if the debtor gave a pledge on contracting the debt, and his great grandſon be living, the debt ſhould be paid by that great grandſon.

CCXXIX.

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

But if the great grandſon do not wiſh to redeem the pledge, thoſe, who would be entitled to inherit on failure of great grandſons, may, in the order of ſucceſſion pay the debt and take the mortgaged property. If no

* Already cited at v. XXXVIII 2, and partially at v. CXI.

one

one chuſe to redeem it, the pledgee may continue to enjoy it, after acquainting the king; the ſum cannot be forcibly exacted from the great grandſon or remoter heir, becauſe, not having yet taken the aſſets, he is not liable for the debt.

THIS doubt here occurs: if the debtor contracted the debt giving a pledge for cuſtody only, and he, his ſon and his ſon's ſon die, but a great grandſon ſurvive; in that caſe the debt need not be paid by the great grandſon; for he does not enjoy the mortgaged property, and the pledgee is permitted to enjoy property pledged, ſo long as the debt ſhall remain unpaid (CCXXIX): but the great grandſon alone can take the pledge, becauſe it is the chattel of his great grandfather. The apparent difficulty may be thus reconciled: "but property pledged ſhall be enjoyed" is an expreſſion merely illuſtrative of a general ſenſe; in the caſe ſuppoſed the payment of the debt is alone requiſite. Or the word pledge may there ſignify a pledge given in lieu of intereſt as well as a pledge not to be uſed; and *the word* "enjoy" ſuggeſts occupancy as well as fruition: hence there is no difficulty. Elſe it would be inconſiſtent with reaſon, that, after advancing his own property and ſafely keeping the pledge for a long time, the creditor ſhould *be obliged to* reſtore it to the great grandſon of his debtor without receiving his due. Since the great grandſon or remoter heir holds aſſets when he has received the pledge, he is bound to pay the debt.

CCXXX.

VRĬHASPATI:—HE, who, having received a ſum lent or the like, does not repay it to the owner, will be born *hereafter* in his creditor's houſe, a ſlave, a ſervant, a woman, or a quadruped.

THE term here employed ſignifies a loan. "Or the like" comprehends depoſits and ſo forth.

The *Retnácara.*

"To the owner;" to the former maſter of the ſum, that is to the creditor and ſo forth. Therefore a debt muſt neceſſarily be paid by a ſon or

other deſcendant, leſt his father or anceſtor become a ſlave; otherwiſe hell awaits him, becauſe he has not followed the conduct preſcribed. Thus may the law be conciſely ſtated.

WHEN the creditor is dead; or has become a religious anchoret or the like, the debtor ſhould pay the ſum to his ſon or other heir; on failure of the neareſt, to the remoter heir ſucceſſively, down to the learned prieſt. But, if there be no heir, nor any learned prieſt in that country, or if he refuſe the payment tendered, NĀREDA propounds the rule to be obſerved in that caſe.

CCXXXI.

NĀREDA: — IF a creditor of the prieſtly claſs die leaving iſſue, *the king ſhall* cauſe the debt to be paid *to them;* if he leave no iſſue, to his near kinſman; if he leave none, who are near, to thoſe who are diſtant, *paternal or maternal;*

2. If he leave no heirs near or diſtant, *nor perſons connected by ſacred ſtudies,* the king ſhall beſtow it on worthy prieſts; but if none ſuch are preſent, let him caſt it into the waters: *the debts of other claſſes, in ſimilar circumſtances, he may ſeize for himſelf.*

WHAT is due to a prieſt, whether it be a gratuity or ſimilar *claim,* or the like, muſt, on failure of him, be paid to his ſon or other deſcendant, in the regular order of ſucceſſion. That is intimated by the phraſe "leaving iſſue." On failure of iſſue, to his near kinſmen; on failure of them, to diſtant kinſmen, allied to himſelf, to his father, or to his mother: this will be explained under the title of inheritance. On failure of theſe, it ſhould be given to learned prieſts; or on failure of them, "let him caſt it into the waters." What is due to men of the military and other claſſes, the debtor ſhould, by parity of reaſoning, pay to the heirs in regular ſucceſſion, delivering it, on failure of nearer heirs, to the next remoter heir, down to diſtant kinſmen: but on failure of theſe, it muſt be paid to the king, under the rule of VISHNU concerning hereditable

ble property, "the wealth of all, but prieſts, *who die without heirs*, goes to the king (Book V, v. CCCCXVII)." But the property of prieſts may on no account be taken by the king. In this MISRA, BHAVADÉVA and others concur; and BAUDHA'YANA, quoted in the *Retnácara* under the title of inheritance, *forbids the ſacrilege*. That text (Book V, v. CCCCXLIV) is expounded, "the property of *Bráhmanas* is the moſt exalted poiſon *to him who ſeizes it*." From the word "never" it appears, that the property of *Bráhmanas* muſt not even be received in the form of a tax. Accordingly, in his gloſs on the inſtitutes of PARA'S'ARA, MA'DHAVA cites the following texts of MENU.

CCXXXII.

MENU:—A KING, even though dying *with want*, muſt not receive any tax from a *Bráhmana* learned in the *Védas*.

MENU:—THE king, having aſcertained his knowledge of ſcripture and good morals, muſt allot him a ſuitable maintenance, and protect him on all ſides, as a father protects his own ſon.

THE king muſt allot him (that is, the prieſt) a ſuitable maintenance, or the means of ſubſiſtence; and protect him on all ſides, from robbers, rogues and the like. However, the direction in the text of NA'REDA, "he ſhall beſtow it on worthy prieſts, or caſt it into the waters," is a law reſpecting the payment of debts.

CHAPTER VI.

ON REDRESS FOR NON-PAYMENT.

THIS, according to the author of the *Mitácſharà*, may be alſo conſidered as the rule for receipt of debts by the creditor.

MENU:—WHAT has been practiſed by learned and virtuous men of twice-born tribes, if it be not inconſiſtent with the legal cuſtoms of provinces or diſtricts, of claſſes or families, *let the king* eſtabliſh.*

"LEARNED;" well read; AMERA interprets it wiſe or intelligent. "Virtuous;" endued with honeſty; not deceivers. "Twice-born;" *Bráhmanas*, *Cſhatriyas*, and *Vaiſyas*: what has been practiſed by ſuch men; if it be not inconſiſtent with the legal cuſtoms of that country, of families and claſſes, *let the king* eſtabliſh, or confirm the practice, adopting it as unſeen or unrecorded law. The text muſt be ſo ſupplied.

CULLUCABHATTA.

IN that gloſs the meaning of the expreſſion "confirm the practice" is, that he ſhould decide, according to that practice, a doubtful caſe, for which no ſeen or recorded law provides.

CCXXXIII.

MENU:—WHEN a creditor ſues before him for the recovery of his right from a debtor, let him cauſe the debtor to pay what the creditor ſhall prove due.

* Already cited at v. L.

" For the recovery of his right from a debtor;" to obtain the ſum lent. The king, on application from the owner of the ſum, *for the recovery of it*, ſhall compel the debtor to pay to the creditor what he ſhall prove due by written or oral evidence or the like.

CULLŪCABHATTA.

ON application from the creditor for the recovery of what is due by the debtor, the king ſhall by various means compel the debtor to pay the creditor's right, or the ſum which he proves by evidence to be due from the debtor.

CHANDÉSWARA.

IN what mode payment ſhould be enforced, MENU declares.

CCXXXIV.

MENU:—BY whatever lawful means a creditor may have gotten poſſeſſion of his own property, let the king ratify ſuch payment by the debtor, though obtained even by compulſory means.

" BY compulſory means;" by ſeizure, or diſtreſs.

CHANDÉSWARA and CULLŪCABHATTA.

THE debtor or his aſſets may be the ſubject, to which that expreſſion refers. The ſame lawgiver declares the ſeveral means by which payment may be enforced.

CCXXXV.

MENU:—BY the mode conſonant to moral duty *or by the mediation of friends*, by ſuit in court, by artful management, or by diſtreſs, a creditor may recover the property lent; and, fifthly, by legal force.

He may recover it by the methods laſt mentioned, if payment cannot be obtained by the ſeveral methods firſt mentioned. MISRA.

ANOTHER

ANOTHER mode will be ſubſequently mentioned. VRĬHASPATI explains the mode conſonant to moral duty.

CCXXXVI.

VRĬHASPATI:—BY the interpoſition of friends and kinſmen, by mild remonſtrances, by importunate following, or by ſtaying conſtantly at the houſe of the debtor, he may be compelled to pay the debt: this mode of recovery is called a mode conſonant to moral duty.

BY the perſuaſive diſcourſe of thoſe who are friends and intimates of the debtor, or his kinſmen, ſuch as maternal uncles and the reſt; by mild remonſtrances or honied language of the creditor himſelf; by importunate following or purſuit; by ſtaying conſtantly at the houſe of the debtor, or by abiding near him, that is by the creditor's faſting and the like at the houſe of the debtor; by all theſe methods the debtor may be compelled to pay the debt to the creditor: this mode of recovery, by the interpoſition of friends and the like, is called a mode conſonant to moral duty. This is merely an inſtance; it comprehends the interpoſition of honeſt ſtrangers with diſcourſe exciting a ſenſe of ſhame, and ſo forth.

CÁTYÁYANA explains the mode of recovery by ſuit in court.

CCXXXVII.

CÁTYÁYANA:—A DEBTOR, being arreſted *and freely acknowledging the debt*, may be openly dragged before the publick aſſembly, and confined until he pay what is due, according to the immemorial uſage of the country.

THE reſtraint of the debtor by the creditor before the publick aſſembly, until he pay the ſum due, is the mode of recovery by forenſick proceeding.

The *Retnácara*.

HE may be detained and confined; he may be ſtopped and prevented from going where he liſts, and ſo confined. "Before the publick aſſembly;"

otherwiſe

otherwiſe he m'ght allege, that he was exceſſively beaten, and ſo forth. "According to the immemorial uſage of the country;" according to the uſage, which ſubſiſts in that particular country. For example; in ſome countries creditors cauſe their debtors to be arreſted and confined by the king's officer; in others, they themſelves, or their ſervants, reſtrain the debtor; in others again, they confine them in fetters.

Or a diſtinct method of recovering debts is called the mode of recovery conſiſtent with the immemorial uſage of the country; or it falls under the deſcription of violent compulſion, and will be hereafter mentioned: "they muſt be made to pay their debts according to the cuſtom of the country" (CXLII). It is limited by the reſtriction of the immemorial uſage of the country. According to this opinion the mode of recovery by ſuit in court or practice muſt be otherwiſe explained. Thus the *Médhátit'hi* has this remark; 'from a debtor, who is indigent, payment muſt be obtained by a practical mode; and that practice conſiſts in perſonal labour and the like. For inſtance; a creditor, lending a further ſum to an indigent debtor, may employ him in his regular occupation, ſuch as huſbandry or the like: the produce thereby obtained ſhould be delivered to the creditor.'

This, according to the preceding opinion, is a mode of recovery ſimilar to that of ſuit in court deſcribed by Cátyáyana; it falls under the ſame deſcription; for the text of Cátyáyana is merely illuſtrative. In fact, a debtor, being reſtrained, or being detained for work, otherwiſe than in the cuſtody of the king's officer and the like, may be employed in his regular occupation, ſuch as agriculture and the like: and in that caſe, the creditor may not employ a *Bráhmana* in menial ſervice, nor a *Vaiſya* in military duty; in ſome countries he may employ a *Bráhmana* in agriculture or commerce, but he may not employ a barber of a mixed claſs in carrying burdens. To indicate this and other circumſtances the legiſlator adds, "according to the immemorial uſage of the country." That intends alſo the cuſtoms of families, and the uſage eſtabliſhed by law, and the like. Conſequently the meaning is, a creditor may not employ his debtor in work inconſiſtent with uſage. Again; in that country, where men of certain claſſes do not carry in a litter men of certain other claſſes, the creditor

may

may not employ one of ſuch a claſs in carrying the litter of a man of ſuch other claſs.

By the phraſe, "before a *publick* aſſembly," it is intimated, that the perſons aſſembled ſhould interpoſe to prevent ſuch irregular employment. The poſſible accuſation of maltreatment is thereby obviated, as before. Or the expreſſion, "before a publick aſſembly," is intended to ſuggeſt the approbation to be obtained from impartial perſons in this form, "this work, which is not inconſiſtent with local uſage, the debtor muſt perform;" it obviates the poſſible accuſation of infringing a cuſtomary right. This and other points may be deduced from reaſoning.

"Until he pay what is due;" conſequently, if the debt were diſcharged, the creditor muſt omit the reſtraint and other meaſures. This is mentioned *incidentally*, wandering from the real ſubject.

Vrĭhaspati explains artful management.

CCXXXVIII.

Vrĭhaspati: — When a creditor, with an artful deſign, borrows any thing of his debtor, or withholds a thing depoſited by him or the like, and thus compels payment of the debt, this is *called* legal deceit.

"With an artful deſign;" by ſtratagem. For inſtance; the creditor borrows effects of the debtor on ſuch pretences as the following, and thus compels payment of the debt; "a gueſt of high rank is come to my houſe, lend me a metallick caldron for his ſervice;" or on this pretence, "a kinſman of the bride is come to viſit the bridegroom, lend me ſilk clothes, ornaments and the like, to array the bridegroom."

"Withholds a thing depoſited by him;" or any thing ſubſequently intruſted. For inſtance; a creditor, who had formerly lent ten *cárſhápanas*, but cannot recover the ſum, reſolves on uſing artifice, and the debtor is deſirous of borrowing a further ſum; the creditor tells him, "I will further

lend you fifty *panas* of copper, and you ſhall pay the whole at once, but you muſt give a pledge." The debtor, ſo addreſſed, delivers a pledge of greater value, and the creditor, giving a ſmall part of the ſum, tells him, "I will give the whole ſum the day after tomorrow." On that day he delivers the ſum diminiſhed by the amount of his former debt, or attaches a ſufficient part of the pledge. In ſuch a caſe he withholds a thing ſubſequently intruſted. The term "and the like" comprehends depoſits and the reſt. In ſuch a caſe there is not the abſolute ſin of wronging one who has repoſed confidence in him, provided he do not take more than his due.

AGAIN; a diſhoneſt debtor, delivering a pledge for cuſtody only, receives a loan, but refuſes to pay the debt at its term; the cunning creditor mentions in various places, "his pledge, which was in my poſſeſſion, has been ſtolen by thieves." On hearing this through ſucceſſive report, the debtor tenders the principal with intereſt, and demands his pledge; and that creditor delivers the pledge, *and takes the ſum tendered.* In this caſe the fallacy muſt be conſidered as an artifice. Such a mode of recovering debts is called legal deceit. Deceit (*upadhi*) is ſynonymous with artifice.

VRĬHASPATI alſo explains diſtreſs.

CCXXXIX.

VRĬHASPATI:—WHEN he forces the debtor to pay by confining his ſon, his wife or his cattle, or by watching conſtantly at his door, this is called lawful confinement.

THE method of recovery by the reſtraint of his wife, his ſon, or his cattle, or by watching at his door, is called lawful confinement, or diſtreſs. This is a mere illuſtration; the ultimate ſenſe is, 'cauſing him *to ſuffer* inconvenience by any mode.' However, that ſhould not be done, by which he may be expoſed to great danger. This we hold reaſonable.

THE ſame legiſlator explains legal force.

CCXL.

CCXL.

VRIHASPATI:—WHEN, having tied the debtor, he carries him to his own houſe, and, by beating or other means compels him to pay, this is called violent compulſion.

BINDING him and carrying him to his own houſe, he may threaten to beat him and ſo forth; frightened by thoſe menaces, the debtor pays the debt: in ſuch a caſe, the threat of blows, preceded by confinement, is a mode of recovering debts, which is called violent compulſion or legal force. The carrying of him to his own houſe is not requiſite; for the threat of beating him on the road, or at ſome other place, is violent compulſion. The binding may be no more than *forcible* ſeizure; conſequently the threat of blows, after catching him by the hair, muſt be deemed violent compulſion.

VIOLENT compulſion is a mode of recovery defined as conſiſting in blows and the like after carrying the debtor to his own houſe.

The *Retnácara.*

ACCORDING to this author even blows are authorized. Under the term "and the like" is comprehended harſh reproof, or verbal abuſe and the like.

CCXLI.

CÁTYÁYANA:—BY beating, or by coercion, a creditor may enforce payment from his debtor, or by work, by ſuit in court, or by mild remonſtrance: firſt *duly* deliberating *on the method to be followed:*

2. Or let him obtain the ſum due by artifice, or diſtreſs.

IN this text "beating" ſignifies legal force or violent compulſion: "coercion," ſtaying conſtantly at the houſe of the debtor or importunate attendance. The term is ſo explained in the gloſs of the *Retnácara*: in effect it denotes the creditor himſelf refraining from food and the like; and

that

that falls within the mode conſonant to moral duty, as deſcribed by VRĬHASPATI. CHANDÉSWARA explains "work" or *proper* conduct, by an example: for inſtance, reflecting, "he is very diſhoneſt and will not repay the loan he receives from me: I muſt recover the debt by blows and other ſuitable methods;" the creditor adopts proper meaſures. Ultimately it ſuggeſts both means, *proper conduct, and obliging the debtor to work;* this *laſt* falls under the deſcription of mild methods: it does not vary from the ſenſe of MENU's text, Or "work" may bear the *literal* ſenſe of labour: it ſhall be ſubſequently diſcuſſed under the text of YÁJNYAWALCYA. But "ſuit in court," *which has been explained as a ſimilar mode*, is alſo noticed by CÁTYÁYANA. "Mild remonſtrance:" affectionate language with praiſe and the like. "Deliberating;" determining after due deliberation.

CÁTYÁYANA next declares from what debtor payment ſhould be obtaintained, in what mode.

CCXLII.

CÁTYÁYANA:—BY mild expoſtulation let a creditor procure payment from a king, from his maſter, and from a prieſt; but from an evil minded man or an heir, by ſome artful contrivance.

2. MENU ordained, that merchants, cultivators of land, and artiſts, muſt be made to pay their debts, according to the cuſtom of the country; but that a creditor might enforce payment from diſhoneſt debtors by violent meaſures.

"HEIR;" inheritor. In ſome places the text is read, "BHRĬGU ordained."

HE ordained, that merchants, cultivators of land, and artiſts, muſt be made to pay their debts, according to the cuſtom of the country.

The *Retnácara.*

"A PRIEST" or ſpiritual parent: but if any other than a prieſt happen

to

to be ſpiritual parent *of the creditor*, he alſo is ſuggeſted by the word "prieſt" taken illuſtratively. Again; the word "prieſt" (*vipra*) may be taken in the ſimple ſenſe of venerable, for it has that import: and a perſon, to whom veneration is due from the creditor, is meant. Why are the "king" and "the creditor's maſter" ſeparately mentioned? The anſwer is, becauſe diſreſpect to the king, or to his own maſter, produces evil in this world; to intimate this, they have been ſeparately mentioned. It may be here remarked, that in ſome inſtances even a *Súdra* is venerable.

YA'JNYAWALCYA:—SCIENCE, moral conduct, age, kindred and wealth, entitle men to reſpect; and moſt that, which is firſt mentioned in order: with theſe qualities, even a *Súdra* deſerves reſpect in his old age.

WITH theſe qualities in an eminent degree, namely ſcience and the reſt, even a *Súdra* is entitled to veneration, when his age paſſes ninety years. Thus MENU expreſſes, "even a Súdra *is venerable*, if he have entered the tenth decad of his age."*

The *Dípacalicá*.

SHOULD many venerable perſons be aſſembled, reſpect muſt be firſt ſhown in ſociety to the learned man; next to him, whoſe conduct is pure; afterwards to the aged man; next to one, who has learned kinſmen and the like; and laſtly to the wealthy man. And this concerns prieſts: valour and the like chiefly entitle a ſoldier to reſpect; and riches, a merchant. But here, ſhould many learned men be aſſembled, the precedence muſt be regulated by the preeminence of their reſpective ſciences; for the *Srí Bhágavata* records, "That indeed is ſcience, by which the knowledge of GOD is advanced." Science, conſiſting in knowledge, which advances *diligent* obſequiouſneſs, entitles a *Súdra* to reſpect; or ſkill in arts, the ſcience of medicine, or the military art. *From him, payment muſt be procured* by mild remonſtrance, tender expoſtulation, or the interpoſition of friends and kinſmen. Surely, from a ſoldier and the reſt, *payment muſt be procured by this mode*. "An evilminded man;" one, who is diſhoneſt but not unentitled to reſpect. It is the

* Chapter 2, v. 137.

ſame in regard to ſoldiers and the reſt, who cannot be treated with diſreſpect. It is alſo the ſame in regard to kindred, pupils, and the like.

"AND artiſts;" (CCXLII 2) the particle ſuggeſts the comprehenſion of *Vaiſyas* and the reſt. "Diſhoneſt debtors:" averſe from the diſcharge of their debts, not afraid of acting immorally, ignorant and ſo forth, but not entitled to reſpect; in a word, *Súdras* and the reſt. Diſtreſs muſt be employed, when violent meaſures cannot be adopted. The term uſed in the text ſignifies violent meaſures.

IN defining the mode of recovering debts by ſuit in court (CXXXVII), it is ſaid "arreſted, dragged *and confined*." How can that be? For, ſhould the ejection of urine and feces, and other corporeal neceſſities, be prevented, life could not be preſerved. For this, CA'TYA'YANA delivers a precept.

CCXLIII.

CA'TYA'YANA:—WHEN a priſoner has need of ejecting urine or feces, he ſhould either be followed *at a diſtance*, or diſmiſſed in fetters:

2. Should he have given a ſurety, he muſt be releaſed each day, at the hour of meals; and at night, if a ſurety have been given to ſuch effect:

3. But, if he do not tender a ſurety for appearance, nor avail himſelf of ſuch a ſurety, he muſt be confined in jail, or delivered to the cuſtody of keepers.

4. A VENERABLE, truſtworthy and virtuous man ſhall not be confined in jail; unreſtrained, he muſt be releaſed, or *be diſmiſſed* under the obligation of an oath.

"WHEN he has need &c." when he intimates ſuch occaſion, he muſt be followed, *or watched*, at a diſtance from the place where urine and feces are ejected. "Or diſmiſſed in fetters;" bound by chains and the like. Two

disjunctive

disjunctive particles, here employed, are intended to ſhow diſtinct rules governed by the nature or amount of the debt, and by the character of the debtor.

WHAT ſhould be done at the hour of meals? The legiſlator adds, "ſhould he have given a ſurety," ſhould a ſurety have been given, or a ſponſor aſſigned, he muſt be releaſed each day, at that hour of meals, for which the ſurety became anſwerable. Conſequently, after taking a ſurety for the hour of meals, he ſhould be daily releaſed. In the *Retnácara* the terms are expounded, a priſoner from whom a ſurety is taken. From the expreſſion "each day," it appears, that a ſurety ſhould be taken each day, that is at the hour of ſunriſe. Still, however, the terms, "and at night," authorize there leaſe of a debtor at night alſo, when a ſurety has been previouſly taken: and the word "day" may ſignify a day and night. A ſynonymous term, bearing a general ſenſe, occurs in the text concerning hair-intereſt (XXXV 4). *Yet* the acceptation may follow the texts of ſages concerning attendance on cattle; for inſtance, the text cited in the *Práyaſ'chitta tatwa.**

THIS muſt be underſtood, when he cannot obtain his repaſt without giving a ſurety. "And at night;" even at night, if a ſurety ſay, "this man ſhall be produced by me, let him go home at night:" in that caſe he ſhould alſo be releaſed at night. But, if no man become ſurety for him, becauſe he is ſuſpected of diſhoneſty; or if he do not ſeek bail; or, having given a ſurety for appearance, if the debtor, being releaſed, do not again apply to his ſurety; what ſhould be done in theſe caſes? The legiſlator ſays, "if he do not tender a ſurety for appearance (if he cannot obtain a ſurety), or do not avail himſelf of ſuch a ſurety" (or do not ſo act as is proper after finding bail); or, having given bail and being liberated by the creditor, if he do not again attend his ſurety, that is if he conceal himſelf from him and ſo forth (both may be underſtood from the ambiguous terms of the text); *in theſe caſes*, ſhould he be at any time diſcovered after laborious ſearch, he ſhall be confined in jail. That is, he ſhall be confined

* Cited here at full length, but omitted in its proper place, Book III, Chapter IV. (See note to v. IX of that chapter).

at

at night within closed gates and the like; but at the hour of meals he must be followed by the creditor himself, or be suffered to take his repast, bound in fetters or the like: in the same manner he should be allowed to bathe, but, if possible, he should take his repast within the prison. If there be keepers of the jail, let the creditor imprison him there, after giving notice to the jailers. But, when the creditor himself enforces payment of the debt, he may confine him in his own house.

But, if the debtor be not liable to confinement in prison, or if he be trustworthy, the creditor shall not confine him in a jail. This the legislator declares (CCXLIII 4). Should such a venerable person be not trustworthy, or, though *in general* trustworthy, if confidence be not placed in him, he must be dismissed under the obligation of an oath. This and other points may be argued.

Chandēswara and the rest give a similar exposition, but in his gloss it is said, 'if the debtor do not tender, or if he refuse to give, a surety for appearance or other sponsor.' The word 'other' intends a surety for payment. Consequently "surety for appearance" is considered as merely illustrative. The term (translated do not "avail himself") is here explained as signifying "refuse." The disjunctive particle has a reference to the word "tender," which occurs in the text. His refusal may be in this form, "how should I give a surety, I am not trusted?" Such a speech, when he is arrested by the creditor or the king, *is deemed a refusal*. But in fact a surety for payment can hardly be supposed *in the present case*. For instance; should any one say, "release this man, I will pay what is due by him," the creditor may reply, "the term of payment has already elapsed, discharge it therefore immediately:" with this notion, a surety for appearance *only* is mentioned. However, since the term *of payment* may be enlarged through the interposition of mediators, it is possible, that a surety for payment should also be given. The opinion of Chandēswara may therefore be justified. The confinement of a trustworthy man is unnecessary, because he can give a surety.

CCXLIV.

Vrĭhaspati:—From a debtor, who promises payment, the debt

debt may be recovered by mild remonſtrance and the like, and by *employing him in* work, by the mode of *moral* duty, by legal deceit, by violent compulſion, and by confinement at home.

" By mild remonſtrance and the like;" ſince the interpoſition of friends and the reſt, and the withholding of a depoſit and the like, are comprehended under the term " and the like," thoſe modes of recovering a debt, which are conſonant to moral duty and ſo forth, are alone exhibited: the legiſlator himſelf details thoſe very modes of recovery by mild remonſtrance and the reſt; " by the mode of moral duty, by legal deceit &c." " By confinement at home;" by the mode of lawful confinement: for he himſelf denominates confinement at home, the mode of lawful confinement. " By *employing him in* work;" by labour. On this conſideration, CHANDE'SWARA has not admitted the enunciation of the word " labour" in the definition of violent compulſion. By him four methods only are mentioned. Suit in court falls within the mode of violent compulſion. There is not conſequently any contradiction to MENU, who notices five modes. CA'TYA'YANA has not ſeparately mentioned diſtreſs or lawful confinement. It falls under the deſcription of compulſory means, *but* is a ſlighter compulſion, as has been already remarked.

BY what means ſhall payment be obtained from him, who has no aſſets? Wanting funds, what can he pay? Therefore does MENU propound a mode of diſcharging debts in ſuch caſes.

CCXLV.

MENU:—EVEN by perſonal labour ſhall the debtor pay what is adjudged, if he be of the ſame claſs with the creditor, or of a lower; but a debtor of a higher claſs muſt pay it *according to his income* by little and little.

A DEBTOR of equal or inferiour claſs to the creditor ſhould by labour put himſelf on a par with his creditor; the parity conſiſts in mutual exoneration from debt: conſequently the ſenſe is, he ſhould diſcharge the debt. Before the debt

 was

was discharged, there was this disparity, that one was creditor, the other debtor; but the debt being discharged by means of labour, on a computation of the hire for work performed, that disparity vanishes. Work must be performed by him alone, the rule of whose class, country, and family, is not thereby infringed: as has been already remarked. But, if the creditor be of the commercial class, and the debtor of the military class, the lawgiver declares what should be done; "but a debtor of a higher *or superiour* class must pay it by little and little." Here it should be considered, that the debtor of a higher class should be employed in labour consistent with his regular occupation, at some other suitable place, not at the creditor's house; after assigning a sufficient portion of his earnings for the maintenance of his family, the remainder should be delivered to the creditor.

But, if the creditor, as well as the debtor, be of the sacerdotal class, may the creditor oblige that debtor to work for him, since he is of equal class? or may he not so employ him?

CCXLVI.

VRĬHASPATI:—If the debtor be really poor, the creditor may take him to his own house, and oblige him to work in distilling spirits and the like; but a priest must be made to pay gradually.

"In distilling spirits and the like;" since the text coincides with that of MENU, a debtor of equal or inferiour class is intended. But the subsequent phrase intimates, that a *Bráhmana*, even though indebted to a man of the same class, shall not be compelled to work: for, if it supposed him indebted to a *Cshatriya* or the rest, the text would be nugatory. The reason is, that *Brāhmanas* are eminent in respect of each other; for their greatness is unlimited.

CCXLVII.

YA'JNYAWALCYA:—He may compel a poor debtor of a low class to do work by way of paying his debt: but a priest, if indigent, must be made to pay gradually according to his income, *or casual gains*.

"By

"By way of paying his debt;" for the diſcharge of his debt. "According to his income;" according to the acquiſition of funds.

The *Retnácara.*

But we expound "a low claſs," a lower claſs than the ſacerdotal tribe, namely the military claſs and the reſt. "Gradually;" employing a prieſt in his regular occupation, as ſacrificing and collecting alms; or, if that fail, in bearing arms and the like; and out of his earnings, ſupplying the maintenance of his family with frugality, the remainder ſhould be applied to the diſcharge of his debt. In proportion as a ſurplus remains, ſhould the debt be diſcharged: and this appears from the expreſſion, "a prieſt muſt be made to pay gradually." But here "a low claſs" is taken as intending alſo an equal claſs; and "prieſt," as intending a ſuperiour claſs. This is likewiſe remarked in the *Mitácſharà.* The text alſo concerns a debtor of equal claſs as well as of inferiour claſs. Cá'tya'yana declares it expreſsly.

CCXLVIII.

Cá'tya'yana:—The creditor may exact payment by labour from a debtor of the military, commercial, or ſervile claſs, if he be either equal to himſelf or lower.

By the enumeration of "military, commercial and ſervile claſſes," it is here intimated, that payment of a debt ſhould be procured from a man of the prieſtly claſs by another mode: and that has been already propounded, as declared by Vrĭhaspati and Yá'jnyawalcya. The term "ſervile claſs" intends generally any very low claſs, and comprehends therefore mixed claſſes, ſuch as *Múrdhábhiſhicta* and the reſt. The particulars of theſe claſſes ſhould be delivered under the title, where tribes are conſidered.

He ſhould only compel his debtor to perform work, which is not reprehended, as has been already hinted. But, if he oblige him to perform work, which is reprehended, what ſhould follow?

CCXLIX.

Cá'tya'yana:—But if he compel the debtor to do any improper

improper work not ſtipulated at firſt, he ſhall be fined in the firſt amercement, and the debtor ſhall be releaſed from his demand.

"NOT ſtipulated at firſt;" not mentioned when the debt was contracted. For inſtance; if the debtor ſaid "I will pay thee this debt by any work, even the moſt abject, if I cannot diſcharge it by honourable means;" in that caſe ſuch work has been ſtipulated: but, if he ſimply ſay, "I will pay the debt," or "I will diſcharge it by labour;" in that caſe, ſhould the creditor oblige him to perform ſuch work, which has not been ſtipulated, the creditor ſhall pay the firſt amercement, that is a fine denominated the firſt amercement. That fine is explained by MENU; "Now two hundred and fifty *panas* are declared to be the firſt amercement." This may be properly diſcuſſed under the title of fines.

THAT ſort of labour is reprehended, which is not authorized by the ſyſtem of law. For example; the regular employment of a *Cſhatriya* is the uſe of arms offenſive and defenſive; but, if that fail, commerce and certain other occupations are authorized by the law: work of a different nature is reprehended. But to a *Cſhatriya*, who abandons not his own profeſſion, however diſtreſſed, commerce and the reſt are alſo abject occupations. Yet to him, who has undertaken commerce and the like, or is willing to undertake it, ſuch an occupation is not a blamable employment. However, ſervice and low mechanical arts are abject occupations. The ſame ſhould be underſtood in regard to men of the commercial claſs and the reſt: and that is aſcertained from practice. This has been ſufficiently explained.

IT ſhould be here remarked, that a *Bráhmana*, who ſubſiſts even by agriculture, is not conſidered as following a profeſſion foreign to him: the creditor may not tell him, "following the profeſſion of arms or the like, and *thereby* earning money, pay the debt." Again; daughters, ſons and the reſt ſhould not be ſold: *therefore*, from parity of reaſoning, no debtor, whoſoever, can be compelled to ſell his children, in as much as the act is immoral.

THE debtor is exonerated from the debt. The *Retnácara*.

BY

By labour alone a debt is fully diſcharged; but releaſe from the demand is again mentioned, to ſhow, that in this caſe the debtor is exonerated, however inconſiderable the work performed.

CCL.

NA'REDA:—SHOULD a debtor be diſabled by *famine or other* calamity of the time, from paying the whole debt, he ſhall be only compelled to pay it *in ſmall ſums* from time to time according to his ability, as he happens to gain property.

SHOULD he be diſabled from paying the debt, through ſome calamity of the time, that is, in conſequence of famine or the like.

The *Retná cara.*

SOME hold, that this text concerns *Bráhmanas* and debtors ſuperiour in claſs to the creditor; for it coincides with the text of MENU and the reſt. But, in fact, this text may alſo be applicable to any caſe, where the creditor cannot oblige him to work, or where the debtor is incapable of labour.

IT ſhould be here underſtood, that MENU (CCXXXIII) directs payment to be enforced by the king; the ſubſequent text (CCXXXIV) ſeems alſo to intend payment enforced by the king. The creditor therefore applies to the king, ſaying "this debtor does not liquidate my debt," the king, finding that the debt is to be recovered from a man of the prieſtly claſs, adopts the mode of moral duty; calling the debtor's intimate friend or the like, he ſends him to obtain payment of the debt from that man by mild expoſtulation; or procures payment by his own mild remonſtrances; or ſuffers the creditor to beſet the houſe of the debtor, faſting there. But, if the debtor be a merchant, he ſhall only be made to pay the debt according to the cuſtom of the country; the king himſelf ſhould confine him in the cuſtody of his own officers: this and other modes ſhould be underſtood. But, if the debtor be very contumacious, and one whom the king cannot reduce by reaſon of his great power, he ſhould bid the creditor procure payment by withholding a depoſit or the like. The mode of violent compulſion is

obvious. If that be not practiſed, he ſhould ſend the creditor to purſue the mode of lawful confinement or diſtreſs: this mode has been diſcuſſed. Suit in court, or, as explained in the *Médhátit'hi*, practice *of labour*, ſhould be followed for the recovery of a debt from a very indigent debtor. It conſiſts in this; taking a further ſum from the creditor, let the king advance it to the debtor, who muſt labour in huſbandry, commerce or the like, and deliver to the creditor the property thereby gained. This appears from a brief examination of the ſubject.

In theſe definitions of the modes of recovery, creditor is mentioned indeterminately; but is deſcribed as a perſon recovering his property, as one who had advanced money, as owner of the effects. It follows, that theſe methods are univerſally applicable to depoſits and the like. Accordingly, in the chapter on redemption of pledges, "deceit" and "confinement" are mentioned in the text of VRĬHASPATI (CII); it thence appears, that the king ſhall not compel a creditor to reſtore a pledge to the debtor, by the mode of confinement and the reſt: wherefore "debtor," in the definition of lawful confinement, muſt be underſtood to ſignify one, who has received property *from another*.

If the creditor do not apply to the king, but himſelf procure payment of the debt, by ſome legal mode, ſuch as that of moral duty and the reſt, ſhall he be puniſhed, or not? On this ſubject MENU declares *the law*.

CCLI.

MENU:—THAT creditor, who recovers his right from a debtor, muſt not be rebuked by the king for retaking his own property.

A CREDITOR, purſuing modes of recovery, ſuch as that of moral duty and the reſt, in proper caſes, ſhall not be checked by the king: ſuch is the ſenſe.

The *Retnâcara*.

"IN proper caſes;" purſuing the mode of moral duty, if the debtor be

of

of the prieſtly claſs and the like; deceit, if he be an heir, and ſo forth. "The creditor ſhall not be checked;" then ſurely he ſhall not be puniſhed. But, if he act contrary to law, a puniſhment ſhall be inflicted. This appears from the terms uſed in the *Retnácara;* and that puniſhment may be harſh rebuke or other correction: this can only be diſcuſſed with propriety under the title of puniſhment.

CULLÚCABHATTA expounds "he ſhall not be rebuked," he ſhall not be chidden by the king in theſe terms; "haſt thou dared to recover the debt from thy debtor by violent means, without acquainting me?" If there be no reproof, ſurely there ſhall be no puniſhment.

CCLII.

VISHNU:—A CREDITOR, recovering the ſum lent by any *lawful* means, detention, bondage or the like, ſhall not be reproved by the king; if the debtor, ſo forced to diſcharge the debt, complain to the king, he ſhall be fined in an equal ſum.

"AN equal ſum;" a ſum equal to the debt recovered.

The *Retnácara.*

"DETENTION;" lawful confinement, and ſuit in court as deſcribed by CÁTYÁYANA. "Bondage;" violent means. The term, "or the like," comprehends the other modes of recovery.

CCLIII.

YÁJNYWALCYA:—HE, who recovers an acknowledged debt by his own act, *in any of the legal modes to which the debtor has tacitly conſented,* ſhall not be blamed by the king; and, if the debtor ſhall complain of ſuch an act before the king, he ſhall be fined and compelled to pay the debt.

"ACKNOWLEDGED;" owned.

The *Mitácſharà.*

A CREDITOR, recovering an acknowledged ſum, or a debt proved by witneſſes or the like, ſhall not be blamed by the king in theſe terms, "why didſt thou ſo?" If a debtor, on whom violent means and the like have been uſed to enforce payment, wickedly complain before the king, he ſhall be blamed by the king, that is, he ſhall be fined; and he ſhall be compelled to pay the debt. This expoſition is approved in the *Dípacalicá*. The text, already cited from VISHNU, regulates the amount of the fine; he ſhall therefore be amerced in a ſum equal to the debt.

Is not an amercement equal to the amount of the debt inconſiſtent with the following text of MENU?

CCLIV.

MENU:—THE debtor, who complains before the king, that his creditor has recovered the debt by his own legal act, *as before mentioned*, ſhall be compelled by the king to pay a quarter of the ſum *as a fine*, and the creditor ſhall be left in poſſeſſion of his own.

IT appears from this text, that he ſhall be fined in a fourth part of the debt. On this CHANDÉSWARA remarks, that 'an amercement equal to a fourth part of the ſum muſt be underſtood, when the offender is unable to pay a *larger* fine, or is *in general* virtuous.' Conſequently a fine equal to the whole ſum is conſidered as the general rule. But CULLU'CABHATTA thus propounds the text; 'ſhould a debtor complain to the king againſt a creditor, who recovered the debt by his own act, thinking, that he has great influence over the monarch, that debtor ſhall be fined in a quarter of the debt, and the ſum *recovered* ſhall be aſſigned to the creditor.' And that is reaſonable; for it was proper, that he ſhould recover the debt by application through ſome perſon near the king: in this caſe, ſince the creditor may alſo be charged with a ſlight offence, a ſmaller fine is impoſed on the debtor. Again; if the debtor be *in general* virtuous, or be unable to pay a large fine, the ſame conſequence is reaſonable; and the expoſition, adopted by CHANDÉSWARA, may therefore be juſtified.

YET

YET ſome think, that, becauſe the inſtitutes of MENU prevail over all other codes, his texts ſhould not be reſtricted in conſequence of a rule of VISHNU. The fine, ſpecified by MENU, muſt therefore be conſidered as the general amercement; and according to that text, and reſtricting the law propounded by VISHNU, his rule muſt be applied to the caſe of a very diſhoneſt debtor. That is wrong; for the law, as propounded by MENU, ſtill needs qualification. The rule of VISHNU, *thus expounded*, ſignifies, that a very perverſe debtor, complaining before the king of his creditor's enforcing payment, ſhall be fined in a ſum equal to the debt; it ſtill contradicts the text of MENU, for that ſignifies, that a debtor, complaining before the king, ſhall be fined in a quarter of the debt: to reconcile the apparent inconſiſtency with the rule of VISHNU, "not diſhoneſt" muſt be given as an epithet to "debtor" in the text of MENU; and the law, propounded by MENU, has needed qualification. This muſt be admitted by the wife.

BUT, if the debtor be unable to pay the ſum by any means whatſoever, wheel-intereſt may be exacted at the choice of the creditor.

CCLV.

VRĬHASPATI:—AFTER the time for payment has paſt, and when the intereſt ceaſes, *on becoming equal to the principal*, the creditor may either recover his debt, or require a new writing in the form of wheel-intereſt *(chacravrĭddhi)*.

"WHEN intereſt ceaſes," after accumulating to its limit.

The *Retnácara*.

"AFTER the time for payment has paſt;" this may be conſidered as relating to a loan for a ſpecified time. "When intereſt ceaſes," concerns a debt unlimited as to time. Hence it appears, that, if a creditor, by violent methods or the like, exact payment of a ſum lent for a limited time, before its term has expired, or of a debt for no limited time, before intereſt ceaſes, he ſhall be puniſhed. But, if he can recover it by mild expoſtulation, no offence ſhall be imputed to the creditor, as ſuggeſted by another text of VRĬHASPATI (CLXVI 2).

" Or require a new writing" (that is, a written contract) in the form of wheel-intereſt. Making the doubled ſum the principal, and ſtipulating intereſt afreſh, he may require a new writing, after cancelling the former note.

CCLVI.

CÁTYÁYANA: — TWICE the ſum lent ſhould always be received by the creditor, *if the debt be of long ſtanding;* but if *the debtor do* not *pay* twice the principal when intereſt has ceaſed, the creditor may again exact *an agreement for* intereſt.

" TWICE the ſum" is here mentioned on the ſuppoſition of a debt conſiſting of gold or the like; but if clothes or other commodities were lent, four times the value, or other multiple *of its*, as declared *by the law*, muſt be underſtood. Accordingly VRĬHASPATI ſays generally, " when intereſt ceaſes."

" WHEN intereſt has ceaſed" (CCLVI); when intereſt has ſtopped; if he do not then pay: the text muſt be ſo ſupplied. In that caſe " the creditor may again exact intereſt;" making the former debt together with intereſt his preſent principal, he may ſtipulate intereſt afreſh: and this is the wheel-intereſt mentioned by VRISHASPATI. Such wheel-intereſt is of three kinds, as declared by MENU.

CCLVII.

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;

2. But if, by ſome *unavoidable accident*, he cannot pay the whole intereſt, he may inſert *as principal* in the renewed contract ſo much of the intereſt accrued as he ought to pay.

" THEN due;" the intereſt legally due to the creditor: paying the whole or a part of that, he may renew the contract or writing; that is, tearing the

former

former writing, he may execute a new bond. If the whole intereſt be paid, freſh intereſt on the original debt only is ſtipulated: this is one form of wheel-intereſt; and in this caſe the expreſſion "he, who cannot pay the debt" ſignifies one, who is only unable to pay the principal. If a part of the intereſt be paid, intereſt may be ſtipulated afreſh on the principal of the debt together with part of the intereſt accrued: this is another form of wheel-intereſt; and in this caſe the expreſſion quoted ſignifies one, who is unable to pay the original debt and a part of the intereſt. But, if he do not pay "the intereſt then due" (for the phraſe is connected with the preceding terms), that is, if he pay no part of the intereſt, he muſt renew the debt for the ſum then due as a new principal; *in other words*, he muſt acknowledge it a freſh debt, that is admit the intereſt as a debt; and acknowledging it a new debt, it follows of courſe, that intereſt ſhall again accrue. Or connecting the phraſe with preceding terms, the conſtruction may be thus; 'if he do not pay the amount of intereſt, he muſt renew the contract:' conſequently he muſt renew the written contract, inſerting as a new principal the original debt with intereſt. In this caſe the expreſſion quoted ſignifies one, who is unable to pay the original debt and the whole of the intereſt; or that may be the ſenſe in all theſe caſes.

"So much of the intereſt accrued as he ought to pay;" this is purpoſely mentioned to remove the doubt, how he ſhould pay the intereſt; whether he may pay any part which is forthcoming, or muſt pay the whole intereſt at once. In the preceding text, "if he pay the intereſt then due," it is ſuppoſed, that he pays the whole intereſt; for no diſtinction is expreſſed. Conſequently two caſes only are fully declared: and by the laſt phraſe, explained "ſo much of the intereſt as may happen to be due," it is intimated, that, after paying ſome part of the intereſt, he ſhould renew the contract, inſerting as principal the original debt with *the remaining* part of the intereſt. Such is the notion entertained by CULLU'CABHATTA. Three caſes therefore ariſe even on this expoſition.

WHEN a debtor renews a contract after paying the whole intereſt *then due*, how can it be wheel-intereſt, ſince it does not correſpond with the text of VRĬHASPATI and YA'JNYAWALCYA, deſcribing that as intereſt

upon

upon intereſt; for in this caſe there is no intereſt upon intereſt? It is anſwered, the word *(vrĭddĕh)* is in the fifth, not the ſixth, caſe: conſequently, after ſtipulated or legal intereſt, *further* intereſt, which was not promiſed when the debt was originally contracted, is wheel-intereſt, or *intereſt after intereſt;* there is no difficulty. Such is the interpretation approved by CHANDĔSWARA; for he ſays, 'the debtor may renew the contract with intereſt on the principal together with ſome part of the intereſt accrued, or on the principal alone.'

SOME explain the firſt text, "if he pay ſome part of the intereſt then due." Conſequently, if ſome part of it be paid, or the whole be unpaid, wheel-intereſt may be ſtipulated. Two forms of it are therefore mentioned by MENU, not three; for a third is not ſpecified. But when the whole intereſt has been paid, if the bond be then renewed, there is no wheel-intereſt, but a freſh debt by the voluntary act of the debtor. In that caſe intereſt is therefore legal in a moral view: but intereſt upon intereſt is immoral. Or that alſo may be deemed immoral, under the text of VRĬSHASPATI (XXXV 7).

BUT rigid interpreters thus expound the text: he, who cannot pay the whole debt, principal and intereſt, being unable to effect its full diſcharge, but able to pay ſome part of the intereſt, or the whole intereſt (that is, unable to pay a certain portion of the debt), muſt renew the contract in writing: he muſt ſtipulate intereſt afreſh; elſe the renewal of the contract would be uſeleſs: and this has been expreſsly declared by CĂTYAYANA. How can that be, ſince there is not a new loan? Therefore does MENU declare, "he may inſert *as principal* in the renewed contract the ſum then due." That being the caſe, muſt a writing be executed, which contains a fallacy? For this cauſe does the legiſlator add, "if he cannot pay; *literally, not producing the ſum:*" therefore, mentally paying the ſum due, let him borrow it again. If ſome aſſets be forthcoming, may, or may not, a part of the intereſt be paid therewith? On this point the ſage adds, "he has aright to pay as much of the intereſt as is poſſible."*

* According to the literal ſenſe of the text: but it has been otherwiſe tranſlated on the authority of commentators.

CCLVIII.

MENU:—A LENDER at intereſt on *the riſk of* ſafe carriage (*chacravriddhi*), who has agreed on the place and time, ſhall not receive ſuch intereſt, if *by accident* the goods are not carried to the place, or within the time.

"WHO has agreed on the place and time," is thus expounded on the authority of CHANDE'SWARA: the debtor ſays, "I will pay the debt at ſuch a place and at ſuch a time;" and the creditor aſſents to that propoſal. Such a creditor is a lender at wheel-intereſt, having bargained for intereſt of that deſcription. If he paſs that place and time; if he do not go to that place at that time, the creditor ſhall not receive ſuch intereſt, namely wheel-intereſt: of courſe he muſt receive back the ſum lent without intereſt. Hence, even ſhould intereſt preſcribed by the law be ſtipulated for a certain time and place, it ſhall not be received by the creditor, if he do not attend at that place and time: for that ſmall omiſſion annuls legal intereſt.

BUT CULLU'CABHATTA expounds the text otherwiſe: the term "wheel" denotes the uſe of a wheel carriage or the like. A lender, who has accepted that by way of intereſt, and has agreed on the place and time; for inſtance, *he has agreed, that* "a journey to *Várán'aſí*, or the uſe of the carriage for a year, ſhall be the only intereſt:" in ſuch a caſe, if the debtor fail in time and place, if he do not carry *goods* to *Várán'aſí*, or do not carry *goods* during the year, he ſhall not receive the benefit, that is, the whole hire of the carriage. Conſequently the whole intereſt is undiſcharged. *

CCLIX.

VRIHASPATI:— As the orginal debt together with *the arrear of* intereſt becomes a *new* principal, when wheel-intereſt is received after the debt is doubled, ſo does the uſe of a pledge *forborne* become a *new* principal in a ſimilar caſe.

WHEN wheel-intereſt is received after the debt is doubled, as in that caſe the original debt with intereſt becomes a new principal,

* The tranſlation, which I quote unaltered, varies from both comments (MENU; Chapter 8, v. 156.)

ſo does the uſe of a pledge alſo become a new principal in a certain caſe; that is, even the uſe and profit of a pledge bear intereſt. For example; a man borrows money, pledging a cow on theſe terms; "this cow ſhall be milked by you, ſo long as I do not diſcharge the debt;" or, "this cow ſhall be milked by you during fifty months;" or, "ſhe ſhall be milked to make good the intereſt of the debt." In this caſe, ſhould the cow accidentally die notwithſtanding the utmoſt care, or be ſtolen by thieves or the like; then, if the debtor do not give a freſh pledge, the value of uſufruct and the principal ſum muſt be paid at the time of diſcharging the debt. But, if the debtor cannot do ſo, then, being ſued before the king or before a publick aſſembly, or attending the creditor of his own accord, he executes a new writing in the form of wheel-intereſt. In that caſe he may execute a bond after paying the value of uſufruct; ſhould even that exceed his means, he may add the principal ſum to that value, and, inſerting as principal the accumulated ſum, execute a new deed, in which ſtipulated intereſt and the like, or legal intereſt at the rate of an eightieth part and ſo forth, may be eſtabliſhed by conſent of both parties; and he may cancel the former note.

HERE an obſervation ſhould be made. When a debt was contracted on theſe terms, "let this cow be milked until the debt be diſcharged," but *afterwards*, the cow being accidentally loſt, wheel-intereſt is ſtipulated by the debtor, whom the creditor has arreſted, it muſt not be ſaid, that, *in ſuch a caſe* the value of the uſe *loſt* before the renewal of the contract ſhould be inſerted therein, and the intereſt ſubſequent to it muſt follow the rate of profit from the uſe *of the cow*. On the contrary, any other rate, which may be ſettled, ſuch as an eightieth part or the like, ſhall regulate the intereſt; for, in fact, it becomes a new debt.

CCLX.

VRĬHASPATI: — THIS rule concerns an acknowledged debt; but he, who conteſts the demand, ſhall be compelled to pay on proof in court by written evidence or oral teſtimony.

THIS rule, already propounded, *for* the recovery of a debt by expoſtulation

and

and other modes, concerns an acknowledged debt, or one which is aſcertained to be due. But, if the debtor conteſt the demand; if he deny the debt, ſaying "I owe not the ſum," he ſhall be compelled to pay it, when the debt has been proved by written evidence or the like; he ſhall not be forced to pay it on the ſimple affirmation of the creditor. "Or by oral teſtimony;" the particle is indeterminate, comprehending *verbal* contract and the like. For example; the creditor at ſome *former* time demanded payment of the debt from his debor; he replied, "I will pay it at the end of a month;" if any honeſt man know this fact, the debt may be thereby proved. So long as it be unproved, the creditor ſhall not uſe the means of recovery. If he do, VRĬHASPATI ordains a fine.

CCLXI.

VRĬHASPATI:—WHEN the debtor appeals to judicature, or when the demand is unliquidated, he ſhall never be conſtrained by the mere act of the creditor; and he, who conſtrains a debtor thus exempted from ſuch conſtraint, ſhall be fined according to law.

IF the demand be, for any reaſon, unliquidated or dubious, the debtor, who appeals to judicature, ſhall not be compelled or forced to pay. He, who conſtrains a debtor thus exempted from conſtraint or compulſion, ſhall be fined: and the fine thus ordained muſt be underſtood in the caſe, where the creditor enforces payment by his own act, or through the king's officers. But, when that is done by the king, expiation muſt be performed, for none has mentioned a fine on *the king* himſelf.

WHO is conſidered as a debtor appealing to judicature? The ſame legiſlator replies to that queſtion.

CCLXII.

VRĬHASPATI:—A DEBTOR is conſidered as appealing to judicature, when he ſays, "I will pay whatever ſhall by law be declared to be due."

"WHEN

"WHEN he ſays;" a debtor, who ſays &c. A debtor appealing to judicature *(criyávádì)* pleads or claims *(vadati)* actual proof of a fact *(criyá)*; ſuch as legal evidence and ſo forth.

THE ſame lawgiver explains a demand unliquidated.

CCLXIII.

VRĬHASPATI:—THE demand is conſidered as unliquidated, when a diſpute ariſes between the two parties on the ſpecies lent, or its number, weight, or meaſure, *on the value of a pledge* or the like, on the amount of intereſt, or on *the queſtion* whether the ſum be, or be not, due.

"ON the ſpecies lent;" on the nature of the property lent, whether it be gold, ſilver, or other ſpecies. For inſtance; it is aſcertained, that the debt bears intereſt at the rate of an eightieth part or the like; and it is alſo admitted by the debtor, that he contracted the debt in ſuch a month and year; but it is queſtioned, whether the ſpecies lent were gold or ſilver. So, "on its number, weight, or meaſure," it is queſtioned, whether a hundred pieces, or eighty, were borrowed. Under the term "and the like" is comprehended ſlavery and ſo forth.

The *Retnácara.*

THE meaning is, when a ſlave has been pledged, it is queſtioned whether his ſervice were aſſigned for one or two months. Under the term "and the like" are comprehended the queſtions, whether a pledge were aſſigned, or a ſurety given. "On the amount of intereſt;" the doubt is, whether the loan bear intereſt or not, or whether the rate be an eightieth part of the principal. "On the queſtion, whether the ſum be, or be not, due;" for inſtance, the debtor queſtions whether he received the loan or not; whether he repaid it or not; in other words, whether it be due from him or not: the verb (*da'*, give) here ſignifies payment. When a diſpute or diſagreement ariſes between the two parties, namely between the claimant and reſpondent, that debt, concerning which it ariſes, is a demand unliquidated. The queſtions abovementioned are intended by the term diſpute. Accordingly MENU

(CCXXXIII) directs, that the king ſhall enforce payment of a debt proved by evidence to be juſtly demandable from the debtor. That text has been already expounded.

BUT when a debtor denies a juſt debt, MENU declares, that the king ſhall enforce payment to the creditor of what is proved by evidence, and exact a fine from the debtor.

CCLXIV.

MENU:—IN a ſuit for a debt, which the defendant denies, let him (*the king*) award payment to the creditor of what, by good evidence, he ſhall prove due, and exact a ſmall fine, *according to the circumſtances of the debtor.*

" WHICH the defendant denies ;" which he diſowns.

The *Retnácara.*

IN a ſuit for a debt, which the debtor denies, affirming, that he owes him nothing.

CULLÚCABHATTA

CONSEQUENTLY the debtor, who affirms that he owes nothing, the king ſhall compel to pay to the creditor what ſhall be proved due by oral teſtimony and ſo forth.

THE king ſhall exact a ſmall fine, becauſe the defendant denied a juſt debt.

The *Retnácara.*

CULLÚCABHATTA ſtates, 'according to the circumſtances of the debtor.' For inſtance; in a caſe of denial, the king ſhall exact, according to the circumſtances of the man, a leſs fine than the full amercement of twice the amount of the debt, which will be mentioned.

VRĬHASPATI has directed a fine on the creditor who enforces payment of a debt not proved by evidence, ordaining that " he, who conſtrains a

debtor exempted from ſuch conſtraint, ſhall be fined according to law." What ſort of fine ſhould be impoſed? MENU replies to that queſtion.

CCLXV.

MENU:—IN the double of that ſum, which the defendant falſely denies, or on which the complainant falſely declares, ſhall thoſe two men, wilfully offending againſt juſtice, be fined by the king.

THE defendant, who denies the debt, offending intentionally, or the claimant who prefers a falſe claim for ſo much money, ſhall be fined in twice the amount conteſted; becauſe theſe two men, the debtor and creditor, offend againſt juſtice.

The *Retnácara.*

A QUESTION here occurs for diſcuſſion: the expreſſion uſed by VRĬHASPATI, "he, who conſtrains &c." ſignifies one who takes meaſures adapted to the recovery of the ſum. The ſame is here ſignified by the expreſſion, "that ſum, on which the complainant falſely declares;" for a falſe claim in theſe words, "pay my debt, which is due from thee," is a meaſure adapted to the recovery of the ſum. Now, if a man only declares falſely on the ſum, and does not proceed to the actual recovery of it, he ſhall be fined in double that ſum; but, if he proceed to the utmoſt length, the amercement is no greater: which is a diſparity in the law. If this be alleged, the anſwer is, that the derivation of the term, "who conſtrains," ſuggeſts one, who takes meaſures adapted to the recovery of debts; it does not neceſſarily ſignify the utmoſt proceſs. Hence VRĬHASPATI and MENU concur: and whether or not a greater fine ſhould be exacted if the falſe demand be enforced, may be diſcuſſed under the title of fines. But here another fine (that is a fine on the debtor) is incidentally propounded by MENU.

THIS text, ordaining a fine equal to double the amount conteſted, muſt be underſtood of the caſe, where the debt is denied knowing it to be juſt, or claimed knowing it to be falſe. Such is the opinion of CULLŪCA-

CCLXVI.

YA'JNYAWALCYA:—SHOULD a debt, *which was* denied, be proved by evidence, the defendant muſt pay the ſum and an equal fine to the king; and he, who prefers a falſe claim, muſt pay twice the ſum, which he demanded.

"DENIED;" diſowned: if the debtor affirm, "I owe it not." Should that debt be proved or eſtabliſhed by the evidence of witneſſes or the like, he muſt pay a fine to the king equal to the debt conteſted. But, if a falſe claim be preferred, the claimant muſt pay a fine to the king equal to twice the ſum, for which he ſued.

THIS text of YA'JNYAWALCYA, preſcribing a fine on the debtor equal to the amount of the debt, muſt be adduced when there is no intentional offence. There is not any inconſiſtency.

The *Retnácara.*

CONSEQUENTLY there is in fact no variance between CULLU'CABHATTA and the *Retnácara;* for the intentional offence can only be the conſcious affirmation of a falſehood.

SOME hold, that, ſince the perſon, who ſhall receive the ſum, is not mentioned in the text of MENU (literally tranſlated, "thoſe two men, wilfully offending againſt juſtice, ſhall be forced to pay a fine *equal to* double that ſum"), the meaning of the precept, that the debtor ſhall be forced to pay twice the ſum, is, that he ſhall pay the ſum in queſtion to the creditor, and a fine of the ſame amount to the king. Conſequently a fine on the debtor, equal to twice the ſum conteſted, is not ordained; the creditor alone ſhall pay a fine equal to double the ſum conteſted, if he prefer a falſe claim: and this alſo coincides with the text of YA'JNYAWALCYA; for both direct, that in whatever caſe a fine equal to the debt ſhall be paid by the debtor, in a ſimilar caſe twice the ſum muſt be paid by the creditor.

THAT cannot be; for it is unreaſonable to impoſe a double fine for an equal offence.

CCLXVII.

CCLXVII.

CA'TYA'YANA: — ANY creditor, who haraſſes a debtor appealing to judicature, ſhall forfeit that claim and pay an equal fine.

IT ſhould not be argued from the coincidence of this text of CATYA'YANA cited in the *Mitácſharâ*, that a fine equal to double the ſum intends the forfeiture of the ſum claimed and an equal fine. Were it ſo, the fine would not be double, ſince one of the conſtituent parts *of that multiple* would have no exiſtence. The laſt hemiſtich in the text of YA'JNYAWALCYA muſt be underſtood as relating to the conſcious exhibition of a falſe claim. Accordingly

CCLXVIII.

YAMA declares: — IF a rich debtor, through diſhoneſt perverſeneſs, pay not his debt, the king ſhall compel him to diſcharge it, and may take from him twice the ſum *as a fine*.

THEREFORE, exacting from the debtor twice the amount of the debt as a fine, the king ſhall compel him to pay it, namely the debt; for that muſt be ſupplied. But, if he begin by denying the debt, though conſcious of owing it, and afterwards, being brought into court, acknowledge the debt before the writing or other evidence be produced, he ſhall only be fined in a ſum equal to the debt; for half the fine in queſtion is ordained when *the defendant* himſelf acknowledges the debt.

CCLXIX.

VYA'SA: — AFTER denying the claim, ſhould the party himſelf acknowledge the due, it is conſidered as a *tardy* acknowledgement, and the fine ordained is half of that, *which is impoſed in the caſe of obſtinate denial*.

OF that fine, which is impoſed in the caſe of obſtinate denial. By parity of reaſoning, ſhould he acknowledge it in court upon reflection, though previouſly unconſcious of the debt, the fine ſhall be half the debt in queſtion.

THIS

THIS text of YA'JNYAWALCYA, though not inſerted in moſt copies under the title of loans, is inſerted in this place, becauſe it has been quoted by CHANDE'SWARA, and correſponds with texts of MENU and others.

CCLXX.

VYA'SA:—THE claimant ſhall pay twice the ſum, for which he preferred a falſe claim:

2. The rule ſhall be the ſame, in reſpect of either party who may be confuted, if a conſideration be *ſpecially* pleaded; and likewiſe in reſpect of either party who may be caſt, ſhould a former deciſion be alleged.

"A CONSIDERATION;" a ſpecial cauſe.

The *Retnácara*.

THE following text explains a ſpecial cauſe.

CCLXXI.

NA'REDA:—WHEN the defendant acknowledges the *receipt of the* ſum, as declared by the plaintiff, but alleges a conſideration, it is deemed a ſpecial plea *(pratyavaſcanda)*.

THE defendant, or debtor, acknowledges the receipt *of the ſum*, but anſwers, "it is true I received the money, but it was given by thee as a gratification for the accompliſhment of thine own buſineſs." In this caſe alſo the rule is the ſame; either party being caſt, whether he be claimant or defendant, ſhall be fined in twice the amount. For inſtance; at the cloſe of the ſuit, if the gift of the ſum as a gratification be proved, the claimant ſhall be fined in twice the amount; if the debt be proved, the debtor *ſhall be fined in the ſame amercement*. CA'TYA'YANA has explained *the plea of* prior deciſion.

CCLXXII.

CA'TYA'YANA:—IF a man, though caſt at law, revive the ſuit, he ſhould be conſidered as one previouſly confuted,

and is called an appellant from a former deciſion *(prán-nyáya)*.

For inſtance; a creditor, caſt in a ſuit formerly inſtituted before one umpire, again declares before another judge, "this man is my debtor." That claimant ſhould be anſwered by the defendant with this plea; "he has been already caſt by me:" and that plaintiff is called an appellant from deciſion, or one whoſe ſuit has been already decided. In that caſe, whoever is caſt, ſhall be fined; whether the claimant be caſt, or the defendant, in conſequence of the former deciſion appearing to be unjuſt, or on other grounds. "Likewiſe;" that is, he ſhall be fined in double the ſum.

CCLXXIII.

Menu:—A debt being admitted by the defendant, he muſt pay five in the hundred, *as a fine to the king;* but, if it be denied *and proved*, twice as much: this law was enacted by Menu.

This text is expounded by Cullucabhatta, Chandéswara and others, as relating to fines. Conſequently, a debt being firſt diſowned, but afterwards voluntarily admitted by the debtor, on his being merely brought into court, he muſt pay an amercement of five in the hundred, or a twentieth part of the debt. But if it be denied, and the debtor perſiſt in diſowning it even in court, and it be proved with much trouble by a writing or by the evidence of witneſſes or the like, *he muſt pay* twice as much, or ten in the hundred. Cullúcabhatta concurs in this expoſition.

On the ſubject of the firſt hemiſtich, Nárada propounds a law.

CCLXXIV.

Nárada:—But, if a rich debtor, through diſhoneſt perverſeneſs, pay not his debt, the king may take only a twentieth part of the ſum, *if circumſtances be very favourable to the debtor, or if he acknowledge the debt in court.*

That

THAT ſum, which a rich debtor withholds through diſhoneſt perverſeneſs, the king ſhall compel him to pay to his creditor, and may himſelf take, as a fine, a ſum amounting to a twentieth part of the debt: and this muſt be underſtood, when the debtor voluntarily confeſſes the debt in court; for it correſponds with the text of MENU ordaining five in the hundred.

AND this alternative in reſpect of moderate fines ſhould be regulated by the qualities of the debtor, his claſs, and his circumſtances.

The *Retnácara.*

ON the ſubject of the laſt hemiſtich, YA'JNYAWALCYA propounds a rule.

CCLXXV.

YA'JNYAWALCYA:—A DEBTOR ſhall be forced to pay to the king ten in the hundred of the ſum proved againſt him; and the creditor, having received the ſum due, muſt pay five in the hundred *towards defraying the charges of judicature.*

THE ſum being proved, the debtor ſhall be forced to pay ten in the hundred, as a fine to the king, making good that amercement out of his own funds. The very ſame gloſs is delivered in the *Dípacalicá;* and this muſt be acknowledged as the opinion entertained by the author of the *Mitácſharà.* It concerns the denial of a debt; for it coincides with the text of MENU, "if it be denied, twice as much" (CCLXXIII).

THE laſt part of the text of YA'JNYAWALCYA conveys this ſenſe; the creditor alſo, having recovered his debt awarded by the king, muſt pay five in the hundred or a twentieth part to him, as wages, *or towards defraying the charges of judicature.*

A MAN, ſubject to amercement under theſe texts, ſhall be forced to pay double the debt, a ſum equal to the debt, or ten in the hundred, the fine being mitigated according to the degree of virtue he poſſeſſes, or other circumſtances

circumſtances taken into conſideration. This is declared. But if the debtor, coming into court, confeſs the debt, he ſhall only be forced to pay half as much. This is alſo declared. Conſequently a prieſt, a virtuous ſoldier or the like, and a very indigent debtor, muſt pay five in the hundred; but, if he perſiſt in his denial even in court, ten in the hundred; for this conduct is ſuppoſed to be preceded by knowledge of the fact: but, if he were unconſcious, half as much. In general, a rich ſoldier and the like ſhall be fined in a ſum equal to the debt, or in half that amercement, according to circumſtances as abovementioned, if he deny the debt through ignorance; but twice as much, if he were conſcious of owing the ſum.

On this ſubject Chande'swara has ſaid in his gloſs on the laſt hemiſtich of the text (CCLXXIII), 'he ſhall be fined in twice as much as is the amount of the debt.' That is liable to objection; for it would be a vain repetition of the double ſum mentioned in another text of Menu (CCLXV).

In like manner ſhould the various fines on the creditor, in the caſe of a falſe claim, be regulated according to claſs and ſo forth. Na'reda mentions a diſtinction in reſpect of the ſervile claſs.

CCLXXVI.

Na'reda: Should the ſons of twice-born men by women of the ſervile claſs advance falſe claims, let the king cauſe their tongues to be drawn *forth* and pierced with a ſharp inſtrument.

As for the following opinion, we think, it appears inadmiſſible, becauſe it is unauthorized by Chande'swara, Va'chespati, Su'lapa'ni, Cullu'cabhatta, and Bhavade'va.

The phraſe in the text of Ya'jnyawalcya (CCLXXV), which is explained "ſhall be forced to pay by the king," being adduced in reply to the queſtion ariſing on the preceding text (CCLXXVIII),* 'by whom ſhall

* In the code of Ya'jnyawalcya, the verſe CCLXXVIII immediately precedes the verſe CCLXXV (See Ya'jnyawalcya, Ch. 2, v. 41 and 42).

he

he be forced to pay his debts in the order, in which they were contracted?' there is in fact a *neceſſary* repetition. Or the firſt text (CCLXXVIII) relates to the caſe of two or more creditors, but this text (CCLXXV) ſuppoſes the caſe of a ſingle creditor. Hence the creditor, having received the ſum due, muſt pay five or ten in the hundred, ſince it is a rule, that 'an alternative is admitted in law, if a queſtion can be propoſed, *which is thereby ſatisfied;*' he muſt pay either five or ten in the hundred: ſuch is the alternative, and that is ſettled in practice. For inſtance; if the creditor muſt pay five in the hundred when the debt is confeſſed to be due, *then*, ſhould the debtor confeſs it in court, but, through diſhoneſt perverſeneſs, pay it not, the king, enforcing payment, ſhall take from the creditor, towards defraying the charges of judicature, five in the hundred, that is a twentieth part of the debt, as directed by MENU, YA'JNYAWALCYA, and NA'REDA, concurring in the ſame precept (CCLXXIII, CCLXXV, and CCLXXIV). If the debt be denied, and the defendant plead in the king's court, "I owe nothing," the king may exact twice as much or ten in the hundred, that is a tenth part, as authorized by MENU and YA'JNYAWALCYA (CCLXXIII and CCLXXV): and the expreſſion in the text of YA'JNYAWALCYA, "of the ſum proved or recovered," is properly put in the fifth caſe; and the terms, "through diſhoneſt perverſeneſs," in the text of NA'REDA, are alſo pertinent: for, on any other conſtruction, there could be no fine of a twentieth part impoſed on the debtor; and it would be improper to exact *no greater fine than* a twentieth part, ſince he is ſtated as acting wilfully, through diſhoneſt perverſeneſs. What then is the import of the following rule of VISHNU; for he mentions, as a fine, the tenth part *to be paid* to the king?

CCLXXVII.

VISHNU:—IF a creditor ſue before the king and fully prove his demand, the debtor ſhall pay, as a fine to the king, a tenth part of the ſum proved; and the plaintiff, having received the ſum due, ſhall pay a twentieth part of it *towards defraying the charges of judicature.*

THIS can be no objection; for CHANDE'SWARA deſcribes, as a ſecondary

fine, the ſum which muſt be paid by the creditor: 'although the creditor be void of offence, the king may exact, as a fine, a twentieth part of the ſum for enforcing payment of it.' Conſequently the debtor muſt pay the ſum in the preſence of the king, and diſcharge the debt due to his creditor; and the creditor, having received his due, muſt pay, as a fine, the tenth or twentieth part of the ſum: ſuch is the conſtruction *according to this opinion.** But we hold it proper to reject this interpretation for the reaſon abovementioned.

OTHERS quote the *Dípacalicá*, that 'the various fines ſhould be regulated by other texts of law, according to the exiſtence or non-exiſtence of an unmitigated offence.' From a creditor of the prieſtly claſs, five or ten in the hundred cannot be taken without offence; for it is declared by MISRA, that the property of a prieſt ſhould on no account be taken by the king; and it is forbidden in the *Mahábhárata*, when treating of the duties of kings, and on other occaſions, to take wealth from *Bráhmanas*. But puniſhment may be inflicted on *Bráhmanas*; for the puniſhment of *mutilation, ſuch as* cutting off the hand, is mentioned in the dialogue between SANC'HA and LIC'HITA contained in the *Mahábhárata*; and the jewel, which he wore on his head, was taken from AS'WAT'HA'MAN: accordingly the gem, yielded by AS'WAT'HA'MAN, is mentioned in the firſt book of the *Mahábhárata*.

The *Srì Bhágavata*:—*Ignominious* tonſure, confiſcation of effects, and baniſhment from the realm, are the puniſh-

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* To underſtand the comment, it may be requiſite to ſtate the texts as they would be tranſlated, were this interpretation received.

CCLXXIII.

A debt being admitted by the defendant, he (the plaintiff) muſt pay five in the hundred; but, if it be denied, twice as much.

CCLXXIV.

But, if a rich debtor, through diſhoneſt perverſeneſs, pay not his debt, the king may take only a twentieth part of the ſum *from the creditor*.

CCLXXV.

A debtor ſhall be forced to pay by the king: and out of the ſum proved and recovered, the creditor, who receives his due, muſt pay ten or five in the hundred, *according to circumſtances*.

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ments of reputed prieſts ;* no other corporal puniſhment *or pecuniary penalty* is allowed.

" TONSURE ;" ſhaving the hair. " Confiſcation of effects ;" ſeizure of property. " Baniſhment from the realm ;" expulſion from the country. This has been ſufficiently explained ; and it has been *here* mentioned merely for the ſake of illuſtration.

IN a matter of debt or the like, the demand ſhould be proved by the evidence of witneſſes and ſo forth ; but if that be impracticable, by ordeal : if popular proof can be obtained, there ſhall be no recourſe to ordeal. This will be elucidated under the title of adminiſtration of juſtice.

SHOULD there be many creditors of the ſame debtor, to whom ſhall his due be firſt paid, to whom laſt ?

CCLXXVIII.

YÁJNYAWALCYA:—A DEBTOR ſhall be forced to pay his creditors in the order, in which the debts were contracted, after firſt diſcharging thoſe of a prieſt or of the king.

ON the competition of ſeveral creditors, a *Bráhmana*, a *Cſhatriya* and ſo forth, the debt of the *Bráhmana* ſhall be firſt paid ; and afterwards the reſt, in their order as they were contracted. That is, the ſum, which was firſt lent, ſhall be firſt paid ; that, which was next lent, ſhall be next diſcharged : ſuch is the ſenſe of the text. The debts ſhall not be liquidated by a diſtribution of proportionate ſhares of the debtor's aſſets ; nor ſhall the priority or ſubſequence of the debt due to the *Bráhmana* be examined : for the law does not direct it. But, ſhould there be ſeveral creditors of the prieſtly claſs, the order, in which the debts were contracted, muſt be admitted.

ON the competition of a *Cſhatriya* and a *Vaiſya*, the debt of the *Cſhatriya* ſhall be firſt paid, and next that of the *Vaiſya ;* for YÁJNYAWALCYA ſays,

* Literally, kinſmen of BRAHMÁ ; by which muſt be underſtood prieſts by birth, yet not ſtrictly obſerving the duties of their claſs.

" after

"after discharging those of the king." * Again; on a similar competition of a *Vaisya* and a *Súdra*, the debt of the *Vaisya* shall be first discharged, and next that of the *Súdra*. In like manner should a triple succession be admitted in regard to creditors of mixed classes, ranking in three degrees, highest, middlemost and lowest: and, should a creditor of the servile tribe claim with one of a mixed class, the same should be understood according to circumstances *of relative precedence*.

On this subject CHANDE'SWARA says, 'should there be at once creditors of various classes, the priest shall be first paid, and next the soldier and the rest; but, if the creditors be of the same class, the debts must be paid in the order, in which they were contracted.' By saying, 'if they be of the same class,' it is evidently meant, that the order of the classes should be taken, if many debts be due to men of different classes. The same meaning is expressed in the gloss of the *Mitácsharà*; 'if the creditors be of equal class, 'the debtor shall be compelled by the king to pay the debts in the same or-'der in which they were contracted; but, if there be variance of class, in the 'order of *the classes*, sacerdotal and the rest.' For "the order, in which the debts were contracted," is there applied to the case of equal class; and the order of classes, sacerdotal and the rest, is there prescribed in the case of unequal class. There is no difficulty in supposing the same meaning in the gloss of the *Dípacalicá*; 'should there be more creditors than one, the debtor 'shall be forced to pay the debts in the order, in which they were contracted; '*but* if there be at once creditors of the priestly and military class, and 'so forth, he shall be forced to pay the sums due to the *Cshatríya* and the 'rest, after first discharging the debt of the *Bráhmana* even though last 'contracted.'

CCLXXIX.

CA'TYA'YANA:—IF there be many debts at once, that, which was first contracted, shall first be paid, after those of a king or of a priest learned in the *Véda*. †

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* Which may be understood generally of the military class.

† "But when the effects are few, the creditors numerous, and the debtor is sold into slavery, all shall re-"ceive *their shares of* the price, in proportion to their just demands, because there are not assets." I cite this passage from the *Viváda Chandra* because it contains a rule affirmed by the *Mait'hila* school, and extended to the case where the debtor's effects only are sold.

"OF

"Of a prieſt learned in the *Véda*;" after the debt of a *Bráhmana*. "Of a king;" of a *Cſhatriya*. This text is alſo intended to ſhow a caſe of preferable payment in the order of the claſſes. It muſt therefore be underſtood in the ſame ſenſe as above mentioned.

CCLXXX.

Ca'tya'yana:—If all the contracts were written in one day, the debts, payment, ſubſiſting demand, and intereſt, ſhall be equal; otherwiſe, in order of time.

From the expreſſion "in one day" it appears, that no account ſhould be taken of the priority and ſubſequence of ſeveral debts contracted on the ſame day: elſe the text would be nearly unmeaning. Conſequently the conſtruction of the phraſe is this; if the contracts were written in one day, that is, if debts, contracted with many perſons, were reduced to writing in one day, payment, ſubſiſting demand, and intereſt, ſhall be equal in reſpect of thoſe debts. Therefore collecting all the aſſets of the debtor, which are forthcoming, the creditors ſhould divide them in ſhares proportionate to the amount of their reſpective debts. A diſtribution of ſhares proportionate to the amount of the debts may be thus exemplified: ten *ſuvernas* are due to one, two to another, and four to a third, but the aſſets of the debtor amount to eight *ſuvernas* only; in this caſe half a *ſuverna* ſhall be received for each *ſuverna*; and he, to whom ten *ſuvernas* are due, ſhall receive five *ſuvernas*; he, to whom four *ſuvernas* are due, two *ſuvernas* and he, to whom two *ſuvernas* are due, one *ſuverna*. But it muſt be underſtood, that in this caſe the principal and intereſt are added together. Hence, if one have a claim for intereſt ſpecially ſtipulated or the like; and the other, for legal intereſt only; the intereſt being unequal, the payment to each ſhall be regulated by the intereſt receivable by him. But if ſome part of the intereſt have been received by any one creditor, that ſhall not be required from him, but it ſhall be deducted from his debt. However, in the caſe of intereſt by enjoyment, the principal only ſhall be admitted in the account. For inſtance; the principal ſum amounts with intereſt to ten *ſuvernas*, and two *ſuvernas* have been received on a former day; the *remaining* eight *ſuvernas* only ſhall be admitted

mitted on a ſubſequent day when a dividend is made: the two *ſuvernas*, received on a former day, ſhall not be confounded with the debtor's aſſets, for that debtor has no title to money actually received by the creditor. But afterwards he ſhall not have enjoyment of the whole *pledge*, for the debt is leſſened in compariſon with the former due. Nor ſhall the creditors divide that pledge, ſince it is poſſeſſed by one creditor alone. In fact the creditor, who has received a pledge to be uſed, ſhall not receive a ſhare of the dividend; for he has truſted to the chattel poſſeſſed by him for the recovery of his debt. He alſo, who has a pledge for cuſtody in his power, ſuch as a copper caldron or the like, ſhall have no ſhare of the dividend; but he may demand the ſale of the pledge. Yet, if the debtor or any other perſon ſay, "this man has in his poſſeſſion a chattel belonging to the debtor, let it be ſold and ſhared by all the creditors," that ſhall not be done; for the debtor cannot ſell a chattel poſſeſſed by the creditor, and the debtor's title *to the pledge* is at that time limited. It is the ſame alſo in other caſes. In ſhort, aſcertaining and writing down the debts of all *the creditors* with the intereſt due on them, a diſtribution of the debtor's aſſets ſhould be made.

ALL this ſhould only be done when the term has elapſed. Hence, if debts be contracted with ſeveral perſons in one day, and the term of one loan be two years; of another, four years; of a third, five years; in this caſe, ſhould a diſtribution be made at the cloſe of the fourth year, no dividend ſhall be received by him, who claims under a contract for the term of five years: for his claim is weaker, ſince the term is unexpired. If he be ſo fortunate, as that the debtor ſhould ſurvive and acquire wealth, then ſhall that debt be diſcharged. Should a further diſtribution of aſſets be made after the expiration of the fifth year, he ſhall receive an equal dividend in proportion to the debts then due: the whole aſſets, or a larger ſhare, ſhall not be received by the creditor, who received no dividend at the former diſtribution; for no law ordains it. This and other points may be argued.

BUT, if the debts of all the creditors be not fully diſcharged, they may preſerve their claim for the remainder. This alſo muſt aſſuredly be proportionate to the *original* debts, *ſince the dividend was ſo*. Therefore the legiſla-

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tor adds, "ſubſiſting demand," or literally preſervation; the term is ſynonymous with the owing of the debtor.*

If the debtor's aſſets only ſuffice for the diſcharge of intereſt due to all the creditors or to any one of them, then intereſt only ſhall be received, but the principal ſhall bear no further intereſt. However, when, in conſequence of a term having been ſtipulated, a diſtribution of aſſets is made before the period which would regularly double the debt, it may bear further intereſt after the dividend. Therefore the ſage adds, "and intereſt." It is *alſo* the practice, for a creditor not to accept *payment of* his principal, while intereſt remains due. It follows, that, if debts have been contracted with two or more creditors on one day, a preference being then diſallowed, if the debtor cannot fully diſcharge all the debts, whatever aſſets are found, ſhall be taken by all the creditors, and their further demand may be retained; or the intereſt may be received *and the principal remain due.*

This may be obſerved; if he, by whom no term was ſtipulated, demand the debt, a dividend ſhall be paid to him; if he do not demand it, but the period, in which a debt is doubled, be paſt, the debtor ſhould call him and pay the ſum. In like manner, ſhould the term of any man's loan be expired, the debtor ſhould call him. But, if any creditor be abſent in a foreign country, his dividend ſhould be depoſited with a confidential perſon. Such is the full meaning of the law.

The following text propounds a diſtinction.

CCLXXXI.

Cātyāyana: — That capital, on which it is proved, that the aſſets were gained, and no other debt, muſt be repaid by the debtor *out of thoſe aſſets.*

If there be at once many creditors of the ſacerdotal and other claſſes, he, through whoſe loan the aſſets were gained, muſt be paid out of thoſe aſſets;

* This expoſition appears unſatisfactory; *racſhaṅ'a* is ſynonimous with *d'hāraṅ'a* in ſome ſences, not in all. Sir W. Jones tranſlated it "profits of a pledge or the like." Nevertheleſs, I follow the gloſs.

not

not any other creditor. Should a ſurplus remain, it ſhall be paid to the other creditors by a dividend or in the order of claſſes. For example; borrowing a ſum from one man, and therewith paying the revenue, which is due to the king by the cuſtom of the country, or ſupporting his own dependants and the like, the debtor conducts agriculture; the produce of that culture is applicable to the payment of the debt due to that creditor alone. But if he borrow money from another man, and during the ſeaſon of culture perform other work to avoid idleneſs, that loan muſt alſo be conſidered as applied to huſbandry, *which was his chief employment:* and ſuch is the practice. But a debt contracted for the charges of celebrating nuptials or the like, even though it be contracted on the ſame day, conſtitutes a weaker claim in reſpect of wealth acquired by agriculture, ſince it was not applied to that purpoſe.

AGAIN; in the caſe of commerce and the like, aſſets, gained by traffick and ſimilar means, are applicable to the payment of the creditor claiming a debt contracted for the purchaſe of goods, for the diſcharge of the king's duties, for the maintenance of ſervants and ſo forth. In like manner, borrowing a ſum from one man, he redeems a pledge hypothecated to another; in that caſe, ſhould the debt remain undiſcharged, he muſt deliver or ſell that pledge for the payment of that creditor and no other: he has no right to pledge the chattel to any other man. Again; a huſbandman cultivates land belonging to a certain perſon; and the landlord borrows money from the huſbandman, or the huſbandman from his landlord; in either caſe, the debt of that creditor alone ſhall be diſcharged out of the grain produced from that land: for thoſe aſſets, conſiſting in grain, were produced from that capital, whether land, or ſeed and plough. Such is the conſiſtent method of CHANDE'SWARA and the reſt.

HOWEVER, ſhould he deliver thoſe aſſets to another perſon through miſtake, or hypothecate that pledge to another creditor, the act is valid; for the aſſets were the property of the debtor. Nevertheleſs, the creditor may forbid it; and, if the debtor ſlight that oppoſition, he ſhall be fined. In like manner, even though unoppoſed, if he do ſo deliberately, he ſhall be fined; for the reaſon of the law is the ſame. This ſhould alſo be argued in the caſe

of

of payment *to a favoured creditor*, neglecting the order, in which the debts were contracted, or the order of claſſes.

HERE a queſtion occurs for conſideration. If the landlord or the huſbandman abovementioned firſt borrowed money from another, pledging to him the produce of the land for that year, and afterwards receive a loan from the huſbandman or landlord, in that caſe who ſhall be paid out of that produce? To this queſtion it is anſwered, the whole ſhall not be paid to the laſt creditor; for, were it ſo, there could be no ſuch practice in moneylending as that of pledging the produce of land owned or cultivated by another; nor *ſhall it be paid* to the firſt creditor, for the text would be almoſt unmeaning, ſince no loan would be made without a pledge, leſt a ſubſequent hypothecation *invalidate the prior lien*. To this it may be replied, ſince the ſubſequent loan had not taken place when the pledge was made, there can be no ſuch lien on the land; the hypothecation is therefore valid, and a ſubſequent loan cannot annul the valid hypothecation and eſtabliſh ſuch a lien: it is therefore reaſonable, that the debt of the mortgagee ſhould alone be diſcharged. However, the ſecond creditor reſiſts the diſpoſal of the produce, unitl his own debt be paid. This many excellent perſons maintain. We hold, that an hypothecation, ſubſequent to ſuch a debt *which gave a lien*, is not valid; and the text therefore is not unmeaning. But ſome lawyers ſay, the text of CA'TYAYANA (CCLXXXI) ſhould be otherwiſe applied. A lien immediately ariſes on that produce, ſimilar to a pledge; ſince there is no authority for a reference to the *time of* contracting the debt. Hence the laſt creditor ſhould alone be paid. But, if the mortgagee, *at firſt* declaring "I will not lend the ſum," *at length* accepts the pledge with the aſſent of the other party, the hypothecation is valid.

THE diſtribution *of dividends* ſhould be made in the preſence of the king's officers, or of arbitrators, to remove the apprehenſion of unmitigated offence; the debtor ſhould not make the diſtribution in the privacy of his own houſe. This has been ſufficiently diſcuſſed.

CCLXXXII.

YAJNYAWALCYA:—WHEN the debtor has paid the debt, let

him cauſe his writing to be torn, or another to be made as his acquittance; but a debt, contracted before witneſſes, muſt be diſcharged before witneſſes.

When the debt is fully diſcharged, let the debtor cauſe the writing to be torn. But, if the note be miſſing, let him cauſe another writing to be made as his acquittance. A debt contracted before witneſſes he ſhould diſcharge before witneſſes.

The *Dípacalicá.*

He ſhould cauſe the writing to be ſo torn or cancelled, that it may not be again produced on another occaſion. But, if the writing were atteſted, the payment ſhould be made, and the deed cancelled, before witneſſes; for ſuch is the import of the text, "a debt, contracted before witneſſes &c:" elſe it might be ſuſpected, that the debt was undiſcharged. "As his acquittance;" the term is in the ſeventh caſe with a cauſal ſenſe. Let him cauſe another writing to be made; namely that, which is denominated a written diſcharge or acknowledgement of payment. This alſo ſhould be atteſted or be made in the creditor's own handwriting; as ſuggeſted by a text cited in the *Vyavahára tatwa* and already quoted in this work (XIII).

The form of the writing ſhould be regulated by the eſtabliſhed cuſtom of the country, and it has been already mentioned in the diſcuſſion on written contracts of debt: the very ſame form ſhould be admitted in the preſent caſe; for it is directed generally, that "whatever contract ſhall have been concluded by mutual conſent," a written memorial of it ſhould be executed in that form (XVI). But, ſince that text is placed under the title of loans and depoſits, the name of the lender or owner is directed to be firſt inſerted in the writing: here the reverſe ſhould be done; for the word lender there intends the perſon whom the obligation regards; that is, him, to whom the writing is delivered. Hence in a deed of gift the name of the donee *ſhould be firſt inſerted;* or in a bill of ſale, the name of the vendee. This and other points may be argued. But in fact, ſays a certain author, the debtor is at that time an owner *delivering his own;* for he differs

in

in nothing from one, who delivers property. Hence the variation conſiſts in this; that the debtor's name ſhould be firſt inſerted, becauſe the debtor is the perſon, whom the obligation regards. The creditor ſhould ſign his name on the top of the writing;* for the word "borrower," in the text of YA'JNYAWALCYA (XVIII), intends the perſon, who executes the writing. This and other points ſhould be underſtood.

CCLXXXIII.

VISHNU: — A DEBT, contracted only before witneſſes, may be diſcharged before witneſſes only; *but* a written contract being fulfilled, the writing ſhould be torn.

"BEFORE witneſſes only;" elſe, if the payment be unatteſted, how can the debtor prove that payment, when the creditor ſubſequently ſues before the king for the debt proved by verbal or other evidence?

CCLXXXIV.

NA'REDA: — LET the creditor give a writing after the debt has been acquitted; or, if that cannot be, let him make a *publick* acknowledgment: this ſhall be a mutual acquittance of the creditor and debtor.

LET him give a writing, that is, a written diſcharge, if the note be not at hand. "After the debt has been acquitted;" after it has been fully diſcharged. "A publick acknowledgment;" a declaration made before *unconcerned* perſons, that the debt has been paid by this man.

The *Retnácara.*

CONSEQUENTLY, if a written acquittance cannot be given, the payment ſhould only be made before witneſſes. Should no writing be given, nor atteſtation made, the debtor might complain before the king, *in theſe words*, "he has exacted from me more than was due;" or, "he refuſes to give a receipt." Hence the creditor alſo would need an acquittance; it is therefore ſaid, "*a* mutual *acquittance or releaſe.*"

* There is an inconſiſtency, in regard to the place of ſignature, which I cannot well reconcile:

WHEN

When the whole ſum is not paid, but a part only, how ſhould the bond be cancelled? For this cauſe Ya'jnyawalcya adds *the following rule.*

CCLXXXV.

Yajnyawalcya: — If the debtor pay by little and little, let him write the ſums paid on the back of his written contract, or let the creditor give a receipt ſigned by his own hand.

"A receipt;" a written acknowledgment of a ſum received.

The *Retnácara.*

Let him write, "ſuch a ſum this day received by me, in part hereof, from ſuch one, the debtor." But the form muſt be regulated by the *current* practice alone. In his receipt ſhould be written the ſum which is paid, and the date on which that very ſum is paid: he may ſubjoin ſums previouſly received. Thus, he ſhould write, "ſo much money received this day, ſuch ſums received earlier, making in all ſuch a ſum *received to this date.*" Elſe, through the forgetfulneſs of his creditor, the debtor might in courſe of time obtain ſeveral receipts for a ſingle payment; or, although that have not been done, the creditor might allege, that it was done. This diſtinction appears admiſſible in our apprehenſion.

From the phraſe, "let the debtor write the ſums paid &c." it appears, that the debtor alone ſhould write the ſums paid by himſelf on the back of the written contract: but the receipt ſhould be written by the creditor; for the phraſe "ſigned by himſelf" may be properly referred to the creditor.

CCLXXXVI.

Vishnu: — Part only being paid, and the writing not being at hand, let the creditor give an acquittance written by himſelf.

"Part only being paid;" the whole amount of principal and intereſt not being fully diſcharged; (for inſtance, a diſtreſſed debtor, unable to pay

the

the whole ſum at once, pays it by little and little, from time to time;) in this caſe, the debtor ſhould write the ſums paid by him on the back of the written contract; or, the deed not being at hand, the creditor ſhould give another writing to this effect, "this ſum has been received by me." Such is the ſenſe.

BUT, if the writing be not at hand, then, even if the whole due be diſcharged, the creditor muſt give a writing ſigned by himſelf; therefore does the legiſlator expreſs, "and the writing not being at hand." Or the noting of partial payments on the back of the bond, as mentioned by YA'JNYAWALCYA, and the acquittance ſigned by the creditor himſelf, as mentioned by VISHNU, admit of two caſes: if the writing be, or be not, at hand, and the debt be fully or partially diſcharged, the creditor ſhould give an acquittance ſigned by himſelf. Herein CHANDE'SWARA concurs: or the expoſition may be thus; if the writing be at hand, and a partial payment be made, it ſhould be noted on the back of the bond, and a ſeparate receipt ſhould be alſo given, agreeably to the texts of both ſages. Should the creditor ſubſequently affirm, "this debtor obtained the writing by artifice from my houſe, and has written ſums on it, though never paid," that aſſertion may be eaſily confuted.

IF the creditor produce not the writing, nor give one ſigned by himſelf for a ſum received, what ſhall be done? On this ſubject NA'REDA propounds *the following text.*

CCLXXXVII.

NA'REDA: — HAVING received a ſum, the creditor ſhould give a receipt to the debtor; but he, who refuſes, when required, to give *back* that, *for which he granted no receipt*, ſhall forfeit the remainder of the debt.

"HAVING received" the intereſt; ſuch is the meaning. He, who refuſes *both* to *give an acquittance and* repay the intereſt when demanded, &c.

The *Retnácara*.

"INTEREST" is here ſupplied. The term ſignifies the intereſt of the debt. But, in fact, that is merely intended for elucidation; the real ſenſe is an incomplete payment. The uſe of ſupplying that term is this; when a part of the principal has been paid to the creditor, and he neither gives up the writing *that the payment may be noted*, nor grants a receipt; in that caſe, even though the creditor may be diſpoſed to repay it, the debtor does not demand the ſum paid; for, *were it repaid to the debtor*, the ſum would bear further intereſt from that day. Should a creditor, who has received a ſum from the debtor, neither permit him to write the ſum paid on the back of the contract, nor give the debtor a receipt ſigned by himſelf, ſurely the debtor will redemand the ſum paid by him *as intereſt*; if the creditor alſo refuſe to reſtore it, he ſhall forfeit the remainder of his debt. The forfeiture of the balance is, as it were, a fine on the creditor for that offence.

CCLXXXVIII.

VRĬHASPATI: — IF he, who has recovered his debt by the mode of moral duty or any of the others, refuſe to write a receipt on the note, or to give an acquittance, the ſum, that was due, ſhall be forfeited.

THAT creditor, who has enforced payment of his debt by the mode of moral duty, or any of the others abovementioned, but will not permit the debtor to write the ſum paid on the back of the note, or, if this were impracticable, who refuſes to give a receipt, which is the next ſtep, *ſhall incur this forfeiture*. 'Through knavery' ſhould be ſupplied in the text. It alſo intends atteſtation as mentioned by NĀREDA: the full meaning is, if he alſo refuſe an atteſtation of the payment. In theſe caſes, the ſum due to the creditor would be forfeited: the mood is potential. Becauſe the ſum, which has been actually paid, cannot be proved by the debtor without a writing or other evidence; hence, ſince he may be liable to pay it again, the creditor may poſſibly receive more than his juſt due: ſuch is the ſenſe of the text. Conſequently, over-exactions being improper, nothing ſhould be done which tends thereto. But if any one do that, which ought not to be done, he ſhall ſurely be puniſhed. This is intimated in the text of VRĬHASPATI. It is therefore abſolutely neceſſary to write the ſum

on

on the back of the note, or grant a receipt or the like: ſuch is the full ſenſe of the text; and puniſhment conſiſts in the forfeiture of the balance, as ordained by NĀREDA. Since no law directs it, the fine ſhall not be received by the king. This expoſition of the text of VRĬHASPATI, though not delivered by any *former* author, ſeems elegant.

HERE the term employed *(vrĭddhi)* * ſignifies loſs or forfeiture.

The *Calpateru.*

FOR the verb *vardh* is inſerted in the *Ganacámadhénu* with the ſenſe of fill, and cut; and this word is derived by the ſubſtitution of *vrĭdh* for *vardh*, *a change* which often occurs with this ſuffix. Or the verb *vrĭdh*, repreſenting the verb *vardh*, as well as its own regular ſenſe of growth or increaſe, through that medium preſents the ſecondary ſenſe of abſciſſion, which is the regular meaning of the verb *vardh*; as the term *dwirépha* (two rs.) ſignifies a black bee through the medium of the word *bhramara* (which contains two rs.); and the verb *ás*, ſit, preceded by the particle *upa*, ſignifies adoration or worſhip in the following verſe of the *Cuſumánjali*, a treatiſe of philoſophy; †

HE, the ſupreme ſpirit, is here deſcribed, the worſhip *(upásti)* of whom wiſe men conſider as the road to heaven and final beatitude.

CONSEQUENTLY, if the creditor, through knavery, do not permit the ſum to be written on the note, nor give a receipt, nor cauſe his acknowledgment to be atteſted by witneſſes, he ſhall forfeit the ſum, that was due, namely the ſum lent by him: and the forfeiture muſt be underſtood, as in the text of NĀREDA, to be the forfeiture of the balance.

THE *Cámadhénu* and HELĀYUDHA read *náſau vrĭddhim avápnuyat*, he ſhall not receive advantage, inſtead of *taſya tad vrĭddhim ápnuyat*. HELĀYUDHA ſays in his gloſs; 'if the creditor, having received a ſmall part *of the debt*, do

* Taking the word in its uſual acceptation of intereſt, Sir WILLIAM JONES tranſlated the text, "the debtor ſhall gain the intereſt, that was due."

† By UDAYANĀCHARYA; a treatiſe written to prove the exiſtence of GOD, conteſted by the Atheiſts of his day.

'not

' not ſuffer the ſum to be written on the back of the note, nor give a re-
' ceipt, then, ſince he forfeits the remaining ſum, he receives no intereſt or
' advantage on it: for that is prevented by the forfeiture of the balance.'
In effect there is no variance between the *Calpateru* and HELA'YUDHA.

THE refuſal to write a receipt, or give an acquittance for the ſum paid, muſt be underſtood as ariſing from an intention of obtaining a ſecond payment of the ſame ſum: for, otherwiſe, there would be an inconſiſtency.

The *Retnácara*.

'Do not ſuffer the ſum to be written on the note;' "by the debtor" ſhould be ſupplied.

THE creditor lends money ſolely for the ſake of gain; and by that gain or intereſt he receives an advantage on his principal. Should even the remaining principal be forfeited, how can he obtain advantage from the principal ſum. Conſequently, by declaring that he has no advantage from the ſum due, the forfeiture of the remainder is, in ſome ſort, indirectly ſuggeſted; ſince the text coincides with that of NA'REDA. 'For that is prevented by the forfeiture of the balance;' this is a repetition intended to ſuggeſt the penalty as the *immediate* cauſe of *his* obtaining no advantage. Or that gloſs may be read, 'for the forfeiture of the balance is the ſubject treated;' that is, it has become the ſubject through the text of NA'REDA. 'He ſhall not receive advantage,' ſuggeſts the penalty of loſing the remaining ſum; therefore does the commentator ſay, 'for the forfeiture of the balance is the ſubject &c.' Such is the expoſition of the *Calpateru* and HELA'YUDHA.

ACCORDING to the *Cámadhénu*, the forfeiture of intereſt only is mentioned; not the forfeiture of the remaining principal. But in fact, according to this opinion, the ſenſe ſo far explained muſt be further extended to the ſame purpoſe. Elſe, there would be a contradiction, repugnant to reaſon, in the forfeiture of the balance when a creditor has caſually written no receipt or given no acquittance, but without intending to obtain a ſecond payment of the ſame ſum, *while on the other hand a leſs penalty fell on a wilful offence.*

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