THE LAW OF INHERITANCE

FROM THE

MITACSHARA,

TRANSLATED BY

H. T. COLEBROOKE, ESQ.,

WITH

AN APPENDIX

CONTAINING

A TABLE OF SUCCESSION AND A COLLECTION OF PRECEDENTS FROM THE DECISIONS OF THE PRIVY COUNCIL ON INDIAN APPEALS AND OF THE SUDDER AND HIGH COURTS OF THE THREE PRESIDENCIES,

AN INDEX.

BY

A PLEADER OF THE HIGH COURT.

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PREFACE.

The *Mitakshara*, it is well known to the student of Hindu Law, is a commentary on the Institutes of the Indian sage YAJNYAWALCYA by VIJNYANESWARA who is said to have belonged to an order of ascetics, founded by SANKARA A'CHA'RYA, the famous Vedantist, and to have flourished more than 800 and less than 1,000 years ago. That distinguished oriental scholar—Mr. H. T. COLEBROOKE, in his Preface to the two Treatises on the Hindu Law of Inheritance, thus speaks of the work of VIJNYANESWARA:—"The range of its authority and influence is far more extensive than that of JIMUTAVAHANA's treatise (the *Dyabhaga*); for it is received in all the Schools of Hindu Law from Benares to the Southern extremity of the Peninsula of India as the chief ground of the doctrines which they follow and as an authority from which they rarely dissent."

No apology is needed for publishing a new edition of so important a work on Hindu Law as the *Mitakshara*, the great legal authority for all India except Lower Bengal—the text-book of the Benares, the Maharashtra and the Dravida Schools. Colebrooke's Translation of the Law of Inheritance from the *Mitakshara* forms the bulk of this volume, but in an Appendix are given a

Table of Succession and a Collection of Precedents from the Decisions of the Sudder Courts as well as the latest rulings of the High Courts and the Privy Council. A general Index has been added. A portion of the present edition has had the benefit of revision by the late Hon'ble Prosunno Coomar Tagore, C. S. I., who kindly allowed the Editor to have had free access to his magnificent Law Library, which privilege the Baboo's Executors were good enough to continue. No pains have been spared to make the book acceptable to the public. For the imperfections which may be discovered in it the learned readers' indulgence is respectfully solicited. Should the publication receive ordinary encouragement, the Editor will consider himself amply rewarded.

August 21*st*, 1869.

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THE LAW OF INHERITANCE

FROM THE

MITACSHARA,

A COMMENTARY BY VIJNYANESWARA
ON THE INSTITUTES
OF
YAJNYAWALCYA.

CHAPTER I.

SECTION I.

Definition of Inheritance; and of partition.—Disquisition on Property.

1 EVIDENCE, human and divine, has been thus explained with [its various] distinctions; the partition of heritage is now propounded by the image of holiness.

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1. *Evidence human and divine.*] Intending to expound with great care the chapter on inheritance, the author shows by this verse the connexion of the first and second volumes of the book. *Subod'hini.*

The image of holiness.] YAJNYAWALCYA, bearing the title of contemplative saint (*Yogiswara,*) and here termed the image of holiness (*Yogamurti.*) BALAM-BHATTA.

2. Here the term heritage *(daya)* signifies that wealth, which becomes the property of another, solely by reason of relation to the owner.

3. It is of two sorts: unobstructed *(apratiband'ha,)* or liable to obstruction *(sapratiband'ha.)* The wealth of the father or of the paternal grandfather, becomes the property of his sons or of his grandsons, in right of their being his sons or grandsons: and that is an inheritance not liable to obstruction. But property devolves on parents (or uncles,) brothers and the rest, upon the demise of the owner, if there be no male issue: and thus the actual existence of a son and the survival of the owner are impediments to the succession; and, on their ceasing, the property devolves [on the successor] in right of his being uncle or brother. This is an inheritance subject to obstruction. The same holds good in respect of their sons and other [descendants.]

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2. *Solely by reason of relation.*] "Solely" excludes any other cause, such as purchase or the like. "Relation," or the relative condition of parent and offspring and so forth, must be understood of that other person, a son or kinsman, with reference to the owner of the wealth. BALAM-BHATTA.

The meaning is this. Wealth, which becomes the property of another, (as a son or other person bearing relation,) in right of the relation o offspring and parent or the like, which he bears to his father or other relative who is owner of that wealth, is signified by the term heritage. *Subod'hini.*

3. *In right of their being his sons or grandsons.*] A son and a grandson have property in the wealth of a father and of a paternal grandfather, without supposition of any other cause but themselves. Theirs consequently is inheritance not subject to obstruction. *Subod'hini.*

Property devolves on parents &c.] VISWESWARA-BHATTA reads "parents, brothers and the rest" *(pitri-bhratradinam)* and expounds it 'both parents, as well as brothers and so forth.' BALAM-BHATTA writes and

4. Partition *(vibhaga)* is the adjustment of divers rights regarding the whole, by distributing them on particular portions of the aggregate.

5. Entertaining the same opinion, NAREDA says, "Where a division of the paternal estate is instituted by sons, that becomes a topic of litigation called by the wise partition of heritage."* "Paternal" here implies any relation, which is cause of property. "By sons" indicates propinquity in general.

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interprets 'an uncle and a brother or the like,' *(pitrivya-bhratradinam ;)* but notices the other reading. Both are countenanced by different copies of the text.

The same holds good in respect of their sons &c.] Here the sons or other descendants of the son and grandson are intended. The meaning is this: if relatives of the owner be forthcoming, the succession of one, whose relation to the owner was immediate, is inheritance not liable to obstruction: but the succession of one, whose relation to the owner was mediate or remote, is inheritance subject to obstruction, if immediate relatives exist. *Subod'hini.*

In respect of their sons &c.] Meaning sons and other descendants of sons and grandsons, as well as of uncles and the rest. If relatives of the owner be forthcoming, the succession of one, whose relation was immediate, comes under the first sort; or mediate, under the second. BALAM-BHATTA.

4. *Partition is the adjustment of divers rights.*] The adjustment, or special allotment severally, of two or more rights, vested in sons or others, relative to the whole undivided estate, by referring or applying those rights to parcels or particular portions of the aggregate, is what the word 'partition' signifies. *Subod'hini* and BALAM-BHATTA.

5. "*When a division of the paternal estate,*" *&c.*] Considerable variations occur in this text as cited by different authors. It is here read *paitrasya ;* and BALAM-BHATTA states the etymology of *paitra* signifying 'of or belonging to a father.' He censures the reading in the *Culpataru, pitryasya,* as ungrammatical. It is read in the *Madana-ratna, pitradeh* 'of a father &c.' Other variations occur upon other terms of the text:

* NAREDA, 13. 1.

6. The points to be explained under this [head of inheritance,*] are, at what time, how, and by whom, a partition is to be made, of what. The time, the manner, and the persons, when, in which, and by whom, it may be made, will be explained in the course of interpreting stanzas on those subjects respectively. What that is, of which a partition takes place, is here considered.

7. Does property arise from partition? or does partition of pre-existent property take place? Under this [head of discussion,†] proprietary right is itself necessarily explained: [and the question is] Whether property be deduced from the sacred institutes alone, or from other [and temporal] proof.

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which is here read *tanayaih* for *putraih*; *calpyate* for *pracalpyate*; and *vycahara-padam* for *tad-vivada-padam*. The last is noticed by the commentator BALAM-BHATTA. A disagreement also occurs respecting the pronoun *yatra*, for which some substitute *yas tu*, and *yat tu*. See JIMUTAVAHANA C. 1. § 2.

Paternal here implies &c.] The meaning, here expressed, is that the word "paternal," as it stands in NAREDA'S text, intends what has been termed [by the author, in his definition of heritage,] 'relation to the owner, a reason of property.' *Subod'hini.*

It intends any relation to the owner, as before mentioned, which becomes a cause of property: and it consequently includes the paternal grandfather and other [predecessors.] The author accordingly observes, 'that "by sons" indicates propinquity in general;' meaning any immediate relative. BALAM-BHATTA.

7. *Does property arise from partition.*] Here the enquiry is twofold: for the substance, which is to be divided, is the subject of disquisition; and the doubt is, whether partition be of property, or of what is not property. For the sake of this, another question is considered: Is partition the cause of property, or not? If it be not the cause of property, but birth alone be so; then, since property is by birth, it follows that partition

*BALAM-BHATTA. † BALAM-BHATTA.

8. [It is alleged, that] the inferring of property from the sacred code alone is right, on account of the text of GAUTAMA; "An owner is by inheritance, purchase, partition, seizure,* or finding.† Acceptance is for a *Brahmana* an additional mode; conquest for a *Cshatriya*; gain for a *Vaisya* or *Sudra*."‡ For, if property were deducible from other proof, this text would not be pertinent. So the precept, ("A *Brahmana*, who seeks to obtain any thing, even by sacrificing or by instructing, from the hand of a man, who had taken what was not given to him, is considered precisely as a thief;"‖) which directs the

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is of property. This is one disquisition, which the author proposes by the question "does property arise from partition &c." Another inquiry relates to the subject of property. The author introduces it, saying "proprietary right is explained." Here the right of property is the subject of discussion: and the doubt is whether it result from the holy institutes only, or be demonstrable by order and temporal proof. That question the author proposes. *Subod'hini.*

The substance, which is to be divided, is the subject of the first disquisition. Here the question is, whether partition of what is not property, be the cause of proprietary right; and thus right, arising from partition, would not be antecedent to it, since partition, which becomes the cause of that right, had not yet taken place. Or is partition not the reason of property, but birth alone? and thus, since proprietary right thence arose, partition would be of property. This is one disquisition, which the author proposes: "Does property arise &c." He introduces a second question, which serves towards the solution of the first. BALAM-BHATTA.

8. *It is alleged that the inferring of property from the sacred code alone is right.*] The author here states the opponent's argument. *Subod'hini.*

On account of the text of GAUTAMA.] If property were deducible from other, that is from temporal, proof, this passage of GAUTAMA's institutes would not be pertinent, since it would be useless if it were a mere repetition of what was otherwise known. BALAM-BHATTA.

* Apprehensio, vel occupatio. † Inventio.
‡ GAUTAMA, 10,39.—42, Vide infra. § 13. ‖ MENU 8. 340.

punishment of such as obtain valuables, by officiating at religious rites, or by other similar means, from a wrongdoer who has taken what was not given to him, would be irrelevant if property were temporal. Moreover, were property a worldly matter, one could not say "My property has been wrongfully taken by "him;" for it would belong to the taker. Or, [if it be objected that] the property of another was seized by this man, and it therefore does not become the property of the usurper; [the answer is,] then no doubt could exist, whether it appertain to one or to the other, any more than in regard to the species, whether gold, silver, or the like. Therefore property is a result of holy institutes exclusively.

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For it would belong &c.] The thing would belong to the taker; since that relation would be alone the subject of perception. BALAM-BHATTA.

Therefore property is a result of holy institutes exclusively.] If property be worldly, it would follow, that when the goods of one man have been seized by another, should the person, who has been despoiled, affirm concerning them, "my property has been taken away by this man," a doubt would not, upon hearing that, arise in the minds of the judges, whether it be the property of one, or of the other. As no doubt exists regarding the species, whether gold or something else, when gold, silver, or any other worldly object, is inspected; so none would exist in regard to property, for [according to the supposition] it is a worldly matter. But doubt does arise. Therefore it cannot be affirmed, that the usurper has no property. Or [the meaning may be this] the opponent, who contends that it is not the property of the captor, because that, which has been seized by him, is another's property, must be asked, Is there or is there not, proof, that property is not vested in the captor? [The opponent] impeaches the first part of the alternative: "then no doubt could exist &c." The notion is this; As no doubt arises concerning the species, when there is demonstration that it is gold or silver; so likewise, in the proposed case, no doubt could arise. Nor is the second part of the alternative admissible: for, if no evidence arise, it could not be affirmed, that the captor has not property.

9. To this the answer is, property is temporal only, for it effects transactions relative to worldly purposes, just as rice or similar substances do: but the consecrated fire and the like, deducible from the sacred institutes, do not give effect to actions relative to secular purposes. [It is asked] does not a consecrated fire effect the boiling of food; and so, of the rest? [The answer is] No; for it is not as such, that the consecrated flame operates the boiling of food; but as a fire perceptible to the senses: and so, in other cases. But, here, it is not through its visible form, either gold or the like, that the purchase of a thing is effected, but through property only. That, which is not a person's property in a thing, does not give effect to his transfer of it by sale or the like. Besides, the use of property is seen also among inhabitants of barbarous countries, who are unacquainted with the practice directed in the sacred code: for purchase, sale, and similar transactions are remarked among them.

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Omitting, however, this part of the reasoning, the author closes the adversary's argument, concluding that property is deduced solely from the sacred code. *Subod'hini* and BALAM-BHATTA.

9. *Property is temporal only.*] The author proves his proposition, that property is secular, by logical deduction. Property is worldly for it effects transactions relative to worldly purposes. Whatever does effect temporal ends is temporal: as rice and other similar substances. Such too is property. Therefore, it is temporal. But whatever is not worldly, promotes not secular purposes: as a consecrated fire and other spiritual matters. *Subod'hini.*

For it is not as such that the consecrated flame &c.] A hallowed fire has two characters: the spiritual one of consecration; and the worldly one of combustion. It effects the boiling of food in its worldly capacity as fire: not in its spiritual one as consecrated. For, if it did so in its last mentioned capacity, a secular fire, wanting the spiritual character of consecra-

10. Moreover, such as are conversant with the science of reasoning, deem regulated means of acquisition a matter of popular recognition. In the third clause of the *Lipsa sutra*,* the venerable author has stated the adverse opinion, after [obviating] an objection to it, that, 'if restrictions, relative to the 'acquisition of goods, regard the religious ceremony, 'there could be no property, since proprietary right 'is not temporal;' [by showing, that] 'the efficacy of 'acceptance and other modes of acquisition in con-'stituting proprietary right, is matter of popular 'recognition.' Does it not follow, 'if the mode of 'acquiring the goods concern the religious ceremony, 'there is no right of property, and consequently no 'celebration of a sacrifice?' [Answer] 'It is a 'blunder of any one who affirms, that acquisition 'does not produce a proprietary right; since this is 'a contradiction in terms.' Accordingly, the author,

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tion, would not effect the boiling of food. Therefore the objection does not hold. Then, in the proposed case, gold or other valuable would effect the secular purpose of sale and purchase, in its character of gold or the like, not in that of property. The author replies to that objection: "It is not through its visible form &c." Besides, the use of property is observable among barbarians, to whom the practice enjoined by the sacred institutes is unknown: and, since that cannot be otherwise accounted for, there is evidence of property being secular. *Subod'hini.*

10. *The* lipsa sutra.] The *sutra*, or aphorism, here quoted, is on the desire of acquisition *(lipsa)*, and is the second topic *(ad'hicarana)* in the first section *(pada)* of the fourth book *(ad'hyaya)* of aphorisms by JAIMINI, entitled *Mimansa*. *Subod'hini* and BALAM-BHATTA.

In the third clause of the lipsa sutra.] In the first clause *(varnaca)*, the distinction between religious and personal purposes is examined. In the second, the inquiry is whether the milking of kine and similar preparatives be relative to the person or to the act of religion. In the third,

* *Mimánsá*, 4. 1, 2. 3.

having again acknowledged property to be a popular notion, when he states the demonstrated doctrine, proceeds to explain the purpose of the disquisition in this manner, 'Therefore a breach of the restric-

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the question examined is whether restrictions, noticed in primeval revelation, as to the means of acquisition, (such as these, 'let a *Brahmana* acquire wealth by acceptance or the like, a *Cshatriya* by victory and so forth, and a *Vaisya* by agriculture &c.') must be taken as relative to the person or to the religious ceremony [performed by him.] *Subod'hini* and BALAM-BHATTA.

The position of the adversary is, that, injunctions regarding the means of acquisition concern the religious ceremony, through the medium of the goods used by the agent; for unless that be admitted, the precept would be nugatory, because there would be no one whom it affected. *Subod'hini.*

The meaning is this: As in the case of an acquisition of goods under a precept relative to sacrifice, such as this "purchase the moon plant,"* the injunction regarding the acquisition of goods concerns the religious ceremony; so does the injunction respecting acceptance and other means of acquisition. BALAM-BHATTA.

The author states an objection to this position of the adversary. The objection is this: the question, considered in the third clause of the *Lipsa-sutra*, is whether injunctions regarding acquisition of goods concern the religious ceremony or the person. The opponent's position is, that they concern the ceremony. That is not congruous. For, if the injunctions, regarding acquisition of goods, concern the religious ceremony, no property would arise since property, being spiritual, would have no worldly cause to produce it; and no other means are shown in scripture; and the injunctions regarding acquisition, being relative to the ceremony, are not relative to any thing else: thus, for want of property, the religious rites would not be complete with that which was not property; and consequently the position, that injunctions, regarding acquisition of goods, concern the act of religion, is incongruous. *Subod'hini.*

He revives the position by answering that objection; and the notion is this: the injunctions, regarding acceptance and the like, accomplish pro-

* SOMA, Asclepias acida. ROXB.

'tion affects the person, not the religious ceremony:' and the meaning of this passage is thus expounded,* 'If restrictions, respecting the acquisition of chattels, regard the religious ceremony, its celebration would be perfect, with such property only, as was acquired consistently with those rules; and not so, if performed with wealth obtained by infringing them; and consequently, according to the adverse

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perty; and they will become relative to the religious ceremony through the medium of goods adapted to the performance of the ceremony; as the husking of grain, which effects the removal of the chaff, concerns the religious ceremony through the medium of clean rice which is adapted to the ceremony. But the wise consider property as a worldly matter [resulting from birth,] like the relation of a son to his father. Consequently there is no failure in the completion of religious rites [as supposed in the objection.]

Admitting, that, because injunctions regarding acquisition concern the religious ceremony, the acquisition likewise must relate to the ceremony; does it not follow, since it relates not to any thing else, that there is no such thing as property? and would not a failure of the religious ceremony ensue? [Wherefore the adversary's position is erroneous.] The author states the objection and confutes it with derision. 'Some one has blundered, affirming that acquisition does not produce property, for it is a contradiction in terms.' Such is the construction of the sentence; and the meaning is this: Acquisition, which is an accident of the acquirer, is a relation between two objects [the owner and his own] like that of mother and son. Consequently, there can be no acquisition without a thing to be acquired; and it is a contradiction in terms to say 'acquisition does not produce a proprietary right,' as it is to affirm 'my mother is a barren woman.' *Subod'hini* and BALAM-BHATTA.

The demonstrated conclusion is, that, since valuables, being intended for every purpose, must be relative to the person, restrictions, regarding the acquisition of them, must concern the person also. BALAM-BHATTA.

The purpose of the disquisition under this topic of inquiry is stated. It is interpreted by the venerable author (PRABHACARA-GURU.) The

* By the commentator on the *Mimansa*: PRABHACARA surnamed *Guru*.

'opinion, the fault would not affect the man, if he 'deviated from the rule: but, according to the de- 'monstrated conclusion, since the restriction, re- 'garding acquisitions, affects the person, the per- 'formance of the religious ceremony is complete, 'even with property acquired by a breach of the 'rule; and it is an offence on the part of a man, 'because he has violated an obligatory rule.' It is consequently acknowledged, that even what is gained by infringing restrictions, is property: because, otherwise there would be no completion of a religious ceremony.

11. It should not be alleged, that even what is obtained by robbery and other nefarious means,

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implied sense is this. According to the adversary's position, there is no offence affecting the person, in violating the injunction. But the religious ceremony is not duly accomplished with goods acquired by a breach of the injunction. It is the religious ceremony, therefore, which is affected. But, according to the demonstrated doctrine, since the restrictions concern the person, the offence is his if he infringe the rule; and the religious ceremony is not affected. *Subod'hini*.

The author, by way of closing the argument, states the result as applicable to the subject proposed. It is acknowledged by the maintainer of the right doctrine, that even what is gained by infringing the rule, much more what is acquired by other means, is property. BALAM-BHATTA.

Otherwise, that is, if a right of property in wealth acquired even by infringing the rule, be not admitted; then, since no property is temporal because the restrictions concern the religious ceremony [and that, which is thus acquired, does so likewise,] therefore the means of living would be unattainable since no temporal property could exist; and consequently there could be no religious ceremony, for there would be nobody to perform it. *Subod'hini* and BALAM-BHATTA.

11. *It should not be alleged, that even what is obtained by robbery.*] If property be acknowledged in that which is acquired by infringing the restriction, might it not be supposed, that even what is obtained by rob-

would be property. For proprietary right in such instances is not recognised by the world ; and it disagrees with received practice.

12. Thus, since property, obtained by acceptance or any other [sufficient] means, is established to be temporal ; the acceptance of alms, as well as other [prescribed] modes for a *Brahmana*, conquest and similar means for a *Cshatriya*, husbandry and the like for a *Vaisya*, and service and the rest for a *Sudra*, are propounded as restrictions intended for spiritual purposes ; and inheritance and other modes are stated as means, common to all. "An owner is by inheritance, purchase, partition, seizure or finding."*

13. Unobstructed heritage is here denominated "inheritance." "Purchase" is well known. "Partition" intends heritage subject to obstruction. "Occupation" or seizure is the appropriation of water, grass, wood and the like not previously appertaining to any other [person as owner†]. "Finding" is the discovery of a hidden treasure or the like. 'If these reasons exist, the person is owner.' If they take place, he becomes proprietor. For a *Brah-*

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bery and other nefarious means, becomes property ? The author obviates that objection. It does not become so. He removes the inconsequence of the reason. For the employment of it as such in sale and other transactions is not familiarly seen in practice. BALAM-BHATTA.

12. *Thus since property obtained by acceptance &c.*] Property being thus proved to be temporal, the author successively refutes the several arguments before cited in support of the notion, that it is not temporal. BALAM-BHATTA.

Common to all.] Including even the mixed classes. BALAM-BHATTA.

13. *If these reasons exist, the person is owner.*) If such reasons are known [to exist,] the owner is known. *Subod'hini* and BALAM-BHATTA.

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* GAUTAMA 10, 39, already, cited in § 8. † BALAM-BHATTA.

mana, that, which is obtained by acceptance or the like, is additional,' not common [to all the tribes]. "Additional" is understood in the subsequent sentence: 'for a *Cshatriya*, what is obtained by victory, 'or by amercement or the like, is peculiar.' In the 'next sentence, "additional" is again understood: 'what is gained or earned by agriculture, keeping of 'cattle, [traffic,] and so forth, is for a *Vaisya* pe-'culiar; and so is, for a *Sudra*, that which is earned 'in the form of wages, by obedience to the regener-'ate and by similar means.' Thus likewise, among the various causes of property which are familiar to mankind, whatever has been stated as peculiar to certain mixed classes in the direct or inverse order of the tribes, (as the driving of horses, which is the profession of the *Sutas*,* and so forth,) is indicated by the word "earned" (*nirvishta*); for all such acquisitions assume the form of wages or hire; and the noun (*nirvesa*) is exhibited in the *tricandi*† as signifying wages.

14. As for the precept respecting the succession of the widow and the daughters &c.‡ the declara-

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Both commentaries read *jnyateshu jnyayate swami*, 'Such reasons existing, an owner exists.' But copies of the text exhibit *jateshu jayate swami*, 'Such reasons being known, the owner is known.'

Additional.] The meaning of the term is 'excellent.' BALAM-BHATTA.

14. *As for the precept respecting the succession.*] The author obviates an objection, that, if property be a worldly matter, the import of the text here cited is inconsistent, as it provides by precept, that the widow and certain other persons shall inherit on the owner's demise. *Subod'hini* and BALAM-BHATTA.

* According to a text of USANAS, from which these words are taken.

† The dictionary of AMERA SINHA in three books (*Candas.*) The passage here cited occurs in the 3d book of the *Amera cosha*. Ch. 4. V. 217.

‡ Vide infra C. 2. Sect. I. § I.

tion [of the order of succession,] even in that text is intended to prevent mistake, (although the right of property be a matter familiar to the world,) where many persons might [but for that declaration] be supposed entitled to share the heritage by reason of their affinity to the late owner. The whole is therefore unexceptionable.

15. As for the remark, that, if property were temporal, it could not be said "my property has been taken away by him ;"* that is not accurate, for a doubt respecting the proprietary right does arise through a doubt concerning the purchase, or other transaction, which is the cause of that right.

16. The purpose of the preceding disquisition is this. A text expresses When *Brahmanas* have acquired wealth by a blamable act, they are cleared

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The declaration of the order of succession.] BALAM-BHATTA notices as a variation in the reading, the words here supplied ; *crama-smaranam* 'declaration of the order of succession,' instead of *smaranam* 'declaration.'

15. *As for the remark, that if property were temporal.*] The sense is this : in such a case, the proposition 'another's property has been taken by him' is simply apprehended from the affirmation of the complainant. But that is apprehension, not proof. Accordingly, if it be contradicted, a doubt arises respecting the cause of right. Thus, if the complainant declare, "my goods have been taken by him," and the defendant affirm the contrary, a doubt arises in the minds of umpires whether the thing were unjustly seized by that man, or were fairly obtained by purchase or title : and so, from a doubt respecting a purchase or other cause of property, arises a doubt concerning property which is the effect. *Subod'hini.*

16. *The purpose of the preceding disquisition is this.*] Admitting property to be a worldly matter ; still [its nature] seems to be an unfit [subject of inquiry] under the head of inheritance, since it matters not whether property be temporal or spiritual. Apprehending this objection, the author proceeds to expl[illegible] the purpose of the disquisition. *Subod'hini.*

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* Vide § 8.

by the abandonment of it, with prayer and rigid austerity."* Now, if property be deducible only from sacred ordinances, that which has been obtained by accepting presents from an improper person, or by other means which are reprobated, would not be property, and consequently would not be partible among sons. But if it be a worldly matter, then even what is obtained by such means, is property, and may be divided among heirs; and the atonement abovementioned regards the acquirer only: but sons have the right by inheritance, and therefore no blame attaches to them, since MENU declares "There are seven virtuous means of acquiring property: viz. inheritance &c."†

17. Next, it is doubted whether property arise from partition, or the division be of an existent right.

18. Of these [positions], that of property arising from partition is right; since a man, to whom a son is born, is enjoined to maintain a holy fire: for, if property were vested by birth alone, the estate would be common to the son as soon as born; and the father would not be competent to maintain a sacri-

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18. *Is enjoined to maintain a holy fire.*] For it is ordained by a passage of the *Veda*, that "he, who has a son born and who has black [not grey] hair, should consecrate a holy fire:" and the meaning of that passage is this; 'one who has issue (for the term son implies issue in general;) and 'whose hair is [yet] black, or who is in the prime of life; that is, who is 'capable; one, in short, who is qualified; must perform the consecration and maintenance of a holy fire.' Does not this relate to the consecration of sacrificial fires, not to the rise of property from partition? Anticipating this objection, he adds "if property were by birth &c." The meaning is this: 'if property arose from birth alone, a son would, even at the instant

* The text is apparently referred to MENU by the commentator BALAMBHATTA: but it is not found in MENU's institutes. A passage of similar import does, however, occur. Ch. 10. V. 111. † MENU, 10. 115.

ficial fire and perform other religious duties which are accomplished by the use of wealth.

19. Likewise the prohibition of a division of that, which is obtained from the liberality of the father previous to separation, would not be pertinent; since no partition of it can be supposed, for it has been given by consent of all parties. But NAREDA does propound such a prohibition: "Excepting what is gained by valour, the wealth of a wife, and what is acquired by science, which are three sorts of property exempt from partition; and any favour conferred by a father."*

20. So the text concerning an affectionate gift, ("What has been given by an affectionate husband to his wife, she may consume as she pleases, when he

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'of his birth, have ownership; and since the goods are thenceforward in 'common, the father would not be competent to the consecration of sacrificial 'fires and other religious acts (as funeral repasts, rites on the birth of chil-'dren, and other indispensable ceremonies,) which must be performed by 'the husband and wife, and which can only be accomplished by expen-'diture of wealth.' *Subod'hini* and BALAM-BHATTA.

20. *The text *** would not be pertinent, if property were vested by birth.*] For, if property were vested at the instant of birth, no such gift could be made; since he would be incompetent even with the consent of the child, and one cannot give away what is common to others. *Subod'hini* and BALAM-BHATTA.

Nor is it right to connect &c.] Is not the text, so far from being in contradiction to the right by birth, actually founded on it? for the construction is this 'what has been given, excepting immovable property, by an 'affectionate husband to his wife, she may consume as she pleases, when he 'is dead;' thus, a right of property by birth being true in regard to immovables, since the gift of them is forbidden; and, by analogy, the same being true of other goods, a gift of wealth other than immovables is permitted by the provisions of the law: why then should not this text be propounded? Apprehending that objection, he says "Nor is it right to connect &c." The

* NAREDA, 13. 6.

is dead, or may give it away, excepting immovable property;"*) would not be pertinent, if property were vested by birth alone. Nor is it right to connect the words "excepting immovable property" with the terms "what has been given" [in the text last cited;] for that would be a forced construction by connexion of disjoined terms.

21. As for the text "The father is master of the gems, pearls and corals, and of all [other movable property:] but neither the father, nor the grandfather, is so of the whole immovable estate;"† and this other passage "By favour of the father, clothes and ornaments are used, but immovable property may not be consumed, even with the father's indulgence;"‡ which passages forbid a gift of immovable property through favour: they both relate to immovables which have descended from the paternal grandfather. When the grandfather dies, his effects become the common property of the father and sons; but it appears from this text alone, that the gems, pearls and other movables belong exclusively to the father, while the immovable estate remains common.

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construction stated would be requisite: but it is not a proper one; for the style would be involved, if the construction connect disjoined terms. *Subod'hini.*

21. *As for the text "The father is master of the gems &c."*] Apprehending the objection, that, since a gift of immovables through partial affection is forbidden by the plain construction of two other passages of law, birth and not partition is the cause of property, he obviates it. *Subod'hini.*

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* VISHNU according to a subsequent quotation (§. 25.) But NAREDA cited by JIMUTA-VAHANA (C. 4. Sect. 1. § 23.)

† YAJNYAWALCYA cited by JIMUTA-VAHANA (C. 2. §. 22)

‡ The name of the author is not given with any quotation of this text.

22. Therefore property is not by birth, but by demise of the owner, or by partition. Accordingly [since the demise of the owner is a cause of property,*] there is no room for supposing, that a stranger could not be prevented from taking the effects because the property was vacant after the death of the father before partition. So likewise, in the case of an only son, the estate becomes the property of the son by the father's decease; and does not require partition.

23. To this the answer is: It has been shown, that property is a matter of popular recognition; and the right of sons and the rest, by birth, is most familiar to the world, as cannot be denied: but the term partition is generally understood to relate to effects belonging to several owners, and does not relate to that which appertains to another, nor to goods vacant or unowned. For the text of GAUTAMA expresses "Let ownership of wealth be taken by birth; as the venerable teachers direct."†

24. Moreover the text above cited "The father is master of the gems, pearls &c." (§ 21) is pertinent on the supposition of a proprietary right vested by birth. Nor is it right to affirm, that it relates to immovables which have descended from the

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23. "*Let ownership of wealth* &c."] 'By birth alone the heir may take the thing which is denominated ownership of wealth: as the venerable teachers hold.' *Subod'hini.*

BALAM-BHATTA notices a variation in the reading; *art'ha-swamitwat*, in the ablative case, instead of *art'ha-swamitwam*, in the nominative. That reading is found in the *Dayatatwa*: and the text is there explained in an entirely different sense. See JIMUTA-VAHANA C. 1. § 19.

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* *Subod'hini* and BALAM-BHATTA. † Not found in GAUTAMA's institutes.

paternal grandfather: since the text expresses "neither the father, nor the grandfather." This maxim, that the grandfather's own acquisition should not be given away while a son or grandson is living, indicates a proprietary interest by birth. As, according to the other opinion, the precious stones, pearls, clothes, ornaments and other effects, though inherited from the grandfather, belong to the father under the special provisions of the law; so, according to our opinion, the father has power, under the same text, to give away such effects, though acquired by his father. There is no difference.

25. But the text of VISHNU (§20), which mentions a gift of immovables bestowed through affection, must be interpreted as relating to property acquired by the father himself and given with the consent of his son and the rest: for, by the passages [above cited, as well as others not quoted,* viz] "The father is master of the gems, pearls &c," (§ 21), the fitness of any other but immovables for an affectionate gift was certain.

26 As for the alleged disqualification for religious duties which are prescribed by the *Veda*, and which require for their accomplishment the use of wealth, (§ 18) sufficient power for such purposes is inferred from the cogency of the precept [which enjoins their performance.]

27 Therefore it is a settled point, that property in the paternal or ancestral estate is by birth, [although†] the father have independent power in the

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27. "*No gift or sale should be made.*"] The close of the passage is read otherwise by RAGHUNANDANA.; "The dissipating of the means of support is censured;" *vritti-lopo vigarhitah*, instead of *na dánan na cha vicrayah*.

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* BALAM-BHATTA. † BALAM-BHATTA.

disposal of effects other than immovables, for indispensable acts of duty and for purposes prescribed by texts of law, as gifts through affection, support of the family, relief from distress, and so forth : but he is subject to the control of his sons and the rest, in regard to the immovable estate, whether acquired by himself or inherited from his father or other predecessor ; since it is ordained, "Though immovables or bipeds have been acquired by a man himself, a gift or sale of them should not be made without convening all the sons. They, who are born, and they who are yet unbegotten, and they who are still in the womb, require the means of support, no gift or sale should, therefore, be made."*

28. An exception to it follows : "Even a single individual may conclude a donation, mortgage, or sale, of immovable property, during a season of distress, for the sake of the family, and especially for pious purposes."†

29. The meaning of that text is this : while the sons and grandsons are minors, and incapable of giving their consent to a gift and the like ; or while brothers are so and continue unseparated ; even one person, who is capable, may conclude a gift, hypothecation, or sale, of immovable property, if a calamity affecting the whole family require it, or the support of the family render it necessary, or indispensable duties, such as the obsequies of the father or the like, make it unavoidable.

30. The following passage " Separated kinsmen, as those who are unseparated, are equal in respect of immovables ; for one has not power over the whole, to make a gift, sale or mortgage ;"‡ must be thus interpreted : 'among unseparated kinsmen, the consent of all is indispensably requisite, because no one is fully empowered to make an alienation, since the estate is in

* VYASA as cited in other compilations.

† VRIHASPATI cited in the *Retnacara* &c. ‡ VRIHASPATI, cited in the *Retnacara*.

common :' but, among separated kindred, the consent of all tends to the facility of the transaction, by obviating any future doubt, whether they be separate or united : it is not required, on account of any want of sufficient power, in the single owner ; and the transaction is consequently valid even without the consent of separated kinsmen.

31. In the text, which expresses, that "Land passes by six formalities ; by consent of townsmen, of kinsmen, of neighbours, and of heirs, and by gift of gold and of water ;"* consent of townsmen is required for the publicity of the transaction, since it is provided, that "Acceptance of a gift, especially of land, should be public:"† but the contract is not invalid without their consent. The approbation of neighbours serves to obviate any dispute concerning the boundary. The use of the consent of kinsmen and of heirs has been explained.

32. By gift of gold and of water.] Since the sale of immovables is forbidden ("In regard to the immovable estate, sale is not allowed ; it may be mortgaged by consent of parties interested ;"‡) and since donation is praised (" Both he who accepts land, and he who gives it, are performers of a holy deed, and shall go to a region of bliss,"‖) if a sale must be made, it should be conducted, for the transfer of immoveable property, in the form of a gift, delivering with it gold and water [to ratify the donation.]

33. In respect of the right by birth, to the estate paternal or ancestral, we shall mention a distinction under a subsequent text. (Section 5 § 3.)

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* The author of this passage is not named. †This passage also is anonymous.

‡ The origin of this quotation likewise has not been found. ‖ *Brahme-vaiverta-purana.*

SECTION II.

Partition equable or unequal.—Four periods of partition.—Provision for wives.—Exclusion of a son who has a competence.

1. At what time, by whom, and how, partition may be made, will be next considered. Explaining those points, the author says, "When the father "makes a partition, let him separate his sons [from "himself] at his pleasure, and either [dismiss] the "eldest with the best share, or (if he choose) all may "be equal sharers."*

2. When a father wishes to make a partition, he may at his pleasure separate his children from himself, whether one, two or more sons.

3. No rule being suggested (for the will is unrestrained,) the author adds, by way of restriction, "he may separate (for this term is again understood) "the eldest with the best share," the middlemost with a middle share, and the youngest with the worst share.

4. This distribution of best and other portions is propounded by MENU. "The portion deducted for the eldest is the twentieth part of the heritage, with the best of all the chattels; for the middlemost, half of that; for the youngest, a quarter of it."†

5. The term "either" (§ 1) is relative to the subsequent alternative "or all may be equal sharers."

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2. *Separate his children.*] Make them distinct and several by giving to them shares of the inheritance. BALAM-BHATTA.

*YAJNYAWALCYA, 2. 115. †MENU, 9. 112. Vide infra. Sect. 3. § 3.

That is, all, namely the eldest and the rest, should be made partakers of equal portions.

6. This unequal distribution supposes property by himself acquired. But, if the wealth descended to him from his father, an unequal partition at his pleasure is not proper: for equal ownership will be declared.

7. One period of partition is when the father desires separation, as expressed in the text "When the father makes a partition." (§ 1) Another period is while the father lives, but is indifferent to wealth and disinclined to pleasure, and the mother is incapable of bearing more sons; at which time a partition is admissible, at the option of sons, against the father's wish: as is shown by NAREDA, who premises partition subsequent to the demise of both parents ("Let sons regularly divide the wealth when the father is dead;"*)

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7. *One period of partition is when the father desires separation.*] There are four periods of partition. One is while the father lives, if he desire partition. Another is, when the mother ceases to be capable of bearing issue, and the father is not desirous of sexual intercourse and is indifferent to wealth; if his sons then require partition, though he do not wish it. Again another period is, while the mother is yet capable of bearing issue, and the father, though not consenting to partition, is old, or addicted to vicious courses, or afflicted with an incurable disease; if the sons then desire partition. The last period is, after the decease of the father. VISWESWARA in *Madana-Parijata.*

There are four periods of partition in the case of wealth acquired by the father. VISWESWARA in the *Subodhini.*

Four periods of partition among sons have been stated by the author (VIJNYANESWARA,) which are compendiously exhibited in a twofold division by the contemplative saint (YAJNYAWALCYA.) Here, three cases may occur under that of distribution during the life of the father: viz with, or without,

* NAREDA, 13. 2.

and adds "Or when the mother is past child-bearing and the sisters are married, or when the father's sensual passions are extinguished."* Here the words "let sons regularly divide the wealth" are understood. GAUTAMA likewise, having said "After the demise of the father, let sons share his estate;"† states a second period, "Or when the mother is past child-bearing;"‡ and a third, "While the father lives, if he desire separation."‖ So, while the mother is capable of bearing more issue, a partition is admissible by the choice of the sons, though the father be unwilling, if he be addicted to vice or afflicted with a lasting disease. That SANC'HA declares: "Partition of inheritance takes place without the father's wish, if he be old, disturbed in intellect, or diseased."§

8. Two sorts of partition at the pleasure of the father have been stated; namely, equal and unequal. The author adds a particular rule in the case of equal partition; "If he make the allotments equal, his wives to whom no separate property has been given by the

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his desire for separation: the case of his not desiring it being also twofold; viz. 1st, when the mother has ceased to be capable of bearing children and the father is disinclined to pleasure &c. 2d. when the mother is not incapable of bearing issue, but the father is disqualified by vicious habits or the like. *Subod'hini.*

The doctrine of the eastern writers [JIMUT-VAHANA &c.] who maintain, that two periods only are admissible, the volition of the father and his demise, and not any third period;¶ and that the text, relative to the mother's incapacity for bearing more issue, regards the estate of the paternal grandfather or other ancestor; is refuted. BALAM-BHATTA.

We hold that while the father survives and is worthy of retaining uncontrolled power, his will alone is the cause of partition. If he be unworthy of such power, in consequence of degradation, or of retirement from the

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* NAREDA, 13. 3. † GAUTAMA, 28. 1. ‡ GAUTAMA, 28. 2. ‖ GAUTAMA, 28. 2.
§ Cited as a passage of Harita in the *Vyavahara mayucha.*
¶ See JIMUTA-VAHANA C. 1. §44.

husband or the father-in-law, must be rendered partakers of like portions."*

9. When the father, by his own choice, makes all his sons partakers of equal portions, his wives, to whom peculiar property had not been given by their husband or by their father-in-law, must be made participant of shares equal to those sons. But, if separate property have been given to a woman, the author subsequently directs half a share to be allotted to her: "Or if any had been given, let him assign the half." †

10. But, if he give the superior allotment to

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world, or the like, the son's will is likewise a cause of partition. But, in the case of his demise, the successor's own choice is of course the reason. By this mode, the periods are three. Else there must be great confusion, in the uncertainty of subject and accident, if many reasons, as extinction of worldly propensities and so forth, must be established collectively and alternatively. Thus the mention of certain reasons in some texts, and the omission of them in others, are suitable: for the extinction of the temporal affections, and the other assigned reasons, indicate the single circumstance of the father's want of uncontrolled power; since it is easy to establish that single foundation of the texts. *Viramitrodaya.*

When the father's passions are extinguished.] JIMUTA-VAHANA's reading of the passage is different: and there are other variations of this text. See note on JIMUTA-VAHANA. C. 1. § 33.

Partition of inheritance takes place without the father's wish.] A text of a contrary import is cited from the same author, by JIMUTA-VAHANA. See note on JIMUTA-VAHANA. C. 1. § 43.

9. *The author subsequently directs half a share.*] This and the passage cited may be supposed to bear reference to a passage which occurs near the close of the head of inheritance (C. 2. Sect. 11. § 34.): but the quotation is not exact and the text relates to a different subject.

10. *The furniture in the house &c.*] The chairs, and the earthen and stone

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* YAJNYAWALCYA, 2. 116.

† Vide infra. C. 2. Sect. 34.

the eldest son, and distribute similar unequal shares to the rest, his wives do not take such portions, but receive equal shares of the aggregate from which the son's deductions have been subtracted, besides their own appropriate deductions specified by APASTAMBA; "The furniture in the house and her ornaments are the wife's [property]."*

11 To the alternative before stated (§ 1) the author propounds an exception; "The separation of one, "who is able to support himself and is not desirous "of participation, may be completed by giving him "some trifle."†

12. To one who is himself able to earn wealth, and who is not desirous of sharing his father's goods, any thing whatsoever, though not valuable, may be given, and the separation or division may be thus completed by the father; so that the children, or other heirs, of that son, may have no future claim of inheritance.

13. The distribution of greater and less shares has been shown (§1). To forbid, in such case, an unequal partition made in any other mode than that which renders the distribution uneven by means of deductions, such as are directed by the law, the author adds. "A legal distribution, made by the father among sons separated with greater or less shares, is pronounced valid."‡

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utensils, and the ornaments worn by her, are the wife's deducted allotment. HARADATTA ¶ says the furniture, as well as the car, is the father's; and the ornaments are the wife's. BALAM-BHATTA.

13. *In any other mode.*] The commentator BALAM-BHATTA prefers another reading, *ayat'hasastra* 'not according to law' instead of *anya'tha* in any other mode.'

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* Vide infra. Sect. 3 § 6.

† YAJNYAWALCYA.

‡ YAJNYAWALCYA

¶ The scholiast of GAUTAMA.

14 When the distribution of more or less among sons separated by an unequal partition is legal, or such as ordained by the law; then that division, made by the father, is completely made, and cannot be afterwards set aside: as is declared by MENU and the rest. Else it fails, though made by the father. Such is the meaning; and in like manner, NAREDA declares "A father, who is afflicted with disease, or influenced by wrath, or whose mind is engrossed by a beloved object, or who acts otherwise than the law permits, has no power in the distribution of the estate."*

SECTION III.

Partition after the Father's decease.

1. The author next propounds another period of partition, other persons as making it, and a rule respecting the mode. "Let sons divide equally both the effects and the debts after (the demise of) their two parents."†

2. After their two parents.] After the demise of the father and mother: here the period of the distribution is shown. The sons.] The persons, who make the distribution, are thus indicated. Equably.] A rule respecting the mode is by this declared; in equal shares only should they divide the effects and debts.

3. But MENU, having premised "partition after the death of the father and the mother,"‡ and having declared "The eldest brother may take the patrimony entire, and the rest may live under him as under their father;"§) has exhibited a distribution with deductions, among brethren separating after the death of their

* NAREDA, 13. 16. † YAJNYAWALCYA, 2. 118. ‡ MENU, 9. 104.
§ MENU, 9. 105.

father and mother: "The portion deducted for the eldest is the twentieth part of the heritage with the best of all the chattels; for the middlemost, half of that; for the youngest, a quarter of it.*" The twentieth part of the whole amount of the property (to be divided,†) and the best of all the chattels, must be given (by way of deduction‡) to the eldest; half of that, or a fortieth part, and a middling chattel, should be allotted to the middlemost; and a quarter of it, or the eightieth part with the worst chattel, to the youngest. He has also directed an unequal partition, but without deductions, among brethren separating after their parents' decease; allotting two shares to the eldest, one and a half to the next born, and one a piece to the younger brothers: "If a deduction be thus made, let equal shares of the residue be allotted: but, if there be no deduction, the shares must be distributed in this manner; let the eldest have double share, and the next born a share and a half, and the younger sons each a share: thus is the law settled."‖ The author himself § has sanctioned an unequal distribution when a division is made during the father's life time ("Let him either dismiss the eldest with the best share &c."¶) Hence an unequal partition is admissible in every period. How then is a restriction introduced, requiring that sons should divide only equal shares?

4. The question is thus answered: True, this unequal partition is found in the sacred ordinances;

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4. *As the slaying of a cow is for the same reason disused.* This is a very remarkable admission of the former prevalence of a practice, which is now held in the greatest abhorrence.

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* Menu, 9. 112. † Balambhatta. ‡ Ibid. ‖ Menu, 9. 116—117
§ Yajnyawalcya. ¶ Vide Sect. 2. § 1.

but it must not be practised, because it is abhorred by the world; since that is forbidden by the maxim "Practise not that which is legal, but is abhorred by the world, [for *] it secures not celestial bliss:"† as the practice [of offering bulls] is shunned, on account of popular prejudice, notwithstanding the injunction "Offer to a venerable priest a bull or a large goat;‡ and as the slaying of a cow is for the same reason disused, notwithstanding the precept "Slay a barren cow as a victim consecrated to MITRA and VARUNA." ||

5. It is expressly declared, "As the duty of an appointment [to raise up seed to another,] and as the slaying of a cow for a victim, are disused, so is partition with deductions [in favour of elder brothers]."§

6. APASTAMBA also, having delivered his own opinion, "A father, making a partition in his life time, should distribute the heritage equally among his sons;" and having stated, as the doctrine of some, the eldest's

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5. *The duty of an appointment.*] So the term (*niyoga-d'herma*) is here interpreted by the author of the *Viramitrodaya*. But it is explained in the *Subod'hini*, as intending the injunction of an observance, such as the offering of a bull &c.

6. *In some countries the gold &c.*] The sense of the text is this; In

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* *Subod'hini* and BALAM-BHATTA.

† A passage of YAJNYAWALCYA, according to the quotation of MITRA MISRA in the *Viramitrodaya*; but ascribed to MENU in BALAMBHATTA'S commentary. It has not, however, been found either in MENU'S or in YAJNYAWALCYA'S institutes.

‡ This also is a passage of YAJNYAWALCYA, according to MITRA MISRA'S quotation; but has not been found in the institutes of that author.

|| A passage of the *Veda*, as the preceding one of the *Smriti* according to the remark of the *Subod'hini* and BALAM-BHATTA.

§ *Smriti-sangraha* as cited in the *Viramitrodaya*.

succession to the whole estate ("Some hold, that the eldest is heir;") and having exhibited, as the notion of others, a distribution with deductions ("In some countries, the gold, the black kine, and the black produce of the earth, belong to the eldest son: the car appertains to the father; and the furniture in the house and her ornaments are the wife's;* as also the property [received by her] from kinsmen: so some maintain;") has expressly forbidden it as contrary to the law: and has himself explained its inconsistency with the sacred codes: "It is recorded in scripture, without distinction, that MENU *distributed his heritage among his sons.*"†

7. Therefore unequal partition, though noticed in codes of law, should not be practised, since it is disapproved by the world and is contrary to scripture. For this reason, a restriction is ordained, that brethren should divide only in equal shares.

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certain countries, the gold, the black kine, the black produce of earth, as *Masha*‡ and other dark-coloured grain, or as black iron, (for so some interpret the word) appertain to the eldest son; the car, and the furniture in the house, or utensils such as tools and the like, belong to the father;§ the jewels worn by her are the wife's as well as property which she has received from the father and other kinsmen. Such respectively are the portions of the eldest son, of the father, and of his wife. *Subod'hini* and HARADATTA cited by BALAM-BHATTA.

Among his sons] BALAM-BHATTA reads *putrena* "son" in the singular; but all copies of the *Mitacshara* and *Subod'hini*, which have been collated, exhibit the term in the plural (*putrebhyah* "sons;") and so does the *Viramitrodaya*, quoting this passage from the *Mitacshara*.

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* Vide supra. Sect 2. § 10.

† A passage of the *Taittiriya Veda*, cited by APASTAMBA; as here remarked by BALAM-BHATTA.

‡ Phaseolus radiatus.

§ See a different interpretation. Sect. 2. § 10.

8. It has been declared, that sons may part the effects after the death of their father and mother. The author states an exception in regard to the mother's separate property; "The daughters share the residue of their mother's property, after payment of her debts."*

9. Let the daughters divide their mother's effects remaining over and above the debts; that is, the residue after the discharge of the debts contracted by the mother. Hence, the purport of the preceding part of the text is, that sons may divide their mother's effects, which are equal to her debts or less than their amount.

10. The meaning is this: A debt, incurred by the mother, must be discharged by her sons, not by her daughters; but her daughters shall take her property remaining above her debts; and this is fit; for by the maxim "A male child is procreated if the seed predominate, but a female if the woman contribute most to the fœtus;" the woman's property goes to her daughters because portions of her abound in her female children; and the father's estate goes to his sons, because portions of him abound in his male children.

11. On the subject [of daughters†] a special rule is propounded by GAUTAMA: "A woman's property goes to her daughters, unmarried, or unprovided."‡ His

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8. *Sons may divide their mother's effects, which are equal to her debts or less.*] They may take the goods and just pay the debts. BALAM-BHATTA.

11. *Unmarried or unprovided.*] The text is explained otherwise by JIMUTA-VAHANA (C. 4. Sect. 2. § 13 and 23.)

Married and unmarried.] Married signifies espoused; unmarried, maiden. *Subod'hini.*

Endowed and unendowed] Endowed signifies supplied with wealth; unendowed, unfurnished with property. BALAM-BHATTA.

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* YAJNYAWALCYA, 2. 118. † BALAM-BHATTA.

‡ GAUTAMA, 28. 22.

meaning is this : if there be competition of married and unmarried daughters, the woman's separate property belongs to such of them as are unmarried ; or, among the married, if there be competition of endowed and unendowed daughters, it belongs exclusively to such as are unendowed ; and this term signifies 'destitute of wealth.'

12. In answer to the question, who takes the residue of the mother's goods, after payment of her debts, if there be no daughter ? the author adds "And the issue succeeds in their default."*

13. On failure of daughters, that is, if there be none, the son, or other male offspring, shall take the goods.

This, which was right under the first part of the text ("Let sons divide equally both the effects and the debts ;"†) is here expressly declared for the sake of greater perspicuity.

SECTION IV.

Effects not liable to Partition.

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1. The author explains what may not be divided "Whatever else is acquired by the coparcener himself, "without detriment to the father's estate, as a present "from a friend, or a gift at nuptials, does not appertain "to the coheirs. Nor shall he, who recovers hereditary "property, which had been taken away, give it up to the "parceners : nor what has been gained by science."‡

2, That, which had been acquired by the coparcener himself without any detriment to the goods of his

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* YAJNYAWALCYA, 2. 118. †Vide § 1.

‡ YAJNYAWALCYA, 2. 119—129

father or mother; or which has been received by him from a friend, or obtained by marriage, shall not appertain to the coheirs or brethren. Any property, which had descended in succession from ancestors, and had been seized by others, and remained unrecovered by the father and the rest through inability or for any other cause, he, among the sons, who recovers it with the acquiescence of the rest, shall not give up to the brethren or other coheirs: the person recovering it shall take such property.

3. If it be land, he takes the fourth part, and the remainder is equally shared among all the brethren. So SANC'HA ordains "Land, [inherited] in regular succession, but which had been formerly lost and which a single [heir] shall recover solely by his own labour, the rest may divide according to their due allotments, having first given him a fourth part."

4. In regular succession.] Here the word "inherited" must be understood.

5. He need not give up to the coheirs, what has been gained by him, through science, by reading the scriptures or by expounding their meaning: the acquirer shall retain such gains.

6. Here the phrase "any thing acquired by himself, without detriment to the father's estate," must be everywhere understood: and it is thus connected with each member of the sentence; what is obtained from a

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4. *Inherited must be understood*] The author supplies the deficiency in the text cited by him. The words "in succession" are in the text; "inherited" must be understood to complete the sense. *Subod'hini.*

6. *Any thing acquired by himself.*] Here, according to BALAM-BHATTA'S remark, either a different reading is proposed *(cinchit for anyat.)* or an interpretation of the words of the text, "whatever else *(anyat)*" being explained by *(cinchit)* 'any thing.'

friend, without detriment to the paternal estate; what is received in marriage, without waste of the patrimony; what is redeemed, of the hereditary estate, without expenditure of ancestral property; what is gained by science, without use of the father's goods. Consequently, what is obtained from a friend, as the return of an obligation conferred at the charge of the patrimony; what is received at a marriage concluded in the form termed *Asura* or the like; what is recovered, of the hereditary estate, by the expenditure of the father's goods; what is earned by science acquired at the expense of ancestral wealth; all that must be shared with the whole of the brethren and with the father.

7. Thus, since the phrase "without detriment to the father's estate" is in every place understood; what is obtained by simple acceptance, without waste of the patrimony, is liable to partition. But, if that were not understood with every member of the text, presents

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ANNOTATIONS.

It is connected with every other member of the sentence.] More is implied: for the same phrase is understood in every instance, stated in other codes, of acquisitions exempt from partition. *Subod'hini.*

In the form termed Asura] For, at such a marriage, wealth is received from the bridegroom by the father or kinsmen of the bride. See MENU, 3. 31.

7. *Thus since the phrase &c.*] A different reading is noticed by BALAMBHATTA "Not thus;" *na tat'ha* instead of "Thus" *tat'ha*. It is taken as a distinct sentence; and is explained as intimating, that, on the other hand, amicable gifts and the like, acquired without detriment to the patrimony, are not liable to partition. According to this reading and interpretation, that short sentence belongs to the preceding paragraph.

In the following sentence there seems to be another difference of reading in the phrase "without waste (or with waste) of the patrimony." But the reading, which is countenanced by the exposition given in the *Subod'hini*, has been preferred.

Since the phrase "without detriment to the father's estate."] Since that portion of the text is applicable to gifts and other acquisitions which are speci-

from a friend, a dowry received at a marriage, and other particular acquisitions, need not have been specified.

8. But, it is alleged, the enumeration of amicable gifts and similar acquisitions is pertinent, as showing, that such gains are exempt from partition, though obtained at the expense of the patrimony. Were it so, this would be inconsistent with the received practice of unerring persons, and would contradict a passage of NAREDA: "He, who maintains the family of a brother studying science, shall take, be he ever so ignorant, a share of the wealth gained by science."* Moreover the definition of wealth, not participable, which is gained by learning, is so propounded by CATYAYANA: "Wealth, gained through science which was acquired from a stranger while receiving a foreign maintenance, is termed acquisition through learning."

9. Thus, if the phrase "without detriment to the father's estate," be taken as a separate sentence, any thing obtained, by mere acceptance would be exempt from partition, contrary to established practice.

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fied as exempt from partition, therefore, as those acquisitions made at the charge of the patrimony are liable to be shared, so any thing obtained by mere acceptance, not being included among such acquisitions, must be subject to partition, though procured without use of the paternal goods. *Subod'hini.*

8. *As showing that such gains are exempt from partition.*] A difference in the reading of this passage, *bhajyatwaya* (in the ablative case) instead *bhajyatwaya* (in the dative), is mentioned by BALAM-BHATTA; but he makes no difference in the interpretation.

Would contradict a passage of Nareda.] Since the support of the family is there stated as a reason for partaking of the property, the right of participation in the gains of science is founded on a special cause; and not a natural consequence of relation as a brother: and the gains of science are not naturally liable to partition, and are therefore mentioned as excepted from distribution.

* NAREDA, 13. 10.

10. This [condition, that the acquisition be without detriment to the patrimony,*] is made evident by MENU: "What a brother has acquired by his labour, without using the patrimony, he need not give up to the coheirs; nor what has been gained by science."†

11. By labour] by science, war or the like.

12. Is it not unnecessary to declare, that effects obtained as presents from friends, and other similar acquisitions made without using the patrimony, are exempt from partition: since there was no ground for supposing a partition of them? That what is acquired, belongs to the acquirer, and to no other person, is well known: but a denial implies the possible supposition of the contrary.

13. Here a certain writer thus states grounds for supposing a partition. By interpreting the text, "After the death of the father, if the eldest brother acquire any wealth, a share of that belongs to the younger brothers; provided they have duly cultivated science;"‡ in this manner, 'if the eldest, youngest or middlemost, acquire property before or after the death of the father, a share shall accrue to the rest, whether younger or elder;' grounds do exist for supposing friendly presents and the like to be liable to partition, whether or not the father be living: that is accordingly denied.

14. The argument is erroneous: since there is not here a denial of what might be supposed; but the text is a recital of that which was demonstratively true: for most texts, cited under this head, are mere recitals of that which is notorious to the world.

15. Or you may be satisfied with considering it an exception to what is suggested by another passage, "All the brethren shall be equal sharers of that which

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* *Subod'hini*

† MENU, 9, 208. The close of this passage is read differently by CULLUCA-BHATTA, JIMUTA-VAHANA &c. See JIMUTA-VAHANA. Ch. 9. Sect. 1 § 3.

‡ MENU, 9, 204.

is acquired by them in concert:"* and it is therefore a mere error to deduce the suggestion from an indefinite import of the word "eldest" in the text before cited (§ 13). That passage must be interpreted as an exception to the general doctrine, deduced from texts concerning friendly gifts and the rest, that they are exempt from partition, both before the father's death and after his demise.

16. Other things exempt from partition, have been enumerated by MENU; "Clothes, vehicles, ornaments, prepared food, women, sacrifices and pious acts, as well as the common way, are declared not liable to distribution."†

17. Clothes, which have been worn, must not be divided. What is used by each person, belongs exclusively to him; and what had been worn by the father, must be given by brethren parting after the father's deccase, to the person who partakes of food at his obsequies: as directed by VRIHASPATI; "The clothes and ornaments, the bed and similar furniture, appertaining to the father, as well as his vehicle and the like, should be given, after perfuming them with fragrant drugs and wreaths of flowers, to the person who partakes of the funeral repast." But new clothes are subject to distribution.

18. Vehicles] The carriages, as horses, litters or the like. Here also, that, on which each person rides, belongs exclusively to him. But the father's must be disposed

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18. *The number being unequal.*] Inequality here signifies insufficiency for shares; not imparity of number. And this is fit. Suppose three horses, and three sons: since the number is adequate to the allotment of shares, the horses may be divided. Suppose four horses and either three or five sons: since the horses do not answer to the number of coheirs, and cannot

* VRIHASPATI cited in the *Retnacara*. † MENU, 9. 219.

of as directed in regard to his clothes. If the horses or the like be numerous, they must be distributed among coheirs who live by the sale of them. If they cannot be divided, the number being unequal, they belong to the eldest brother: as ordained by MENU; "Let them never divide a single goat or sheep, or a single beast with uncloven hoops: a single goat or sheep belongs to the first born."*

19. The ornaments worn by each person are exclusively his. But what has not been used, is common and liable to partition. "Such ornaments as are worn by women during the life of their husband, the heirs of the husband shall not divide among themselves: they, who do so, are degraded from their tribe."† It appears from the condition here specified ("such ornaments as are worn,") that those, which are not worn, may be divided.

20. Prepared food, as boiled rice, sweet cakes and the like, must be similarly exempted from partition. Such food is to be consumed according to circumstances.

21. Water, or a reservoir of it, as a well or the like, being unequal [to the allotment of shares,] must not be distributed by means of the value; but is to be used [by the coheirs] by turns.

22. The women or female slaves, being unequal [in

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be distributed into shares in their kind, and since a distribution by means of the value is forbidden, and the cattle is directed to be given to the eldest brother, the horses may be divided so far as they are adequate to the shares, and the surplus shall be given to the eldest. Throughout this title, imparity must be so understood. *Subod'hini.*

21. *Being unequal.*] It is thus hinted, that, if the number be adequate, partition takes place. BALAM-BHATTA.

22. "*Women connected.*"] Enjoyed, or kept in concubinage. *Subod'hini.*

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* MENU, 9. 119. † MENU, 9, 200.

number, to the shares,] must not be divided by the value, but should be employed in labour [for the coheirs] alternately. But women (adulteresses or others) kept in concubinage by the father, must not be shared by the sons, though equal in number; for the text of GAUTAMA forbids it. "No partition is allowed in the case of women connected [with the father or with one of the coheirs]."*

23. The term *yogacshema* is a conjunctive compound resolvable into *yoga* and *cshema*. By the word *yoga* is signified a cause of obtaining something not already obtained: that is, a sacrificial act to be performed with fire consecrated according to the *Veda* and the law. By the term *cshema* is denoted an auspicious act which becomes the means of conservation of what has been obtained: such as the making of a pool or a garden, or the giving of alms elsewhere than at the altar. Both these, though appertaining to the father, or though accomplished at the charge of the patrimony, are indivisible; as LAUGACSHI declares. "The learned have named a conservatory act *csheema*, and a sacrificial one *yoga*; both are pronounced indivisible: and so are the bed and the chair."

24. Some hold, that by the compound term *yogacshema*, those, who effect sacrificial and conservatory acts (*yoga* and *cshema*), are intended, as the king's counsellors, the stipendiary priests, and the rest. Others say, weapons, cowtails, parasols, shoes and similar things, are meant.

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Female slaves, being taken for enjoyment by any one of the brethren or coheirs, belong exclusively to him. HARADATTA on GAUTAMA.

24. *Some hold.*] The interpretation, given by MED'HATIT'HI and the *Calpataru*, is stated. BALAM-BHATTA.

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* GAUTAMA, 28. 45.

25. The common way, or road of ingress and egress to and from the house, garden, or the like, is also indivisible.

26. The exclusion of land from partition, as stated by USANAS, ("Sacrificial gains, land, written documents, prepared food, water, and women, are indivisible among kinsmen even to the thousandth degree;") bears reference to sons of a *Brahmana* by women of the military and other inferior tribes: for it is ordained [by VRIHASPATI:] "Land, obtained by acceptance of donation, must not be given to the son of a *Cshatriya* or other wife of inferior tribe: even though his father give it to him, the son of the *Brahmani* may resume it, when his father is dead."*

27. Sacrificial gains] acquired by officiating at religious ceremonies.

28. What is obtained through the father's favour, will be subsequently declared exempt from partition.† The supposition, that any thing, acquired by transgressing restrictions regarding the mode of acquisition, is indivisible, has been already refuted.‡

29. It is settled, that whatever is acquired at the charge of the patrimony, is subject to partition. But the acquirer shall, in such a case, have a double share, by the text of VASISHT'HA. "He, among them, who has made an acquisition, may take a double portion of it."§.

30. The author propounds an exception to that maxim. "But, if the common stock be improved, an equal division is ordained."‖

ANNOTATIONS.

29. *He, among them.*] Among the brethren. *Subod'hini.*

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* This is a passage of VRIHASPATI, according to the remark of BALAM-BHATTA; and it is cited as such by JIMUTA-VAHANA, C. 9. § 19.

† Sect. 6. § 13—16. ‡ Sect 1. § 16. § VASISHT'HA, 17. 42.

‖ YAJNYAWALCYA, 2. 121.

31. Among unseparated brethren, if the common stock be improved or augmented by any one of them, through agriculture, commerce or similar means, an equal distribution nevertheless takes place; and a double share is not allotted to the acquirer.

SECTION V.

Equal rights of Father and son in property ancestral.

1. The distribution of the paternal estate among sons has been shown; the author next propounds a special rule concerning the division of the grandfather's effects by grandsons. "Among grandsons by different fathers, the allotment of shares is according to the fathers."*

2. Although grandsons have by birth a right in the grandfather's estate, equally with sons: still the distribution of the grandfather's property must be adjusted through their father, and not with reference to themselves. The meaning here expressed is this: if unseparated brothers die, leaving male issue; and the number of sons be unequal, one having two sons, another three, and a third four; the two receive

ANNOTATIONS.

1. *Grandsons by different fathers.*] Children of distinct fathers; meaning sons of brothers. Another reading also occurs: *pramita-pitricanam* "whose fathers are deceased," instead of *aneca-pitricanam* "whose fathers are different." *Subod'hini.*

BALAM-BHATTA notices another variation of the reading, but with disapprobation; *aneca-pitryacanam.* It intends the same meaning, though inaccurately expressed.

* YAJNYAWALCYA, 2. 121.

a single share in right of their father, the other three take one share appertaining to their father, and the remaining four similarly obtain one share due to their father. So, if some of the sons be living and some have died leaving male issue; the same method should be observed: the surviving sons take their own allotments, and the sons of their deceased brothers receive the shares of their own fathers respectively. Such is the adjustment prescribed by the text.

3. If the father be alive, and separate from the grandfather, or if he have no brothers, a partition of

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ANNOTATIONS.

3. *If he be deceased.*] A variation in the reading and punctuation of the passage is noticed by BALAM-BHATTA: *vibhago n'asti d'hriyamane: apitari pitrito bhaga-calpanetyuctatwat,*' (instead of *vibhago n'asti; ad'hriyamane pitari pitrito &c.*) "partition would not take place, if he be living, since it is directed that shares shall be allotted in right of the father, if he be deceased."

To obviate this doubt the author says.] If the father be alive, and separated from his own father, or if, being an only son with no brothers to participate with him, he be alive and not separated from his own father; then, since in the first mentioned case he is separate, no participation of the grandson's own father, in the grandfather's estate, can be supposed, and therefore as well as because he is surviving, the grandson cannot be supposed entitled to share the grandfather's property since the intermediate person obstructs his title: and, in the second case, although the grandson's own father have pretensions to the property, since he is not separated, still the participation of the grandson in his grandfather's estate cannot be supposed, for his own father is living: hence no partition of the grandfather's effects, with the grandson whose father is living, can take place in any circumstances. Or, admitting that such partition may be made, because he has a right by birth; still, as the father's superiority is apparent, (since a distribution by allotment to him is directed, when he is deceased; and that is more assuredly requisite, if he be living;) it follows, that partition takes place by the father's choice and that a double share belongs to him. *Subod'hini.*

the grandfather's estate with the grandson would not take place; since it has been directed, that shares shall be allotted in right of the father, if he be deceased: or, admitting partition to take place, it would be made according to the pleasure of the father, like a distribution of his own acquisitions; to obviate this doubt the author says; "For the ownership of father and son is the same in land, which was acquired by the grandfather, "or in a corrody or in chattels [which belonged to him."]*

4. Land] a rice field or other ground. A corrody] So many leaves receivable from a plantation of betle pepper, or so many nuts from an orchard of areca. Chattels] gold, silver, or other movables.

5. In such property, which was acquired by the paternal grandfather, through acceptance of gifts, or by conquest or other means [as commerce, agriculture, or service,†] the ownership of father and son is notorious: and therefore partition does take place. For, or because, the right is equal, or alike, therefore partition is not restricted to be made by the father's choice; nor has he a double share.

6. Hence also it is ordained by the preceding text, that "the allotment of shares shall be according to the fathers," (§ 1.) although the right be equal.

7. The first text "When the father makes a partition &c." (Sect. 2 § 1.) relates to property acquired by

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ANNOTATIONS.

For the ownership of father and son.] The *Calpataru* and APARÁRCA read "The ownership of both father and son" instead of "For the ownership of father and son:" *chobhayoh* instead of *chaiva hi.*

4. *Betle pepper.*] Piper betle. LINN. Betle leaf. *Areca.*] Areca Faufel. GOERT. Betle-nut.

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* YAJNYAWALCYA, 2. 122.

† BALAM-BHATTA.

the father himself. So does that which ordains a double share: "Let the father, making a partition, reserve two shares for himself."* The dependence of sons, as affirmed in the following passage, "While both parents live, the control remains, even though they have arrived at old age;"† must relate to effects acquired by the father or mother. This other passage, "They have not power over it (the paternal estate) while their parents live;"‡ must also be referred to the same subject.

8. Thus, while the mother is capable of bearing more sons, and the father retains his worldly affections and does not desire partition, a distribution of the grandfather's estate does nevertheless take place by the will of the son.

9. So likewise, the grandson has a right of prohibition, if his unseparated father is making a donation, or a sale, of effects inherited from the grandfather: but he has no right of interference, if the effects were acquired by the father. On the contrary, he must acquiesce, because he is dependant.

10. Consequently the difference is this: although he have a right by birth in his father's and his grandfather's property; still, since, he is dependant on his father in regard to the paternal estate and since the father has a predominant interest as it was acquired by himself, the son must acquiesce in the father's disposal of his own acquired property: but, since both have indiscriminately a right in the grandfather's estate, the son has a power of interdiction [if the father be dissipating the property.§]

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* NAREDA, 13. 12.

† The remainder of this passage has not been found; nor is the text cited in other compilations. BALAM-BHATTA ascribes it to MENU; but it is not found in his institutes.

‡ MENU, 9. 204.

§ *Subodhini.*

11. MENU likewise shows, that the father, however reluctant, must divide with his sons, at their pleasure, the effects acquired by the paternal grandfathers; declaring, as he does ("If the father recover paternal wealth not recovered by his coheirs, he shall not, unless willing, share it with his sons; for in fact it was acquired by him:")* that, if the father recover property, which had been acquired by an ancestor, and taken away by a stranger, but not redeemed by the grandfather, he need not himself share it, against his inclination, with his sons; any more than he need give up his own acquisitions.

SECTION VI.

Rights of a posthumous son and of one born after the partition.

1. How shall a share be allotted to a son born subsequently to a partition of the estate? The author replies "When the sons have been separated, one who "is [afterwards] born of a woman equal in class, shares "the distribution."†

2. The sons being separated from their father, one, who shall be afterwards born of a wife equal in class, shall share the distribution. What is distributed, is distribution, meaning the allotments of the father and

ANNOTATIONS.

2. *If there be no daughter.*] But, if there be a daughter, the son does not take his mother's portion. *Subod'hini.*

* MENU, 9. 209.

† YAJNYAWALCYA. 2. 123.

mother: he shares that; in other words, he obtains after [the demise of*] his parents, both their portions: his mother's portion, however, only if there be no daughter; for it is declared that "Daughters share "the residue of their mother's property, after payment "of her debts."†.

3 But a son by a woman of a different tribe, receives merely his own proper share, from his father's estate, with the whole of his own proper share, from his father's estate, with the whole of his mother's property, if there be no daughter.‡]

4. The same rule is propounded by MENU: "A son, born after a division, shall alone take the parental wealth."§ The term parental *(pitryam)* must be here interpreted 'appertaining to both father and mother:' for it is ordained that "A son, born before partition, has no claim on the wealth of his parents; nor one, begotten after it, on that of his brother."‖

5. The meaning of the text is this: one, born previously to the distribution of the estate, has no property in the share allotted to his father and mother who are

ANNOTATIONS.

3. *His own proper share.*] See Section 8.

From his father's estate.] BALAM-BHATTA here notices a different reading; *pitryam* in the accusative, for *pitriyat* in the ablative; and afterwards, *matrican* "maternal" for *matuh* "his mothers." The sense is not materially affected by these variations.

4. *On the wealth of his parents.*] This passage, being read differently by JIMUTA-VAHANA (Ch. 7. § 5.), who writes *pitrye* "parental or paternal" instead of *pitroh* "of both parents," is not less ambiguous according to the reading, than the text cited from MENU.

5. *In the share.*] BALAM-BHATTA censures another reading, *vibhage* "in the division," for *bhage* "in the share."

* BALAM-BHATTA.
† YAJNYAWALCYA. 2. 118. Vide supra. Sect. 3. § 8. ‡ *Subod'hini.*
§ MENU, 9. 216.
‖ VRIHASPATI.

separated [from their elder children*]; nor is one, born of parents separated [from their children], a proprietor of his brother's allotment.

6. Thus, whatever has been acquired by the father in the period subsequent to partition, belongs entirely to the son born after separation. For it is so ordained: "All the wealth, which is acquired by the father himself, who has made a partition with his sons, goes to the son begotten by him after the partition: those, born before it, are declared to have no right."†

7. But the son, born subsequently to the separation, must, after the death of his father, share the goods with those who reunited themselves with the father after the partition: as directed by MENU; "Or he shall participate with such of the brethren, as are reunited with the father."‡

8. When brethren have made a partition subsequently to their father's demise, how shall a share be allotted to a son born afterwards? The author replies "His allotment must absolutely be made, out of the "visible estate corrected for income and expenditure."§

9. A share allotted for one who is born after a separation of the brethren, which took place subsequently to the death of the father, at a time when the mother's pregnancy was not manifest is "his allotment." But whence shall it be taken? The author replies, "from the

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ANNOTATIONS.

8. *Absolutely.*] The particle *va* is here employed affirmatively. The meaning is, that an allotment for them should be made only from the visible estate corrected for income and expenditure. *Subod'hini.*

9. *His allotment.*] The pronoun "his" refers to the son born after partition. *Subod'hini.*

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* BALAM-BHATTA.

† VRIHASPATI. See JIMUTA-VAHANA, Ch. 7. § 6. ‡ MENU, 9. 216.

§ YAJNYAWALCYA, 2. 123.

visible estate" received by the brethren, "corrected for income and expenditure." Income is the daily, monthly or annual produce. Liquidation of debts contracted by the father, is expenditure. Out of the amount of property corrected by allowing for both income and expenditure, a share should be taken and allotted to the [posthumous son].

10. The meaning here expressed is this: Including in the several shares the income thence arisen, and subtracting the father's debts a small part should be taken from the remainder of the shares respectively, and an allotment, equal to their own portions, should be thus formed for the [posthumous] son born after partition.

11. This must be understood to be likewise applicable in the case of a nephew, who is born after the

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Corrected for income and expenditure.] If agriculture or the like have been practised by the brethren with their several shares after separation, the gain is "income." The payment of the father's debts, the support of their own families, and similar disbursements constitute "expenditure." Counting the income in the shares, and deducting the expenditure from the allotments, as much as may be in each instance proper, should be taken from each portion, and an allotment be thus adjusted for a pregnancy which existed at the moment of the father's decease, as well as at the time of the partition, though not then manifest. *Subod'hini.*

10. *Including in the several shares &c.*] It is the patrimony though divided, as much as when undivided. Since then the offspring, though yet in the mother's womb, is entitled to a share of the father's goods, as being his issue, therefore that offspring is entitled to participate in the gain arising out of the patrimony. Here again, if it be a male child, he has a right to an equal share [with others of the same class]. But, if a female child, she participates for a quarter of the share due to a brother of the same rank with herself. This, which will be subsequently explained should be here understood. *Subod'hini.*

11. *Who was yet childless.*] This is according to the reading and in-

separation of the brethren; the pregnancy of the brother's widow, who was yet childless, not having been manifest at the time of the partition.

12. But, if she were evidently pregnant, the distribution should be made, after awaiting her delivery; as VASISHT'HA directs, "Partition of heritage [takes place] among brothers [having waited] until the delivery of such of the women, as are childless [but pregnant]."* This text should be interpreted, 'having waited until the delivery of the women who are pregnant.'

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terpretation followed by BALAM-BHATTA. He notices, however, another reading, (*aprajasya* instead of *aprajasi*) which connects the epithet of "childless" with the brother.

12. *Such of the women as are childless but pregnant.*] VACHESPATI-MISRA connects the word "women" (or 'wives') with the term "brothers." The *Calpataru*, and other compilations, also understand the wives of brothers to be meant; but in the *Smriti-chandrica* the passage is interpreted as relating to the widows of the father. All concur in explaining it as meant of pregnant widows.

This text should be interpreted.] The most natural construction of the original text is 'Partition of heritage is among brothers and women who are childless; until the birth of issue.' The authors of the *Calpataru* and *Chintamani* follow that interpretation, and conclude that 'a share should 'be set apart for the widow who is likely to have issue (being supposed 'pregnant): and, when she is delivered, the share is assigned to her son, 'if she bear male issue'; but, if a son be not born, the share goes to the 'brethren, and the woman shall have a maintenance.' The author of the *Smriti-chandrica* acknowledges that to be the natural construction of the words; but rejects the consequent interpretation, because it contains a contradiction, and because widows are not entitled to participate as heirs. He expounds the text, nearly as it is explained in the *Mitacshara*, viz. 'Among

* The first part of this passage corresponds with a text of VASISHT'HA's institutes (17. 36.); but the sequel of it is not to be found in that work.

13. It has been stated, that the son, born after partition, takes the whole of his father's goods and of his mother's.* But if the father, or the mother, affectionately bestow ornaments or other presents on a separated son, that gift must not be resisted by the son born after partition; or, if actually given, must not be resumed. So the author declares: "But effects, which 'have been given by the father, or by the mother, belong 'to him on whom they were bestowed." †

14. What is given (whether ornaments or other effects,) by the father and by the mother, being separated from their children, to a son already separated, belongs exclusively to him; and does not become the property of the son born after the partition.

15. By parity of reason, what was given to any one, before the separation, appertains solely to him.

16. So, among brethren, dividing the allotment of their parents who were separated from them, after the demise of those parents, (as may be done by the brothers, if there be no son born subsequently to the original partition;) what had been given by the father and mother to each of them, belongs severally to each, and is shared by no other. This must be understood.

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'brothers, who have continued to live together, until the delivery of the child-'less but pregnant widow, partition of heritage takes place after the birth of 'the issue, when its sex is known; and does not take place immediately after 'the obsequies.' VISWESWARA-BHATTA, in the *Madana-Parijata*, exhibits a similar interpretation; 'Partition takes place after awaiting the delivery of 'widows who are evidently pregnant.'

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* Vide supra. § 1.—§ 7. † YAJNYAWALCYA, 2. 124.

SECTION VII.

Shares allotted to provide for widows and for the nuptials of unmarried daughters.—The initiation of uninitiated brothers defrayed out of the joint funds.

1. When a distribution is made during the life of the father, the participation of his wives equally with his sons, has been directed. ("If he make the allotments equal, his wives must be rendered partakers of like portions."*) The author now proceeds to declare their equal participation, when the separation takes place after the demise of the father: "Of heirs dividing after the death of the father, let the mother also take an equal share." †

2. Of heirs separating after the decease of the father, the mother shall take a share equal to that of a son; provided no separate property had been given to her. But, if any had been received by her, she is entitled to half a share, as will be explained. ‡

3. If any of the brethren be uninitiated, when the father dies, who is competent to complete their

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2. *Provided no separate property had been given.*] Peculiar property of a woman (*Strid'hana.*) Vide C. 2. Sect. 11. § 1.

3. *Initiation.*] *Sanscara*; a succession of religious rites commencing on the pregnancy of the mother and terminating with the investiture of the sacerdotal thread, or with the return of the student to his family and finally his marriage.

* Section 2. § 8. † YAJNYAWALCYA, 2. 124. ‡ Vide C. 2. Sect. 11. § 34.

initiation? The author replies: "Uninitiated brothers should be initiated by those, for whom the ceremonies have been already completed."*

4. By the brethren, who make a partition after the decease of their father, the uninitiated brothers should be initiated at the charge of the whole estate.

5. In regard to unmarried sisters, the author states a different rule: "But sisters should be disposed of in marriage, giving them as an allotment, the "fourth part of a brother's own share."†

6. The purport of the passage is this: Sisters also, who are not already married, must be disposed

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4. *By the brethren who make a partition &c.*] By such, for whom all the initiatory ceremonies, including marriage, have been completed. BALAM-BHATTA.

After the decease of their father.] In like manner, while the father is living but disqualified by degradation from his tribe or other incapacity, if the brethren be themselves the persons who make the partition, the same rule must be understood in regard to the initiation of brothers at the charge of the common stock. BALAM-BHATTA.

6. *The purport of the passage is this.*] As commentators disagree in their interpretation of the text, and a subtile difficulty does arise, the author proceeds to show that his own exposition, and no other, conveys the real sense of the passage. Taking the phrase "the uninitiated should be initiated" as here understood from the preceding sentence (§ 3), he expounds the text: 'Sisters also, who are not already married &c.'

Some thus interpret the words "own share:" 'After assigning as many 'shares as there are brothers, a quarter part should be given to a sister, 'out of their several allotments: so that, if there be two or more sisters, a 'quarter of every share must be given to each of them.'

But others thus expound those terms: 'Deducting a quarter from each 'of their shares, the brothers should give that to a sister. If there be two

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* YAJNYAWALCYA, 2. 125.

† YAJNYAWALCYA, 2. 125.

of, in marriage, by the brethren, contributing a fourth part out of their own allotments. Hence it appears, that daughters also participate after the death of their father. Hence, in saying "of a brother's own share," the meaning is not, that a fourth part shall be deducted out of the portions allotted to each brother, and shall be so contributed; but that the girl shall be allowed to participate for a quarter of such a share as would be assignable to a brother of the same rank with herself. The sense expressed is this: if the maiden be daughter of a *Brahmani*, she has a quarter of so much as is the amount of an allotment for a son by a *Brahmani* wife.

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or more sisters, they and their brothers shall respectively take the same 'subtracted share [and residue:] and no separate deduction shall be made '[for each.']

Both interpretations are unsuitable: for, according to the first, if there be one brother and seven or eight sisters, * nothing will remain for the brother, if a quarter must be given to each sister; or, if there be one sister and many brothers, the sister has a greater allotment than a brother, if a quarter must be given to her by each of her brothers; and this is inconsistent with a text, which indicates, that a daughter should have less than a son.

Under the second exposition, if there be one sister and numerous brothers, the same objection arises, which was before stated: or, in the case of one brother and seven or eight sisters, suppose the amount of brother's share to be a *nishca*, the quarter of that is very inconsiderable, and the allotment of shares out of it is still more trifling: the terms of the text "giving them, as an allotment, the fourth part," (§ 5) would be impertinent; or, admitting that the precept is observed, still there would be an inconsistency.

But, according to our method, since each sister has exactly a quarter of a share, there is nothing contradictory to the terms of the text "a fourth part" (§ 5). *Subodhini.*

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* If there be four sisters, nothing will remain for the brothers; if there be a greater number, the allotment of a quarter to each is impossible. C.

7. For example, if a certain person had only a *Brahmani* wife, and leaves one son and one daughter; the whole paternal estate should be divided into two parts, and one such part be subdivided into four: and, the quarter being given to the girl, the remainder shall be taken by the son. Or, if there be two sons and one daughter, the whole of the father's estate should be divided into three parts; and one such part be subdivided into four: and, the quarter having been given to the girl, the remainder shall be shared by the sons. But, if there be one son and two daughters, the father's property should be divided into thirds, and two shares be severally subdivided into quarters: then, having given two [quarter] shares to the girls, the son shall take the whole of the residue. It must be similarly understood in any case of an equal or unequal number of brothers and sisters alike in rank.

8. But if there be one son of a *Brahmani* wife and one daughter by a *Cshatriya* woman, the paternal estate should be divided into seven parts; and the three parts, which would be assignable to the son of a *Cshatriya* woman, must be subdivided by four: then,

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7. *Divided into two parts, and one such part .... into four.*] If the text were not so explicit, it might have been rather concluded, that the estate should be divided into five parts; one for the sister, and four for the brother: which would be exactly an allotment of a quarter of the amount of a brother's share to a sister. But, according to the distribution exemplified in the text, the sister receives one quarter of that which she would have received, had she been male instead of female. It is, however, in the instance first stated, a seventh only of what her brother actually reserves for himself.

This is consonant to MED'HATIT'HI's interpretation of a parallel passage of MENU:* where he observes, that 'if the maiden sisters be numerous, the 'portions are to be adjusted at the fourth part 'of an allotment for a brother

* Vide infra. § 9.

giving such fourth part to the daughter of the *Cshatriya* wife, the son of the *Brahmani* shall take the residue. Or, if there be two sons of the *Brahmani* and one daughter by the *Cshatriya* wife, the father's estate shall be divided into eleven parts: and three parts, which would be assignable to a son by a *Cshatriya* wife, must be subdivided by four: having given such quarter share to the daughter of the *Cshatriya*, the two sons of the *Brahmani* shall share and take the whole of the remainder. Thus the mode of distribution may be inferred in any instance of an equal or unequal number of brothers and sisters dissimilar in rank.

9. Nor is it right to interpret the terms of the text ("giving the fourth part" § 5) as signifying 'giving money sufficient for her marriage,' by considering the word "fourth" as indefinite. For that contradicts the text of MENU "To the maiden sisters, let their brothers give portions out of their own allotments respectively: to each the fourth part of the appropriate share; and they, who refuse to give it, shall be degraded."*

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of the same class: thus the meaning is, let the son take three parts, and let 'the damsel take the fourth.'

9. *For her marriage.*] *Sanscara* (§3.) signifies, in this instance, marriage since the previous ceremonies are not performed for females, but only for male children. *Subod'hini &c.*

"*Out of their own allotments respectively.*"] A difference in a reading of this passage is remarked in the notes on JIMUTA-VAHANA (C. 3. Sect. 2. § 36). A further variation occurs in the commentary by MED'HATI'HI, who reads *Swabhyah swabhyah* "to their own sisters;" that is, 'sisters of their own classes respectively.'

"*To each the fourth part of the appropriate share*"] This part of the text is understood differently by JIMUTA-VAHANA. C. 3. Sect. 2. § 36.

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* MENU, 9. 118.

10. The sense of this passage is as follows. Brothers, of the sacerdotal and other tribes, should give to their sisters belonging to the same tribes, portions out of of their own allotments; that is, out of the shares ordained for persons of their own rank, as subsequently explained.* They should give to each sister a quarter of their own respective allotments. It is not meant, that a quarter should be deducted from the share of each and be given to the sister. But, to each maiden, should be severally allotted the quarter of a share ordained for a son of the same class. The mode of adjusting the division, when the rank is dissimilar and the number unequal, has been stated: and the allotment of such a share appears to be indispensably requisite, since the refusal of it is pronounced to be a sin: "They who refuse to give it, shall be degraded." (§9)

11. If it be alleged, that, here also, the mention of a quarter is indeterminate, and the allotment of property sufficient to defray the expenses of the nuptials is all which is meant to be expressed: the answer is, no; for there is not any proof, that the allotment of a quarter of a share is indefinite in both codes; and the withholding of it is pronounced to be a sin.

12. As for what is objected by some, that a sister, who has many brothers, would be greatly enriched, if the allotment of a [fourth†] part were positively meant; and that a brother, who has many sisters, would be entirely deprived of wealth; the consequence is obvia-

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ANNOTATIONS.

11. *In both codes.*] In the text of YAJNYAWALCYA and in that of MENU. *Subod'hini.*

Pronounced to be a sin.] In MENU'S text. (§9.) BALAM-BHATTA.

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* Sect. 8. § 4.

† BALAM-BHATTA.

ted in the manner before explained :* it is not here directed, that a quarter shall be deducted out of the brother's own share and given to his sister; whence any such consequence should arise.

13. Hence the interpretation of MED'HATIT'HI who has no compeer, as well as of other writers, who concur with him, is square and accurate; not that of BHARUCHI.

12. Therefore, after the decease of the father, an unmarried daughter participates in the inheritance. But, before his demise, she obtains that only, whatever it be, which her father gives; since there is no special precept respecting this case. Thus all is unexceptionable.

SECTION VIII.

Shares of Sons belonging to different tribes.

1. The adjustment of a distribution among brothers alike in rank, whether made with each other, or with their father, has been propounded in preceding pas-

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13. *Who has no compeer.*] Who is independent of control. BALAM-BHATTA. This commentator treats *Asahaya* as an epithet of the author next named (MED'HATIT'HI.) The word occurs, however, as a proper name in the *Vivada-retnacara*, in commenting on a passage of MENU (9. 165.) The meaning may be that 'the opinion of ASAHAYA, MED'HATIT'HI, and the rest is accurate: not that of BHARUCHI.'

* § 6.

sages ("When the father makes a partition &c.*). The author now describes partition among brethren dissimilar in class: "The sons of a *Brahmana*, in the several tribes, have four shares or three, or two, or one; the children of a *Cshatriya* have three portions, or two, or one; and those of a *Vaisya* take two parts, or one."†

2. Under the sanction of the law,‡ instances do occur of a *Brahmana* having four wives; a *Cshatriya* three; *Vaisya*, two: but a *Sudra*, one. In such cases, the sons of a *Brahmana*, born to him by women of the several tribes, shall have four shares, three, two, or one, in the order of these tribes.

3. The several tribes *(varnasas)*] Women of the different classes, the sacerdotal and the rest, here signified by the word tribe *(varna.)* The termination *sas*, subjoined to noun in the singular number and locative or other case, bears a distributive sense, conformably with the grammatical rule.§

4. The meaning here expressed is this: The sons of a *Brahmana*, by a *Brahmani* woman, take four shares apiece: his sons by a *Cshatriya* wife, receive

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MED'HATIT'HI is a celebrated commentator on MENU: and his exposition of MENU's text (§ 9.) agrees with the author's explanation of YAJNYAWALCYA's (§ 5.)

BHARUCHI, an ancient author, probably maintained the opinion and interpretation which are refuted in the present Section.

2. *Under the sanction of the law.*] The initial words of a passage of YAJNYAWALCYA (1. 57.) are cited in the text, for the sanction of the practice here noticed.

3. *Conformably with the grammatical rule.*] The author quotes a rule of grammar. (PANINI, 5. 4. 43.)

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* Section 2. § 1.

† YAJNYAWALCYA, 1. 57.

‡ YAJNYAWALCYA, 2. 126.

§ PANINI, 5. 4, 43.

three shares each; by a *Vaisya* woman, two,; by a *Sudra*, one.

5. The sons of a *Cshatriya*, born to him by women of the several tribes, (for that is here understood,) have three shares, or two, or one, in the order of the tribes: that is, the sons of a *Cshatriya* man, by a *Cshatriya* woman, take three shares each; by a *Vaisya* woman, two; by a *Sudra* wife, one.

6. The sons of a *Vaisya* by women of the several tribes, (for here, again, the same term is understood,) have two shares, or one, in the order of the classes: that is, the sons of a *Vaisya* man, by a *Vaisya* woman, take two shares apiece; by a *Sudra* woman, one.

7. Since a man of the servile tribe cannot have a son of a different class from his own, because one wife only is allowed to him, (for "a *Sudra* woman only must be the wife of a *Sudra* man,"*) partition among his children takes place in the manner beforementioned.

8. Although no restriction be specified in the text (§ 1.), it must be understood to relate to property other than land obtained by the acceptance of a gift. For it is declared [by VRIHASPATI†] "Land obtained "by acceptance of donation, must not be given to the "son of a *Cshatriya* or other wife of inferior tribe: "even though his father give it to him, the son of the "*Brahmani* may resume it, when his father is dead."

9. Since acceptance of donation is here expressly stated, land obtained by purchase or similar means appertains also to the son of a *Cshatriya* or other

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7. *In the manner beforementioned.*] As directed by the texts above cited. (YAJNYAWALCYA, 2. 115. and 118. Vide Sect. 2. and 3.) *Subodhini.*

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* MENU, 3. 13. † BALAM-BHATTA supplies the author's name.

inferior woman. For the son by a *Sudra* woman is specially excepted ("The son, begotten on a *Sudri* woman by any man of a twice-born class, is not entitled to a share of land."*) Now, if land acquired by purchase and similar means did not belong to the sons of a *Cshatriya* or *Vaisya* wife, the special exception of a son by a *Sudra* woman would be impertinent.

10. But the following text "The son of a *Brahmana*, or a *Vaisya*, by a woman of the servile class, shall not share the inheritance: whatever his father may give him, let that only be his property:"† relates to the case where something, however inconsiderable, has been given by the father, in his lifetime, to his son by a *Sudra* woman. But, if no affectionate gift have been bestowed on him by his father, he participates for a single share [of the movables]. Thus there is nothing contradictory.

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9. *Begotten on a* Sudri *woman.*] *Sudri* does not here bear its regular signification of 'wife of a *Sudra* man,' but intends a wife of the regenerate man, being a *Sudra* woman. *Subod'hini* and BALAM-BHATTA.

The special exception of a son by a Sudra *woman would be impertinent.*] Since the son of the *Sudra* is specifically excepted, it follows, that the sons of the *Cshatriya* wife and those of the *Vaisya* do participate. *Subod'hini.*

10 *Where something .... has been given.*] Where an affectionate gift has been bestowed. In some copies, the reading is so: (*prasada-dattam* in place of *pradattam.*) BALAM-BHATTA.

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* This also is a passage of VRIHASPATI. See JIMUTA-VAHANA, Ch. 9. § 22.

† MENU, 6. 155.

SECTION IX.

Distribution of effects discovered after partition.

1. Something is here added respecting the residue after a general distribution of the estate. "Effects, which have been withheld by one coheir from another, and which are discovered after the separation, let them again divide in equal shares: this is a settled rule."*

2. What had been withheld by coparceners from each other, and was not known at the time of dividing the aggregate estate, they shall divide in equal proportions, when it is discovered after the patrimony. Such is the settled rule or maxim of the law.

3. Here, by saying "in equal shares" the author forbids partition with deductions. By saying "let them divide," he shows, that the goods shall not be taken exclusively by the person who discovers them.

4. Since the text is thus significant, it does not imply, that no offence is committed by embezzling the common property.

5. Is it not shown by MENU to be an offence on the part of the eldest brother, if he appropriate to himself common property; and not so, on the part of younger brothers? "An eldest brother, who from avarice shall defraud his younger brothers, shall forfeit the honours of his primogeniture, be deprived of his [additional] share, and be chastised by the king."†

6. That inference is not correct; for, by pronouncing such conduct criminal in an elder brother, who is

* YAJNYAWALCYA, 2. 127.

† MENU, 9. 213.

independent and represents the father, it is more assuredly shown (by the argument exemplified in the loaf and staff) to be criminal in younger brothers, who are subject to the control of the eldest and hold the place of sons. Accordingly it is declared [in the *Veda**] to be an offence without exception or distinction: "Him, indeed, who deprives an heir of his right share, he does certainly destroy; or, if he destroy not him, he destroys his son, or else his grandson."†

7. Whoever debars, or excludes, from participation, an heir, or person entitled to a share, and does not yield to him his due allotment; he, being thus debarred of his share, destroys or annihilates that person who so debars him of his right: or, if he do not immediately destroy him, he destroys his son or his grandson.

8. It is thus pronounced to be criminal in any person to withhold common property, without any distinction of eldest [or youngest.]

9. It is argued, that blame is not incurred by one who takes the goods, thinking them his own, under the notion, that the common property appertains also to him.

10. That is wrong. He does incur blame: for, though he took it thinking it his own; still he has taken the property of another person, contrary to the injunction which forbids his so doing.

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6. *By the argument exemplified in the loaf and staff.*] If a staff, to which a loaf is attached, be taken away by thieves, it is inferred, that assuredly the loaf also has been stolen by them.‡ So in the case under consideration, if the eldest, who is independent and represents the father, be criminal for withholding the goods, the same may surely be affirmed concerning the rest, if they do so. *Subod'hini.*

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* BALAM-BHATTA.

† A passage of the *Veda*, as observed by BALAM-BHATTA.

‡ See JIMŪTA-VAHANA, 2, 25. & 3. 1. 15.

11. As in answer to a proposed solution of a difficulty 'If an oblation of green kidney beans* be not procurable, and black kidney beans† be used in their stead, by reason of the resemblance, the maxim, which prohibits the employment of these in sacrifices, is not applicable, because they were used by mistake for ground particles of green kidney beans;' it is on the contrary maintained, as the right opinion, that, 'although the ground particles of green kidney beans be taken as being unforbidden, still the ground particles of black kidney beans are also actually employed: and the prohibitory command is consequently applicable in this case.

12. Therefore it is established, both from the letter

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11. *As in answer to a proposed solution.*] The author here adduces an example of reasoning from the *Mimansa*, in the 6th book *(Ad'hyaya,)* 3d section *(pada)* and 6th topick *(ad'hicarana) Subod'hini.*

The black kidney bean, with certain other kinds of grain, is declared by a passage of the *Veda* unfit to be used at sacrifices. An oblation of green kidney beans, by another passage of the same, is directed to be made on certain occasions. If then the green sort be not procurable, may the black kind be used in its stead? The solution first proposed is, that the black sort may be substituted for the green kind, in like manner as wild rice is used in place of the cultivated sort: and, in answer to the argument drawn from the special prohibition, it is pretended, that the prohibition holds against the use of the black kidney bean as such, and not against its use when ground particles of this and other sorts are taken with particles of green kidney beans as being unforbidden. But the correct and demonstrated opinion is, that the black kind is altogether unfit to be used at sacrifices, being expressly prohibited: its particles, therefore, although intermixed with other sorts, are to be avoided; and for this reason they must not be used as a substitute for the other kind. *Subod'hini* and BALAM-BHATTA.

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* *Mudga*: Phaseolus Mungo; green kidney beans.

† *Mudga*: Phaseolus Max, v. radiatus: black kidney beans.

of the law and from reasoning, that an offence is committed by taking common property.

SECTION X.

Rights of the Dwyamushyayana *or son of two fathers.*

1. Intending to propound a special allotment for the *Dwyamushyayana* (or son of two fathers,) the author previously describes that relation. "A son, "begotten by one, who has no male issue, on the wife "of another man, under a legal appointment, is law- "fully heir, and giver of funeral oblations, to both fa- "thers."*

2. A son procreated by the husband's brother or other person (having no male issue), on the wife of another man, with authority from venerable persons, in the manner before ordained, is heir of both the natural father and the wife's husband: he is successor to their estates, and giver of oblations to them, according to law.

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1. Dwyamushyayana, *or son of two fathers.*] As here described, the *Dwyamushyayana* is restricted to one description of adoptive son, the *Cshetraja* or son of the wife: but the term is applicable to any adopted son retaining his filial relation to his natural father with his acquired relation to his adoptive parent. See Sect 11. § 32.

2. *In the manner before ordained.*] The initial words of another passage of YAJNYAWALCYA are here cited. It is as follows: "Let the husband's brother, or a kinsman near or remote, having been authorized by venerable persons, and being anointed with butter, approach the childless "wife at proper seasons, until she become pregnant. He, who approaches her in

* YAJNYAWALCYA, 2. 128.

3. The meaning of this is as follows. If the husband's brother, or other person, duly authorized, and being himself destitute of male issue, proceed to an intercourse with the wife of a childless man, for the sake of raising issue both for himself and for the other; the son, whom he so begets, is the child of two fathers and denominated *Dwyamushyayana*. He is heir to both, and offers funeral oblations to their manes.

4. But, if one, who has male issue, being so authorized, have intercourse with the wife for the sake of raising up issue to her husband only; the child, so begotten by him, is son of the husband, not of the natural father: and, by this restriction, he is not heir of his natural father, nor qualified to present funeral oblations to his manes. It is so declared by MENU: "The owners of the seed and of the soil may be considered as joint owners of the crop, which they agree by special compact, in consideration of the seed, to divide between them."*

5. By special compact.] When the field is delivered by the owner of the soil to the owner of the seed, on an agreement in this form, "let the crop, which will be here produced, belong to us both;" then the owners both of the soil and of the seed are considered by mighty sages as sharers or proprietors of the crop produced in that ground.

6. So [the same author.] "Unless there be a special agreement between the owners of the land and of the seed, the fruit belongs clearly to the land-owner; for the soil is more important than the seed."†

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any other mode, is degraded from his tribe. A child, begotten in that mode, is the husband's son, denominated *(cshetraja)* son of the wife."‡

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* MENU, 9. 53. † MENU, 9. 52. ‡ YAJNYAWALCYA, 1. 69—70.

7. But produce, raised in another's ground, without stipulating for the crop, or without a special agreement that it shall belong to both, appertains to the owner of the ground: for the receptacle is more important then the seed; as is observed in the case of cows, mares and the rest.

8. Here, however, the commission for raising up issue is relative to a woman who was only betrothed, since any other such appointment is forbidden by MENU. For after thus premising a commission, "On failure of issue, the desired offspring may be procreated, either by his brother or some other kinsman, on the wife who has been duly authorized: anointed with liquid butter, silent, in the night, let the kinsman, thus appointed, beget one son, but a second by no means, on the widow [or childless wife;]"* MENU has himself prohibited the practice: "By regenerate men, no widow must be authorized to conceive by any other: for they, who authorize her to conceive by any other, violate the primeval law. Such a commission is no where mentioned in the nuptial prayers; nor is the marriage of widows noticed in laws concerning wedlock. This practice, fit only for cattle, and reprehended by learned priests, was introduced among men, while VENA had sovereign sway. He, possessing the whole earth, and

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8. *The commission.....is relative to a woman who was only betrothed.*] The commentator, BALAM-BHATTA, dissents from this doctrine: and cites passages of law to show, that, after troth verbally plighted, should the husband die before the actual celebration of the marriage, the damsel is at the disposal of her father to be given in marriage to another husband. It is unnecessary to go into his explanation of the passages cited in the text, in another opinion.

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* MENU, 9, 59.—60.

therefore eminent among royal saints, gave rise to a confusion of tribes, when his intellect was overcome by passion. Since his time, the virtuous censure that man, who, through delusion of mind, authorizes a widow to have intercourse for the sake of progeny."*

9. Nor is an option to be assumed from the [contrast of] precept and prohibition. Since they, who authorize the practice, are expressly censured: and disloyalty is strongly reprobated in speaking of the duties of women; and continence is no less praised. This, MENU has shown: "Let the faithful wife emaciate her body by living voluntarily on pure flowers, roots, and fruit; but let her not, when her lord is deceased, even pronounce the name of another man. Let her continue till death forgiving all injuries, performing harsh duties, avoiding every sensual pleasure, and cheerfully practising the incomparable rules of virtue, which have been followed by such women, as were devoted to one only husband. Many thousands of *Brahmanas*, having avoided sensuality from their early youth, and having left no issue on their families, have ascended nevertheless to heaven; and, like those abstemious men, a virtuous wife ascends to heaven, though she have no child, if, after the decease of her lord, she devote herself to pious austerity: but a widow, who, from a wish to bear children, slights her deceased husband, brings disgrace on herself here below, and shall be excluded from the abode of her lord."† Thus the legislator has forbidden the recourse of a widow or wife to another man, even for the sake of progeny. Therefore it is not right to deduce an option from the injunction contrasted with the prohibition.

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9. *It is not right to deduce an option.*] For an option is inferred in the case of equal things: but here a censure is passed on those persons, who

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* MENU, 9. 64.—68. † MENU, 5. 157.—161.

10. The authorizing of a woman sanctified by marriage, [to raise up issue to her husband by another man,] being thus prohibited, what then is a lawful commission [to raise up issue ?] The same author explains it: "The damsel, whose husband shall die after troth verbally plighted, his brother shall take in marriage according to this rule: having espoused her in due form, she being clad in a white robe, and pure in her conduct, let him privately approach her once in each proper season, until issue be had."*

11. It appears from this passage, that he, whom a damsel was verbally given, is her husband without a formal acceptance on his part. If he die, his own brother of the whole blood, whether elder or younger, shall espouse or take in marriage the widow. "In due form," or as directed by law, "having espoused" or wedded her, and "according to this rule," namely with an inunction of clarified butter and with restraint of voice &c. let him "privately" or in secret, "approach her, clad in a white robe, and pure in her conduct," that is, restraining her mind, speech and gesture, "once" at a time, until pregnancy ensue.

12. These espousals are nominal, and a mere part of the form in which an authorized widow shall be approached; like the inunction of clarified butter and

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authorize such a practice, and none upon those who forbid it. The injunction and the prohibition are consequently not equal; and therefore an option is not inferred. *Subod'hini.*

12. *These espousals are nominal.*] The notion is this: as an inunction of clarified butter, and other observances, are prescribed as mere forms in approaching an authorized widow; so these espousals are a mere part of that intercourse, and not a principal and substantive act, whence the parties might be supposed to become a married couple. *Subod'hini* and BALAM-BHATTA.

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* MENU, 9. 69.—70.

so forth. They do not indicate her becoming the wedded wife of her brother-in-law.

13. Therefore the offspring, produced by that intercourse, appertains to the original husband, not to the brother-in-law. But, by special agreement, the issue may belong to both.

SECTION XI.

Sons by birth and by adoption.

1. A distribution of shares, among sons equal or unequal in class, has been explained. Next, intending to show the rule of succession among sons principal and secondary, the author previously describes them. "The legitimate son is procreated on the lawful wedded wife. Equal to him is the son of an appointed daughter. The son of the wife is one begotten on a wife by a kinsman of her husband, or by some other relative. One, secretly produced in the house, is a son of hidden origin. A damsel's child is one born of

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For the woman cannot become a lawful wedded wife, being twice-married. BALAM-BHATTA.

13. *Therefore the offspring &c.*] The child is not a legitimate son (*aurasa*) of both parents; but is (*cshetraja*) son of the soil or wife, and appertains to the husband or owner of the soil, provided no agreement were made to this effect; 'the offspring, here produced, shall belong to us both.' But if such a stipulation exist, he is son of both. *Subod'hini* and BALAM-BHATTA.

He is not legitimate son (*aurasa*) of the natural father, but similar to a legitimate son; as will be made evident in the sequel.* BALAM-BHATTA.

* Vide Sect. 11. § 4.

an unmarried woman: he is considered as son of his maternal grandsire. A child, begotten on a woman whose [first] marriage had not been consummated, or on one who had been deflowered [before marriage], is called the son of a twice-married woman. He, whom his father or his mother give for adoption, shall be considered as a son given. A son bought is one who was sold by his father and mother. A son made is one adopted by the man himself. One, who gives himself, is self-given. A child accepted, while yet in the womb, is one received with a bride. He, who is taken for adoption, having been forsaken by his parents, is a deserted son."*

2. The issue of the breast *(uras)* is a legitimate son *(aurasa)*. He is one born of a legal wife. A woman of equal tribe, espoused in lawful wedlock, is a legal wife; and a son, begotten [by her husband†] on her, is a true and legitimate son; and is chief in rank.

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1. *Son of his maternal grandsire.*] In the numerous quotations of this passage, some read *sutah* "son," others *smritah* "called," and others again *matah* "considered." The sense is not materially affected by these differences; as either term, being not expressed, must be understood.

2. *A son, begotten on a woman of equal tribe.*] In fact it is not to be so understood. For it contradicts the author's own doctrine, since he includes the *Murd'havasicta* and others, born in the direct order of the tribes, among legitimate issue (§ 41.) They are not sons begotten on a woman of equal tribe: and, if issue by women of different tribes be not deemed legitimate, being considered as born of wives whom it was not lawful to marry, then it might follow, that other persons would take the heritage, although such sons existed. Hence the mention of a wife equal by tribe intends only the preferableness [of her or her offspring:] and the restriction, that she be a lawful wife, excludes the *cshetraja* or issue of the soil, and the rest. *Viramitrodaya.*

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* YAJNYAWALCYA, 2. 129.—133.

† BALA-BHATTA directs this to be supplied in conformity with passages of VISHNU (15. 2.) and MENU (9. 166.)

3. The son of an appointed daughter *(putrica-putra)* is equal to him; that is equal to the legitimate son. The term signifies son of a daughter. Accordingly he is equal to the legitimate son: as described by VASISHT'HA: "This damsel, who has no brother, I will give unto thee, decked with ornaments: the son, who may be born of her, shall be my son."* Or that term may

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The son by a woman of equal tribe espoused in any of the irregular forms of marriage (*Asura* &c.) is a legitimate son: and the sons of a *Brâhmana*, by wives espoused in the direct order of the classes (*Cshatriya* &c.), denominated the *Murd'havasicta*, the *Ambasht'ha* and the *Parasava* or *Nishada;* and the sons of a *Cshatriya* by the wives of the *Vaisya* or *Sudra* tribe, named the *Mahishya* and the *Ugra:* and the son of a *Vaisya* by a *Sudra* woman, called the *Carana;* are all legitimate sons. VISWESWARA-BHATTA in the *Madana-Parijata.*

By the term "lawful" is excluded a woman espoused by one to whom such marriage was not permitted: therefore the sons by women of superior tribe are not legitimate; and for this purpose, the word "lawful" has been introduced into the text (§ 1). A lawful wife for a man of a regenerate tribe is a woman of a regenerate tribe; and, for a *Sudra* man, a *Sudra* woman. For want of a wife of preferable description, one analogous is allowed. Consequently it is not indispensable, that the wife be of the preferable description. Even a *Sudra* woman may be the wife of a regenerate man; and her issue is legitimate, as will be shown. BALAM-BHATTA.

3. *Equal to the legitimate son.*] The daughter appointed to be a son, and the son of an appointed daughter, are either of them equal to the legitimate son. VISWESWARA in the *Madana Parijata.*

Since the son of an appointed daughter is son of legitimate female issue, therefore he is equal to a legitimate son: but he is not literally a legitimate son, being one remove distant. VISWESWARA in the *Subod'hini.*

Or that term may signify &c.] It may signify a daughter who becomes by appointment a son; that is, who is put in place of a son. Although she be legitimate, yet being female, she is merely equal to a son. *Viramitrodaya.*

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* VASISHT'HA, 17. 16.

signify a daughter becoming by special appointment a son. Still she is only similar to a legitimate son: for she derives more from the mother than from the father. Accordingly she is mentioned by VASISHT'HA

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"Equal to him," equal to the legitimate son, is the *putrica-putra* or daughter appointed to be a son: for since all the terms of the definition of a legitimate son excepting sex, are applicable to her, she is similar to him. APARARCA

The *putrica-putra* is of four descriptions. The first is the daughter appointed to be a son. She is so by a stipulation to that effect. The next is her son. He obtains of course the name of 'son of an appointed daughter,' without any special compact. This distinction, however, occurs: he is not in place of a son, but in place of a son's son, and is a daughter's son. Accordingly he is described as a daughter's son in the text of SANC'HA and LIC'HITA: "An appointed daughter is like unto a son; as PRACHETASA has declared: her offspring is termed son of an appointed daughter: he offers funeral oblations to the maternal grandfathers and to the paternal grandsires. There is no difference between a son's son and a daughters son in respect of benefits conferred." The third description of son of an appointed daughter is the child born of a daughter who was given in marriage with an express stipulation in this form "the child, who shall be born of her, shall be mine for the purpose of performing my obsequies."* He appertains to his maternal grandfather as an adopted son. The fourth is a child, born of a daughter who was given in marriage with a stipulation in this form: "The child, who shall be born of her, shall perform the obsequies of both." He belongs, as a son, both to his natural grandfather and to his maternal grandfather. But, in the case where she was in thought selected for an appointed daughter,† she is so with a compact, and merely by an act of the mind. HEMADRI.

The son of the appointed daughter belongs in general only to the maternal grandfather: but, by special compact, to the natural father also.. Thus YAMA says: "Let the son of an appointed daughter perform the obsequies of his maternal ancestors exclusively: but if he succeed to the property of both, let him perform the obsequies of both." Accordingly this child also is denominated *dwyamushyayana* or son of two fathers. BALAM-BHATTA.

* MENU, 9. 127.

† MENU, 9. 136.

as a son, but as third in rank: "The appointed daughter is considered to be the third description of sons."*

4. The son of two fathers *(dwyamushyayana)*† is inferior to the natural father's legitimate son, because he is produced in another's soil.

5. A child, begotten by another person, namely by a kinsman, or by a brother of the husband, is a wife's son *(cshetraja)*.

6. The son of hidden origin *(gud'haja)* is one secretly brought forth in the husband's house. By excluding the case of a child begotten by a man of inferior or superior tribe, this must be restricted to

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"*The appointed daughter is the third description of sons.*" "For she, who has no brother, reverts to her male ancestors and obtains a renewed filiation." VASISHT'HA.‡

The adopted daughter is counted by VASISHT'HA as the third: not by YAJNYAWALCYA. *Subod'hini.*

MITRA-MISRA reads second instead of third: against the authority of the institutes and of every compiler who has cited this passage.

4. *Is inferior to the legitimate son.*] He is similar to the son of the body. BALAM-BHATTA.

Is not the son of two fathers the offspring of his natural father? Is he then a legitimate son? or one or other of the various descriptions of adoptive and secondary sons? Anticipating this question, the author says: "He is not different from him;" he is equal to a son of the body. *Subod'hini.*

The commentary last cited reads *avis'ishta* 'not different' instead of *apacrishta* 'inferior.' Both readings are noticed by BALAM-BHATTA.

5. *A child begotten by another person ...is a wife's son.*] There are two descriptions of *cshetraja* or wife's son: the first of them is son of both fathers *(dwipitrica;)* the other is adopted son of the wife's husband. *Viramitrodaya.*

A son begotten, under a formal authority, by a kinsman being of equal class, or by another relative, is a wife's son. VISWESWARA in the *Madana-Parijata.*

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* VASISHT'HA', 17. 14. † Vide Sect. 16. ‡ VASISHT'HA, 17, 15.

an instance where it is not ascertained who is the father, but it is certain that he must belong to the same tribe.

7. A damsel's child (*canina*) is the offspring of an unmarried woman by a man of equal class (as restricted in the preceding instance); and he is son of his

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6. *He must belong to the same tribe.*] A child secretly conceived by a woman, in her husband's house, from a man of the same tribe, but concerning whom it is not certainly known who the individual was, is named a son of concealed origin. The ignorance as to the particular person must be the husband's, not the wife's: and the knowledge of his equality in tribe may be obtained through her; for surely she must know who he is. But, if she really do not know his tribe, having been secretly violated by a stranger [in a dark night,*] then the child bears the name of a son of hidden origin, but is not so fit a son as the one before described. VISWESWARA in the *Madana-Parijata.*

In such circumstances, the child must be abandoned, say others. BALAM-BHATTA.

Since the natural father is not known, the child belongs to the same tribe with his mother. But, if there be a suspicion, that he was begotten by a man of inferior tribe, he is contemned. VACHEEPATI MISRA in the *Sradd'ha-chintamani.*

A son, who is born of the wife, and concerning whom it is not certainly known who is the natural father, is adoptive son of the mother's husband, and called son of concealed origin. Being son of the adoptive father's own wife, and begotten on her by another man, he is similar to the son of the wife, and therefore described after him. APARARCA.

7. *By a man of equal class.*] As the son before described must be one begotten by a man of like tribe, so must this son also be the offspring of a man of equal class. "Damsel" does not here signify unmarried only: for, even with that import, the term is frequently used in the sense of 'unconnected with man.' But it signifies a woman with whom a regular marriage has not been consummated. BALAM-BHATTA.

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* BALAM-BHATTA.

maternal grandfather, provided she be unmarried and abide in her father's house. But if she be married, the child becomes son of her husband. So MENU intimates; "A son, whom a damsel conceives secretly in the house of her father, is considered as the son of her husband, and denominated a damsel's son, as being born of an unmarried woman."*

8. The son of a woman twice-married is one begotten by a man of equal class, on a twice-married woman,

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The meaning of the passage of the *Mitacshara* is this: "Unmarried" signifies one whose nuptials have not been commenced; "married," whose nuptials are begun. The affix here implies an act begun and not past. For a child begotten by a paramour alike in class, or a woman whose marriage is complete, is a son of concealed origin. *Viramitrodaya.*

The child, born of an unmarried woman, is denominated son of a damsel; and is considered by MENU and the rest as son of his maternal grandfather. Being produced in a soil which in some measure appertains to him, namely his daughter, the child is similar to the son of concealed origin, and is therefore mentioned by YAJNYAWALCYA next after him. APARARCA.

If the maternal grandfather have no male issue, then the damsel's son is deemed his son; if he have issue, then the child is son of the husband. If both be childless, he is adoptive son of both. *Parijata* cited in the *Retnacara* and *Sudd'hi-viveca.*

If either of them be destitute of male issue, the child is his son; but, if both be so, the child is son of both. BALAM-BHATTA.

So MENU *intimates.*] The meaning of the passage cited from MENU is as follows: a young woman, betrothed, but whose nuptials have not been completed; and who is consequently a maiden, since she is not yet become the wife of her intended husband: a son (we say) borne by such a damsel is denominated a damsel's child, and is considered as son of the bridegroom; that is, of the person by whom she is espoused. Accordingly the condition "in the house of her father" is pertinent as an explanatory phrase: for, after marriage, she inhabits the house of her husband. *Viramitrodaya.*

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* MENU, 9. 172.

whether the first marriage had or had not been consummated.

9. He, who is given by his mother with her husband's consent, while her husband is absent, [or

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8. *Whether &c.*] Whether the marriage had or had not been consummated by the first husband, and whether she have been forsaken by her husband in his life time or be a widow. Such is the meaning. Accordingly VISHNU so declares: "He, whom a woman, either forsaken by her husband, or a widow, and again becoming a wife by her own choice, conceived [by a second husband] is called the son of a woman twice-married."* The child is son of the natural father: for the first husband's right to the woman is annulled by his death or relinquishment; and she has not been authorized to raise up issue to him; and she takes a second husband solely by her own choice. BALAM-BHATTA.

There are two descriptions of twice-married women: the first is a woman whose marriage has not been consummated, but only contracted, and who is espoused by another man. The other is a woman who has been blemished by intercourse with a man, before marriage. The offspring of such a woman is *(Pauner-bhava)* son of a twice-married woman. Accordingly it is so expressed in the text. *Viramitrodaya.*

"A woman, whose marriage had not been consummated, and who is again espoused, is a twice-married woman. So is she, who had previous intercourse with another man, though she be not actually married a second time." VISHNU.†

A child begotten "on a woman, whose [first] marriage had not been consummated;" on the wife of an impotent man or the like, whether she have become a widow or not; or on his own wife "who had been enjoyed by strangers, and who is taken back, and again espoused; the child (we say) begotten on such a woman, is called 'son by a woman twice-married.' The twice-married woman has been described in the first book [of YAJNYAWALCYA's institutes.] APARARCA.

"Whether a virgin or deflowered, she who is again espoused with solemn rites, is a twice-married woman: but she who deserts her husband and

* MENU, 9. 175. Erroneously cited as a passage of VISHNU.

†. VISHNU, 15. 8.—9.

incapable though present,*] or [without his assent†] after her husband's decease, or who is given by his

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through lust cohabits with another man of the same tribe, is a self-guided woman." YAJNYAWALCYA.‡

There are two descriptions of women termed *anyapurva* ‖ or previously connected with another: namely the *punerbhu* or woman twice married, and the *swairini* or self-guided and unchaste woman. The twice-married woman also is of two descriptions; according as she has or has not been deflowered. She, who is not a virgin, is blemished by the repetition of the ceremony of marriage. But one, who deserts the husband of her youth, and through desire cohabits with another man of the same tribe, is a self-guided woman *(swairini) Mitacshara.*§

A woman, who, having been married, whether she be yet a virgin or not, is again espoused in due form by her original husband or by another, is a twice-married woman. She is so described by MENU: "If she be still a virgin, or if she left her original husband and return to him, she may again perform the marriage ceremony with her second [or, in the latter case, her original] husband:"¶ and by VASISHT'HA: She, who having deserted the husband to whom she was married in her youth, and having cohabited with others, return to his family, is a twice-married woman. Or she, who deserts a husband impotent, degraded, or insane, and marries another husband, or does so after the death of the first, is a twice-married woman."** The repetition of the nuptial ceremony constitutes her a twice-married woman. But she, who leaves her husband and through desire cohabits, without marriage, with a man of the same tribe, is a self-guided woman. APARARCA.

9. *He who is given by his mother with her husband's consent.*] VASISHT'HA says "Let not a woman either give or accept a son, unless with the assent of her husband."†† He had before said "Man, produced from virile seed and uterine blood, proceeds from his father and his mother, as an effect from its cause. Therefore both his father and his mother have power to give, to sell, or to abandon their son.‡‡

*BALAM-BHATTA
† BALAM-BHATTA.
‡ YAJNYAWALCYA, 1. 68
‖ Same with *parapurva*. See MENU, 5. 163.
§ On YAJNYAWALCYA. 1. 68.
¶ MENU, 9. 176.
**VASISHT'HA, 17. 18.—18. 19.
†† VASISHT'HA, 15. 4,
‡‡ VASISHT'HA, 15. 1—2.

father, or by both, being of the same class with the person to whom he is given, becomes his given son *(dattaca.)* So MENU declares: "He is called a son

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Concerning the mother's authority to give away her son, when she is a widow, see a subsequent note. In regard to a widow's power of adopting a son, there is much diversity of opinions. VACHESPATI MISRA, who is followed by the *Maithila* school, maintains that neither a woman, nor a *Sudra*, can adopt a *dattaca* or given son; because the prescribed ceremony (§. 13) includes a sacrifice, which they are incapable of performing. This difficulty may be obviated by admitting a substitute for the performance of that ceremony: and accordingly adoption by a woman, under an authority from her husband, is allowed by writers of the other schools of law. NANDA PANDITA, however, in his treatise on adoption, restricts this to the case of a woman whose husband is living, since a widow cannot, he observes, have her husband's sanction to the acceptance of a son. On the other hand, BALAM-BHATTA contends, that a woman's right of adopting, as well as of giving, a son, is common to the widow and to the wife. This likewise is the opinion of the author of the *Vyavahara-mayucha*, but, while he admits, that a widow may adopt a son without her husband's previous authority, he requires, that she should have the express sanction of his kindred. Writers of the *Gaura* school, on the contrary, insist on a formal permission from the husband declared in his life time.

Being of the same class with the person to whom he is given.] Or being given to a person of the same class. The two readings, (*savarnaya* in the dative, or *savarnoyah* in the nominative,) both noticed by the commentator BALAM-BHATTA, give the same sense.

The adopted son must be of the same tribe with the giver or natural parent as well as with the adoptive parent, according to the remark of APARARCA cited with approbation by NANDA PANDITA in his treatise on adoption.

Becomes his given son.] The son given *(dattaca* or *dattrima)* is of two sorts: 1st simple, 2d son of two fathers *(dwymushyayana)* The first is one bestowed without any special compact: the last is one given under an agreement to this effect "he shall belong to us both" *Vyavahara-mayuc'ha*.

"*Whom his father or mother gives*"] MED'HATIT'HI reads and interprets "whom his father *and* mother give;" (ins the conjunctive particle

given (*dattrima,*) whom his father or mother affectionately gives as a son, being alike (by class,) and in a time of distress; confirming the gift with water."*

10. By specifying distress, it is intimated, that the son should not be given unless there be distress. This prohibition regards the giver (not the taker.†)

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cha instead of the disjunctive *va.*) BALAM-BHATTA condemns that reading; and infers from the disjunctive particle and dual number in the text, that three cases are intended; viz. 1st. The mother may give her son for adoption with her husband's consent, if he be absent or incapable; and without it, if he be dead or the distress be urgent. 2nd. The father may give away his son without his wife's consent, if she be dead, or insane, or otherwise incapable; but with her consent, if she reside in her own father's house. 3d. The father and mother may conjointly give away their sons, if they be living together.

"*Whom his father or mother affectionately gives.*"] Amicably: not from avarice or intimidation. In the *Viramitrodaya* the word is expressly stated to be used adverbially: but BALAM-BHATTA considers it as an epithet of the son to be adopted, and as implying, that the adoption is not to be made against his will or without his free consent.

"*Being alike.*"] This is interpreted by MED'HATIT'HI as signifying 'alike, not by tribe, but by qualities suitable to the family: accordingly a *Cshatriya* or a person of any inferior class, may be the given son (*dattaca*) of a *Brahmana.*' BALAM-BHATTA and the author of the *Mayuc'ha* censure this doctrine: since every other authority occurs in restricting adoption to the instance of a person of the same tribe.

10. *By specifying distress.*] "Distress" is explained in the *Pracass* cited by CHANDESWARA, 'inability [of the natural father] to maintain his offspring.' NANDA PANDITA, in his treatise on adoption, expounds it as intending the necessity for adoption arising from the want of issue. But BALAM-BHATTA rejects this, and supports the other interpretation: explaining the term as signifying 'famine or other calamity.'

This prohibition regards the giver.] If he give away his son, when in no distress the blame attaches to him, not to the taker. BALAM-BHATTA.

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* MENU, 9. 168. † *Subod'hini and* BALAM-BHATTA.

11. So an only son must not be given (nor accepted.*) For VASISHT'HA ordains "Let no man give or accept an only son.†

12. Nor, though a numerous progeny exist, should an eldest son be given: for he chiefly fulfils the office of a son; as is shown by the following text. "By the eldest son, as soon as born, a man becomes the father of male issue."‡

13. The mode of accepting a son for adoption is propounded by VASISHT'HA: "A person, being about to adopt a son, should take an unremote kinsman or the near relation of a kinsman, having convened his kindred

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11. *So an only son should not be given..*] Nor should such a son be accepted. The blame attaches both to the giver and to the taker, if they do so. BALAM-BHATTA.

"*Let no man give or accept an only son.*" "For he is [destined] to continue the line of his ancestors. Such is the sequel of VASISHT'HA's text. BALAM-BHATTA.

13. *The mode of accepting a son....propounded by* VASISHT'HA.] RAGHUNANDANA, in the *Udvaha-tatwa*, has quoted a passage from the *Calica-purana*, which, with the text of VASISHT'HA || constitutes the groundwork of the law of adoption, as received by his followers. They construe the passage as an unqualified prohibition of the adoption of a youth or child whose age exceeds five years and especially one whose initiation is advanced beyond the ceremony of tonsure. This is not admitted as a right maxim by writers in other schools of law; and the authenticity of the passage itself is contested by some, and particularly by the author of the *Vyavahara-mayuc'ha*, who observes truly, that it is wanting in many copies of the *Calica-purana*. Others, allowing the text to be genuine, explain it in a sense more consonant to the general practice, which permits the adoption of a relation, if not of a stranger, more advanced both in age and in progress of initiation. The following version of the passage conforms with the interpretation of it given by NANDA PANDITA in the *Dattaca-mimansa*. "Sons given and the rest, though sprung from the seed of another,

* BALAM-BHATTA. † VASISHT'HA, 15. 3. ‡ MENU, 9. 16.

|| VASISHT'HA, 15. 1.—7. See preceding quotations.

and announced his intention to the king, and having offered a burnt offering with recitation of the holy words, in the middle of his dwelling."*

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yet being duly initiated [by the adopter] under his own family name, become sons [of the adoptive parent.] A son, having been regularly initiated under the family name of his [natural] father, unto the ceremony of tonsure, does not become the son of another man. When indeed the ceremony of tonsure and other rites of initiation are performed [by the adopter] under his own family name, then only can sons given and the rest be considered as issue: else they are termed slaves. After their fifth year, O King, sons are not to be adopted. [But,] having taken a boy five years old, the adopter should first perform the sacrifice for male issue."†

The *Putreshti* or sacrifice for male issue, mentioned at the close of this passage, is a ceremony performed according to the instructions contained in the following text of the *Veda*: "He who is desirous of issue, should offer to fire parent of male offspring, an oblation of kneaded rice roasted upon eight potsherds; and to INDRA father of male offspring, a similar oblation of rice roasted on eleven potsherds: fire grants him progeny; INDRA renders it old.

"*An unremote kinsman or the near relation of a kinsman.*" This very obscure passage, which is variously read and interpreted, is here translated according to the elaborate gloss of NANDA PANDITA in his treatise entitled *Dattaca mimansa*. Yet the same writer in his commentary on VISHNU (15. 19.), citing this passage, gives the preference to another reading (*adura-band'havam asannicrishtam eva*), which he expounds 'one whose whole kindred dwell in a near country, and one not connected by affinity.' Which of these readings he has adopted in his commentary on the *Mitacshara*, is not ascertained. From a remark in the text (§ 14.), the author himself VIJNYANESWARA, appears to have read and understood it differently: "Should take, in the presence of his kin, one whose kinsmen are not remote." For copies of the *Mitacshara* exhibit the reading *adura-band'havam bandhu-sannicrishta eva*. But the commentator BALAM-BHATTA seems to have read, as the *Dattaca mimansa*, *bandhu-sannicrishtam* (in the accusative instead of the locative;) though he explain the terms a little differently and transpose them: 'should

* VASISHT'HA, 15. 5.

† *Calica-purana*. c. antepenult.

14. An unremote kinsman.] Thus the adoption of one very distant by country and language, is forbidden.

15. The same [ceremonial of adoption*] should be extended to the case of sons bought, self-given, and made (as well as that of a son deserted†) for parity of reasoning requires it.

16. The son bought (*crita*) is one who was sold by his father and mother, or by either of them: excepting as before an only son or an eldest one, and supposing distress and equality of tribe. As for the text of MENU, ("He is called a son bought, whom

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take a kinsman nearly related (*band'hu-sannicrishtam,*), as a brother's son or the like; but, on failure of such, one whose kinsmen are not remote '(*adura-band'havam*); that is, any other person, whose father and the rest of 'his relations abide in a near country and whose family and character are 'consequently known.' The authors of the *Calpataru* and *Retnacara* read, 'like the scholiast of VISHNU, *adura band'havam asannicrishtam eva*, and 'thus interpret the passage 'should take one whose kinsmen, namely his mater-'nal uncle and the rest, are near, [and whose name and tribe, with other 'particulars, can therefore be ascertained; or, for want of such kindred,‡] 'even one whose good or bad qualities are not known, [or one whose kinsmen 'are not at hand; for his name and family may be ascertained by other 'sufficient proof.'§]

"*Announced his intention to the king.*"] *Raja* or king, usually signifying, the sovereign, is here restricted according to the remark of NANDA PANDITA to the chief of the town or village.

"*In the middle of his dwelling.*"] The sequel of VASISHT'HA'S text is as follows. "*But* if doubt arise, let him set apart [without initiation and with a bare maintenance] like a *Sudra*, one whose kindred are remote. For it is declared [in the *Veda*] *Many are saved by one.*"‖

15. *The same ceremonial.*] Excepting the sacrifice or burnt offering. However, even that is to be performed at the adoption of a son self-given. BALAM-BHATTA.

16. *As for the text of Menu &c.*] SULAPANI, on the other hand, ex-

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* *Subod'hini.* † BALAM-BHATTA.
‡ *Vivada-Retnacara.* § *Vivada-Retnacara* ‖ VASISHT'HA, 15. 6.—7.

a man, for the sake of having issue, purchases from his father and mother: whether the child be equal or unequal to him."*) it must be interpreted 'whether like or unlike in qualities; not in class; for the author concludes by saying "This law is propounded by me, in regard to sons equal by class."†

17. The son made (*critrima*) is one adopted by the person himself, who is desirous of male issue: being enticed by the show of money and land, and being an orphan without father or mother: for, if they be living, he is subject to their control.

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pounds YAJNYAWALCYA by MENU, and admits the inequality of tribe. 'A child, sold by his father and mother, and received for adoption, is a son 'bought. He may be of dissimilar tribe: for the text [of MENU] expresses 'equal or unequal."‡ CHANDESWARA quotes the following discordant inter-'pretations: "Equal;" belonging to the same tribe; or, if that be not 'practicable, one unequal, or not appertaining to the same tribe. So the '*Parijata*.§ But the author of the *Pracasa* observes, Though the text express "unequal," yet a child of a superior tribe must not be taken as a 'son, by a man of inferior tribe; nor one of inferior class, by a man of a 'higher tribe. And the words "equal or unequal," as interpreted by 'MEDHATIT'HI, are relative to similarity in respect of qualities.'¶

17. *The son made*] One bereft of father and mother and belonging to the same tribe with the adopter, and by him adopted, being enticed to acquiesce by the show of wealth, is a son made by adoption. VISWESWARA in the *Madana-Parijata*.

The form, to be observed, is this. At an auspicious time, the adopter of a son, having bathed, addressing the person to be adopted, who has also bathed and to whom he has given some acceptable chattal, says "Be my son." He replies "I am become thy son." The giving of some chattel to him arises merely from custom. It is not necessary to the adoption. The consent of

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* MENU, 9. 174.

† YAJNYAWALCYA, 2. 134, Vide § 37. ‡ *Dipacalica* on YAJNYAWALCYA.

§ Not the *Madana-parijata*, which gives the contrary interpretation.

¶ *Vivada Retnacara*.

18. The son self-given is one, who, being bereft of father and mother, or abandoned by them (without cause,*) presents himself, saying "Let me become thy son."

19. The son, received with a bride, is a child, who, being in the womb, is accepted when a pregnant bride is espoused. He becomes son of the bridegroom.

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both parties is the only requisite; and a set form of speech is not essential. RUDRAD'HARA in the *Sudd'hi-viveca.*

18. *The son self-given.*] He, who, unsolicited, gives himself saying "let me become thy son," is called a son self-given (*swayandatta*). APARARCA.

Here also it is requisite, that he belong to the same tribe with his adoptive father. VISWESWARA in the *Madana-Parijata.*

"He who has lost his parents, or been abandoned by them without cause, and offers himself to a man as his son, is called a son self-given." MENU.†

Being abandoned by his father and mother without any sufficient cause, such as degradation from class or the like; but merely from inability to maintain him during a dearth, or for a similar reason. *Viramitrodaya.*

19. *The son received with a bride.*] If a woman be married while pregnant, the child born of that pregnancy is a son received with a bride (*sahod'ha:*) provided the child were begotten by a man of equal class. VISWESWARA in the *Madana-Parijata*

He is distinguished from the son of an unmarried damsel, because the conception preceded the betrothing of the mother; and from the son of concealed origin, because the natural father is known. Then what difference is there? for the son of the unmarried damsel was conceived before troth plighted.

True: yet there is a great difference, since one is born before marriage, and the other after marriage. This son received with a bride is son of him who takes the hand of the pregnant woman in marriage; for the maternal grandfather's right is divested by his giving away the child with the mother. NANDA PANDITA in the *Vaijayanti* VISHNU.

Since the bridegroom is specified as the adoptive father, the child does not belong to his natural father. Although the religious ceremony of marriage

* BALAM-BHATTA. † MENU, 9. 178.

20. A son deserted (*apavidd'ha*) is one, who, having been discarded by his father and mother, is taken for adoption. He is son of the taker. Here, as in every other instance, he must be of the same tribe with the adoptive father.

21. Having premised sons chief and secondary, the author explains the order of their succession to the heritage: "Among these, the next in order is heir, and presents funeral oblations on failure of the preceding."*

22. Of these twelve sons abovementioned, on failure of the first respectively, the next in order, as

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do not take place in the case of a pregnant woman, since a text of law restricts the prayers of the marriage ceremony to the nuptials of virgins, and forbids their use in the instance of women who are not virgins, as a practice which has become obsolete among mankind; and it would be inconsistent with a passage of the *Veda* [used at the nuptial ceremony as a prayer] expressing "the virgin worships the generous sun in the form of fire;" nevertheless the term "marry" [in the text of MENU†] intends a religious ceremony different from that, but consisting of burnt offerings, and so forth, according to the remark of the *Retnacara* and the rest. VACHESPATI MISRA in the *Sradd'ha chintamani.*

20. *Discarded.*] Abandoned: not for any fault, but through inability to maintain him, or because he was born under the influence of the stars of the scorpion's tail,‡ or for any similar reason. BALAM-BHATTA.

Since that, of which there is no owner, is appropriated by seizure or occupation, the child becomes son of him, by whom he is taken. NANDA PANDITA in the *Vaijayanti* VISHNU. 15. 24.

22. *Of these twelve sons.*] The various modes of adoptions added to the legitimate son by birth, raise the number of descriptions of sons to twelve,

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* YAJNYAWALCYA, 2. 133.

† MENU, 9. 173.

‡ The birth of a son, while the moon is near the stars of *Mula* (the scorpion's tail), is dangerous to the father's life, according to *Indian* astrology; and, on this account, a son born under that influence is exposed or abandoned, if natural affection and humanity do not overcome superstition and credulity.

enumerated, must be considered to be the giver of the funeral oblation or performer of obsequies, and taker of a share or successor to the effects.

23. If there be a legitimate son and an appointed daughter, MENU propounds an exception to the seeming right of the legitimate son to take the whole estate; "A daughter having been appointed, if a son be afterwards born, the division of the heritage must in that case be equal: since there is no right of primogeniture for the woman."*

24. So the allotment of a quarter share to other inferior sons, when a superior one exists, has been

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according to most authorities. That number is expressly affirmed by MENU,† NAREDA,‡ VASISHT'HA,§ VISHNU, &c. A passage is however‖ quoted from DEVALA, asserting the number of fifteen ("The descriptions of sons are ten and five,") and VRIHASPATI is cited as alleging the authority of MENU for thirteen: "of the thirteen sons, who have been enumerated by MENU in their order, the legitimate son and appointed daughter are the cause of lineage. As oil is declared to be a substitute for liquid butter, so are eleven sons by adoption substituted for the legitimate son and appointed daughter." NANDA PANDITA, in his commentary on VISHNU, observes, that 'the number of thirteen specified by VRIHASPATI, and that of fifteen by DEVALA, intend subdivisions of the species, not distinct kinds: consequently there is no contradiction: for those subdivisions are also included in the enumeration of twelve.' It appears, however, from a comparison of texts specifying the various descriptions of sons, that the exact number (as indeed is acknowledged by numerous commentators and compilers) is thirteen: including the son by a *Sudra* woman. Vide § 30.

23. *If there be a son and an appointed daughter.*] So this passage is interpreted by the commentators VISWESWARA and BALAM-BHATTA: The original is, however, ambiguous and might be explained 'if there be a legitimate son and a son of an appointed daughter.' BALAM-BHATTA remarks that this can only happen where a legitimate son is born after the appointment of a daughter.

24. *So the allotment of a quarter share.*] As the appointed daughter parti-

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* MENU, 9, 134. † MENU, 9. 158. ‡ NAREDA, 13. 44. § VASISHT'HA 17. 11.
‖ VISHNU, 15. 1.

ordained by VASISHT'HA: "When a son has been adopted, if a legitimate son be afterwards born; the given son shares a fourth part." Here the mention of a son given is intended for an indication of others also, as the son bought, son made by adoption, and [son self-given† and] the rest: for they are equally adopted as sons.

25. Accordingly CATYAYANA says, "If a legitimate son be born, the rest are pronounced sharers of a fourth part, provided they belong to the same tribe, but, if they be of a different class, they are entitled to food and raiment only."

26. "Those who belong to the same tribe," as the son of the wife, the son given and the rest [namely the sons bought, made, self-given and discarded,‡] share a fourth part, if there be a true legitimate son: but those, who belong to a different class, as the damsel's son, the son of concealed origin, the son of a pregnant bride, and the son by a twice-married woman, do not take a fourth part, if there be a legitimate son: but they are entitled to food and raiment only.

27. "Exceptionable sons, as the son of an unmarried damsel, a son of concealed origin, one received

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cipates where there is a legitimate son; so do other sons likewise partake. *Subod'hini.*

The mention of a son given.) This is according to the reading of the text as here cited and in the *Viramitrodaya* and CAMALACARA's *Vivada-Tandava*. But, in the *Culpataru*, *Retnacara*, *Chintamani* &c. that restrictive term is wanting: *Sa chatur'ha-bhaga-bhagi syat*, instead of *Chatur'ha-bhaga bhagi syad dattacah.*

25. *Sharers of a fourth part.*] This reading is followed in the *Madana Parijata*, *Viramitrodaya &c.* But the *Calpataru*, *Retnacara* and other compilations read 'a third part.' Vide JIMUTA-VAHANA. C. 10. § 13.

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* VASISHT'HA, 16. 8.

† BALAM-BHATTA.

‡ *Subod'hini* and *Parijata.*

with a bride, and a son by a twice-married woman, share neither the funeral oblation, nor the estate." This passage of VISHNU* merely denies the right of those sons to a quarter share, if there be legitimate issue: but, if there be no legitimate son or other preferable claimant, even the child of an unmarried woman and the rest of the adoptive sons may succeed to the whole paternal estate, under the text before cited (§21.)

28. "The legitimate son is the sole heir of his father's estate; but, for the sake of innocence, he should give a maintenance to the rest."† This text of MENU must be considered as applicable to a case, where the adopted sons (namely the son given and the rest) are disobedient to the legitimate son and devoid of good qualities.

29. Here a special rule [different from CATYAYANA's‡] is propounded by the same author (MENU) respecting the son of the wife: Let the legitimate son, when dividing the paternal heritage give a sixth part, or a fifth, of the patrimony to the son of the wife."§ The cases must be thus discriminated: if disobedience and want of good qualities be united, then a sixth part should be allotted. But, if one only of those defects exist, a fifth part.

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28. *Applicable to a case where adopted sons (namely the son given &c.) are disobedient.* It also relates to the damsel's son and the rest: for they are declared entitled to food and raiment only, if there be legitimate issue: and that must be supposed to be founded on the same authority with this text: but MENU has himself propounded a fifth or a sixth part for the son of the wife if there be legitimate issue.‖ *Viramitrodaya.*

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* It is not found in the institutes of VISHNU; but is cited from that author in the *Madana-parijata* and *Viramitrodaya* as in this place. † MENU, 9. 163.

‡BALAM-BHATTA.

§ MENU, 9. 151.

‖ VIDE § 28.

30. MENU, having premised two sets of six sons, declares the first six to be heirs and kinsmen; and the last to be not heirs but kinsmen: "The true legitimate issue, the son of a wife, a son given, and one made by adoption, a son of concealed origin, and one rejected [by his parents,] are the six heirs and kinsmen. The son of an unmarried woman, the son of a pregnant bride, a son bought, a son by a twice-married woman, a son self-given, and a son by a *Sudra* woman, are six not heirs but kinsmen."*

31. That must be expounded as signifying, that the first six may take the heritage of their father's collateral kinsmen *(sapindas* and *samanodacas)* if there be no nearer heir; but not so the last six. However, consanguinity and the performance of the duty of offering libations of water and so forth, on account of relationship near or remote, belong to both alike.

32. It must be so expounded; for the mention of a given son in the following passage is intended for any adopted or succedaneous son. "A given son must never claim the family and estate of his natural father.

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31. *The first six may take the heritage of collateral kinsmen:.....not so the last six.*] The sense of the two passages is, that, if there be no nearer collateral kinsman, the first six inherit the property; but not the six last. *Subod'hini.*

However, consanguinity &c.] MED'HATIT'HI interprets the text of MENU signifying that 'the last six are neither heirs nor kinsmen.' But that interpretation is censured by CULLUCA-BHATTA; and is supposed by the commentator on the *Mitacshara* to be here purposely confuted.

32. *The mention of a given son is intended for any adopted son.*] The meaning, as here expressed, is this: the mention of a son given is in this place intended to denote any succedaneous son. Consequently since it appears from the text that adopted sons have a right of inheritance; but, according to the

* MENU, 9. 195—160.

The funeral oblation follows the family and estate: but of him, who has given away his son, the obsequies fail."*

33. All, without exception, have a right of inheriting their father's estate, for want of a preferable son: since a subsequent passage ("Not brothers, nor parents, but sons, are heirs to the estate of the father,"†) purposely affirms the succession of all subsidiary sons other than the true legitimate issue; and the right of the legitimate son is propounded by a separate text ("The legitimate son is the sole heir of his father's es-

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opponent's opinion, it appears from another passage, that they have not a right of succession; it might be concluded from such a contradiction, that the precepts have no authority: therefore, lest the text become futile, the interpretation, proposed by us, is to be preferred. *Subod'hini.*

Of him, who has given away his son, the obsequies fail.] This must be understood of the case where the giver has other male issue. *Subod'hini.*

But, if he have not, then even that son is competent to inherit his estate and to perform his obsequies; like the son of two fathers (Sect. 10 § 1): for a passage of SATATAPA directs "Let the given son present oblations to his adoptive parent and to his natural father, on the anniversary of decease, and at *Gaya*, and on other occasions; not, however, if there be other male issue." This indeed can only occur where the natural father is bereft of issue after giving away his son: since, at the time of the gift, it is forbidden to part with an only son (§ 11.) In this manner is to be understood the circumstance of a given son, as son of two fathers, conferring benefits on both. BALAM-BHATTA.

If either the natural parent or the adoptive father have no other male issue, the *Dwyamushyayana* or son of two fathers shall present the funeral oblation to him, and shall take his estate: but not so, if there be male issue. If both have legitimate sons, he offers an oblation to neither, but takes the quarter of a share allotted to a legitimate son of his adoptive father. *Vyavahara-mayuc'ha.*

* MENU, 9. 142.

† MENU, 9. 185.

tate;"*) and the word "heir" *(dayada)* is frequently used to signify any successor other than a son.

34. The variation which occurs in the institutes of VASISHT'HA and the rest, respecting some one in both sets, must be understood as founded on the difference of good and bad qualities.

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33. *The word "heir" is frequently used.*] An instance is cited in the text. It is part of a passage, of which the sequel has not been found. The words are "let him compel the heirs to pay."

34. *The variation, which occurs in Vasishtha &c.*] MENU, declaring the appointed daughter equal to the legitimate son, includes her under legitimate issue,† and proceeds to define the remaining ten succedaneous sons.‡ But VASISHT'HA states the appointed daughter as third in rank;§ which is a disagreement in the order of enumeration. The same must be understood of other institutes of law;‖ which are here omitted for fear of prolixity. How then is the succession of the next in order on failure of the preceding reconcileable? The author proposes this difficulty with its solution. His notion of the mode of reconciling it is this: MENU, declaring that the first set of six sons by birth or adoption is competent to inherit from collateral kinsmen on failure of nearer heirs, but not so the second set, afterwards proceeds to deliver incidentally definitions of those various sons. It appears therefore to be a loose enumeration, and not one arranged with precision. Accordingly MENU, in saying "Let the inferior in order take the heritage,"¶ does not limit this very order, but intends one different in some respects: and the difference is relative to good and bad qualities. The same method must be used with the variations in other codes. Moreover, what is ordained by YAJNYAWALCYA is consistent with propriety. For the true legitimate son and the son of an appointed daughter are both legitimate issue and consequently equal. The son of the wife, a son of hidden origin, the son of an unmarried damsel, and a son by a twice-married woman, being produced from the seed of the adoptive father or from a soil appertaining to him, have the preference before the son given and the rest. The son received with a bride, being produced from soil which

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* Vide § 28. † MENU, 9. 165. ‡ MENU, 9. 166—178.
§ VASISHT'HA, 17. 14. ‖ AsVISHNU, 15. 2—37. NAREDA, 13. 44.—45. DEVALA &c. ¶ MENU, 9. 124.

35. But the assignment of the tenth place to the son of an appointed daughter, in GAUTAMA's text, is relative to one differing in tribe.

36. The following passage of MENU, "If, among several brothers of the whole blood, one have a son born, MENU pronounces them all fathers of male issue by means of that son;"* is intended to forbid the adoption of others, if a brother's son can possibly be adopted. It is not intended to declare him son of his uncle: for that is inconsistent with the subsequent text; "brothers likewise and their sons, gentiles, cognates &c."†

37. The author next adds a restrictive clause by way of conclusion to what had been stated: "This law is propounded by me in regard to sons equal by class."‡

38. This maxim is applicable to sons alike by class, not to such as differ in rank.

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the adoptive father accepts for his own, is placed in the second set by the authority of the text [or because the mother did not appertain to the adoptive father at the time when the child was begotten.§] The whole is therefore unexceptionable. *Subod'hini.*

36. *That is inconsistent with the subsequent text.*] It is incompatible with a passage of YAJNYAWALCYA declaratory of the nephew's right of succession after brothers. For, if he be deemed a son, because all the brethren are pronounced fathers of male issue by means of the son of a brother, he ought to inherit before all other heirs, such as the father and the rest, [who are in that passage preferred to him.] *Subod'hini.*

The principle of giving a preference to the nephew, as the nearest kinsman, in the selection of a person to be adopted, is carried much further by NANDA PANDITA in the *Dattaca-mimansa*: and, according to the doctrine there laid down, the choice should fall on the next nearest relation, if there be no brother's son; and on a distant relation, in default of near kindred: but on a stranger, only upon failure of all kin. See § 13.

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* MENU, 9. 182. † YAJNYAWALCYA, 2. 136. Vide infra C. 2. Sect 1. § 1.
‡ YAJNYAWALCYA, 2. 134. § BALAM-BHATTA.

39. Here the damsel's son, the son of hidden origin, the son received with a bride, and a son by a twice-married woman, are deemed of like class, through their natural father, but not in their own characters: for they are not within the definition of tribe and class.

40. Since issue, procreated in the direct order of the tribes, as the *murd'havasicta* and the rest, are comprehended under legitimate issue, it must be understood, that, on failure of these also, the right of inheritance devolves on the son of the wife and the rest.

41. But the son by *Sudra* wife, though legitimate, does not take the whole estate, even on failure of other issue. Thus MENU says, "But, whether the man have sons, or have no sons, [by his wives of other classes,] no more than a tenth part must be given to the son of the *Sudra*."*

42. "Whether he have sons," whether he have male issue of a regenerate tribe; "or have no sons,"

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39. *They are not within the definition of tribe.*] For YAJNYAWALCYA, having described the origin and distinctions of the tribes and classes, [viz. the *Murd'havasicta*, *Ambasht'ha*, *Nishada*, *Mahishya*, *Ugra* and *Carana*:] adds "This rule concerns the children of women lawfully married."† *Viramitrodaya.*

Since these (viz. the damsel's son and the rest) are bastards; born either in fornication or adultery, their exclusion from class, tribe &c. has been ordained in the first book on religious observances. *Subod'hini.*

41. *No more than a tenth part.*] Is not this wrong? for it has been declared, that the *Sudra's* son shall take a share in a distribution among sons of various tribes (Sect. 8. § 1); but it is here directed, that he shall have a tenth part. No: for the four shares of the *Brahmani's* son, with three for the *Cshatriya's* child, make seven; and, with two for the *Vaisya's* offspring, make nine; adding that to one for the *Sudra's* son, the sum is ten. Thus there is no contradiction: for in that instance also, his participation for a tenth part is ordained: and the whole is unexceptionable. *Subod'hini.*

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* MENU, 9. 154. † YAJNYAWALCYA, 1. 93.

or have no issue of such a tribe; in either case, upon his demise, the son of the wife or other [adoptive son,] or any other kinsman [and heir,] shall give to the *sudra's* son, no more than a tenth part of the father's estate.

43. Hence it appears, that the son of a *Cshatriya* or *Vaisya* wife takes the whole of the property on failure of issue by women of equal class.

SECTION XII.

Rights of a son by a female slave, in the case of a Sudra's *estate.*

1. The author next delivers a special rule concerning the partition of a *Sudra*'s goods. "Even a son begotten by a *Sudra* on a female slave may take a share by 'the father's choice. But, if the father be dead, the 'brethren should make him partaker of the moiety of 'a share: and one, who has no brothers, may inherit 'the whole property, in default of daughter's sons."*

2. The son begotten by a *Sudra* on a female slave, obtains a share by the father's choice, or at his pleasure. But after [the demise of †] the father, if there be sons of a wedded wife, let these brothers allow the

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43. *Hence it appears.*] It so appears from the text of MENU above cited (§ 41). BALAM-BHATTA.

1. "*In default of daughter's sons.*"] Some interpret this 'on failure of daughters and in default of their sons.' BALAM-BHATTA.

* YAJNYAWALCYA, 2. 134.—135. † BALAM-BHATTA.

son of the female slave to participate for half a share: that is, let them give him half [as much as is the amount of one brother's*] allotment. However, should there be no sons of a wedded wife, the son of the female slave takes the whole estate, provided there be no daughters of a wife, nor sons of daughters. But, if there be such, the son of the female slave participate for half a share only.

3. From the mention of a *Sudra* in this place, [it follows, that] the son begotten by a man of a regenerate tribe on a female slave, does not obtain a share even by the father's choice, nor the whole estate after his demise. But, if he be docile, he receives a simple maintenance.

Subodhini and BALAM-BHATTA.

CHAPTER II.

SECTION I.

Right of the widow to inherit the estate of one, who leaves no male issue.

1. THAT sons, principal and secondary, take the heritage, has been shown. The order of succession among all [tribes and classes*] on failure of them, is next declared.

2. "The wife, and the daughters also, both parents, brothers likewise, and their sons, gentiles, cognates, a pupil, and a fellow student: on failure of the first among these, the next in order is indeed heir to the estate of one, who departed for heaven leaving no male issue. This rule extends to all [persons and†] classes."‡

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2. "*Brothers likewise.*"] This is understood by BALAM-BHATTA as signifying both brothers and sisters.

"*And their sons.*"] BALAM-BHATTA understood the daughters of brothers, as well as their sons.

* *Subod'hini.* † *Subod'hini.* ‡ YAJNYAWALCYA, 2. 136.—137.

3. He, who has no son of any among the twelve descriptions abovestated (C. I. 11.) is one having 'no male issue.' Of a man, thus leaving no male progeny, and going to heaven, or departing for another world, the heir, or successor, is that person, among such as have been here enumerated, (viz. the wife and the rest,) who is next in order, on failure of the first mentioned respectively. Such is the construction of the sentence.

4. This rule, or order of succession, in the taking of an inheritance, must be understood as extending to all tribes, whether the *Murd'havasicta* and others in the direct series of the classes, or *Suta* and the rest in the inverse order; and as comprehending the several classes, the sacerdotal and the rest.

5. In the first place, the wife shares the estate. "Wife" *(patni)* signifies a woman espoused in lawful wedlock; conformably with the etymology of the term as implying a connexion with religious rites.

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3. *Such is the construction of the sentence.*] The commentator BALAM-BHATTA disapproves the reading which is here followed. The difference is, however, immaterial.

5. *Conformably with the etymology.*] A rule of grammar is cited in the text: viz. PANINI, 4. 1. 35.

The author of the *Subod'hini* remarks, that the meaning of the grammatical rule cited from PANINI is this: *Patni* 'wife' anomalously derived from *Pati* 'husband,' is employed when connexion with religious rites is indicated: for they are accomplished by her means, and the consequence accrues to him. The purport is, that a woman, lawfully wedded, and no other, accomplishes religious ceremonies: and therefore one espoused in lawful marriage is exclusively called a wife *(Patni.)* Although younger wives are not competent to assist at sacrifices or other religious rites, if an eldest wife exist, who is not disqualified; still since the rest become competent in their turns, on failure of her, or even during her life, if she be afflicted with a lasting malady or be degraded for misconduct, they possess a capacity for the performance of religious ceremonies: and here such capacity only is intended. Or else

separated brother: and that, provided she be solicitous of authority for raising up issue to her husband. Whence is it inferred, that a widow succeeds to the estate, provided she seek permission for raising up issue, but not independently of this consideration? From the text above cited, "Of him, who leaves no son, the father shall take the inheritance;"* and other similar passages [as NAREDA's &c.†] For here a rule of adjustment and reason for it must be sought; but there is none other. Besides it is confirmed by a passage of GAUTAMA: "Let kinsmen allied by the funeral oblation, by family name, and by descent from the same patriarch, share the heritage; or the widow of a childless man, if she seek to raise up offspring to him."‡

9. 'The meaning of the text is this: persons, connected by a common oblation, by race, or by descent from a patriarch, share the effects of one who leaves no issue: or his widow takes the estate, provided she seek progeny.'

10. 'MENU likewise shows by the following passage, that, when a brother dies possessed of separate property, the wife's claim to the effects is in right of progeny and not in any other manner. "He, who keeps the estate of his brother and maintains the widow, must, if

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from the interpretation of the text in the next paragraph (§ 9.); according to the remark of the commentators on the *Mitacshara*. But the scholiast of GAUTAMA takes it in its usual disjunctive sense: and the text is differently interpreted by the author of the *Mitacshara* himself (§ 18.)

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* MENU, 9. 185. Vide § 7.
† BALAM-BHATTA.
‡ GAUTAMA, 28. 19.—20. Vide infra. § 18.

he raise up issue to his brother, deliver the estate to the son."* So, in the case of undivided property likewise, the same author says, "Should a younger brother have begotten a son on the wife of his elder brother, the division must then be made equally: thus is the law settled."†

11. 'VASISHT'HA also, forbidding an appointment to raise up issue to the husband, if sought from a covetous motive; ("An appointment shall not be through covetousness;"‡) thereby intimates, that the widow's succession to the estate is in right of such an appointment, and not otherwise.'

12. 'But, if authority for that purpose have not been received, the widow is entitled to a maintenance only: by the text of NAREDA: "Let them allow a maintenance to his women for life."§

13. 'The same (it is pretended) will be subsequently declared by the contemplative saint: "And their childless wives, conducting themselves aright, must be supported; but such, as are unchaste, should be expell-

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10 "*Must....deliver the estate to the son.*"] It is thus shown, that a separated brother is meant; else, if there had been no partition, he could have separate property. In the text subsequently cited, it appears from the direction for making the division equally, that the case of an unseparated coheir is intended. Since there could be no partition, if he were already separated. *Subod'hini.*

11. *The widow's succession is in right of such an appointment.*] A widow, who has accepted authority for raising up issue to her husband, has the right of succession to his estate; but no other widow has so. *Viramitrodaya.*

13. *The same (it is pretended) will be declared.*] Here the particle *cita* indicates disapprobation; as in the example 'Ah! wilt thou [presume to] fight.' For this passage of YAJNYAWALCYA will be expounded in a different sense. So

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* MENU, 9. 146. † MENU 9. 120. ‡ VASISHT'HA, 17. 18.
§ NAREDA, 13. 26. Vide supra. § 7.

ed; and so, indeed, should those, who are perverse.'*

14. 'Moreover, since the wealth of a regenerate man is designed for religious uses, the succession of women to such property is unfit; because they are not competent to the performance of religious rites. Accordingly, it has been declared by some author, "Wealth was produced for the sake of solemn sacrifices: and they, who are incompetent to the celebration of those rites, do not participate in the property, but are all entitled to food and raiment." "Riches were ordained for sacrifices. Therefore they should be allotted to persons who are concerned with religious duties; and not be assigned to women, to fools, and to people neglectful of holy obligations."

15. That is wrong: for authority to raise up issue to the husband is neither specified in the text, ("The wife and the daughters also &c."†) nor is it suggested by the premises. Besides, it may be here asked; is the appointment to raise up issue a reason for the widow's succession to the property? or is the issue, borne by her, the cause of her succession? If the appointment alone be the reason, it follows, that she has a right to the estate, without having borne a son; and the right of the son subsequently produced [by means of the appointment ‡] does not ensue. But, if the offspring be the

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the expression 'by some author' (§ 14.) is intended as an indication of disrespect. Hence the insertion of the passage so cited, in this argument, does not imply an acknowledgment of it as original and genuine. *Subod'hini.*

14. *It has been declared by some author.*] The passage here cited is not considered as authentic; and no authority is shown for that and the following text: BALAM-BHATTA.

15. *And the right of the son subsequently produced does not ensue.*] Which is inconsistent with the enunciation of his right succession, as one

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* YAJNYAWALCYA, 2. 143. † § 2. ‡ BALAM-BHATTA.

sole cause [of her claim,*] the wife should not be recited as a successor: since, in that case, the son alone has a right to the goods.

16. But, it is said, women have a title to property, either through the husband, or through the son, and not otherwise. That is wrong: for it is inconsistent with the following text and other similar passages. "What was given before the nuptial fire, what was presented in the bridal procession, what has been given in token of affection, what has been received by the woman from her brother, her mother, or her father, are denominated the sixfold property of a woman."†

17. Besides, the widow and the daughters are announced as successors (§2), on failure of sons of all descriptions. Now by here affirming the right of a widow who has been appointed to raise up issue, the right of her son to succeed to the estate is virtually affirmed. But that had been already declared; and therefore the wife ought not to be mentioned under the head [of succession to the estate‡] of one who leaves no male issue.

18. But, it is alleged, the right of a widow, who is authorized to raise up issue to her husband, is deduced from the text of GAUTAMA: "Let kinsmen allied by the funeral oblation, by family name, and by descent from the same patriarch, share the heritage; or the widow of a childless man: and she may either [remain chaste

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of the twelve descriptions of sons, preferably to the widow and other heirs. *Subod'hini* and BALAM-BHATTA.

16. *That is wrong: for it is inconsistent with the following text.*] Admitting the restriction, that women obtain property through their husbands or sons only, still that restriction does not hold good universally, since women's right of property is declared in other instances. *Subod'hini.*

17. *The wife ought not to be mentioned.*] She ought not to be here mentioned, lest it should be thought a vain repetition. *Subod'hini.*

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* BALAM-BHATTA. † MENU, 9. 194. ‡ BALAM-BHATTA.

or may] seek offspring.*" This too is erroneous: for the sense, which is there expressed, is not 'If she seek to obtain offspring, she may take the goods of one who left no issue;' but 'persons allied by the funeral oblation, by family name, and by descent from the same patriarch, share the effects of one who leaves no issue; or his widow takes his estate: and she may either seek to obtain progeny, or may remain chaste.' This is an instruction to her, in regard to her duty. For the particle (*va*) 'or,' denoting an alternative, does not convey the sense of 'if.' Besides it is fit, that a chaste woman should succeed to the estate, rather than one appointed to raise up issue, reprobated as this practice is in the law as well as in popular opinion. The succession of a chaste widow is expressly declared; "The widow of a childless man keeping unsullied her husband's bed, and persevering in religious observances, shall present his funeral oblation and obtain his entire share."† And an authority to raise up issue is expressly condemned by MENU: "By regenerate men no widow must be authorized to conceive by any other;

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18. *She may either seek to obtain progeny.*] The author proposes two modes of conduct for a woman whose husband is deceased. One is, that she should seek offspring, or endeavour to obtain male issue under an authority for that purpose. The term *va* (either, or,) in this place does not signify 'if;' but indicates an alternative and that implies an opposite case; and the opposite case is the second mode of conduct, which, though not expressly stated in the text, must, by force of the particle *va*, in its usual disjunctive acceptation, be opposite to the desire of obtaining progeny by means of an appointment to raise up issue: and this is consequently determined to be the duty of chastity. The meaning therefore is this: two modes of conduct are here prescribed: either she must seek male issue by means of an appointment for that purpose, or she must remain chaste. *Subod'hini.*

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* Vide § 8. The text is here translated according to the commentator's interpretation.

† Vide § 6.

for they, who authorize her to conceive by another, violate the primeval law."*

19. But the text of VASISHT'HA "An appointment shall not be through covetousness;"† must be interpreted: 'if the husband die either unseparated from his coparceners or reunited with them, she has not a right to the succession; and therefore an appointment to raise up issue must not be accepted for the sake of securing the succession to her offspring.'

20. As for the text of NAREDA, "Let them allow a maintenance to his women for life;"‡ Since reunion of parceners had been premised (in a former text, viz. "The shares of reunited brethren are considered to be exclusively theirs;"§) it must be meant to assign only a maintenance to their childless widows. Nor is tautology to be objected to that passage, the intermediate text being relative to reunited parceners ("Among brothers, if any one die without issue, &c."‖) For women's separate property is exempted from partition by this

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19. *Therefore an appointment . . . . must not be accepted.*] Considering that she has not herself a right to the estate, she ought not to seek an authority for raising up issue, from covetousness, with the view that the wealth may go to her progeny, as it cannot belong to herself. *Subod'hini.*

20. *Nor is tautology to be objected*] On the ground, that both passages convey the same import. For, in explaining what had been before said, the two several passages convey two distinct meanings; namely, that the woman's separate property is not to be divided, and that a maintenance only is to be granted to them. What had been before said, is not all which is afterwards declared; that it should be charged with tautology. The text "Among brothers, if any one die without issue," is an explanation of the preceding one ("The shares of reunited brethren are considered to be exclusively theirs.") The close of it, "except the wife's separate property," is a

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* MENU, 9. 64. Vide C. 1. Sect. 10. § 8.
† Vide § 11.
‡ NAREDA, 13. 26. Vide § 12.
§ NAREDA, 13. 24.
‖ NAREDA, 13. 25. See JIMUTA-VAHANA, Ch. 11. Sect. 1. §. 48

explanation of what had been before said; and a mere maintenance for the widow is at the same time ordained.

21. The passage, which has been cited, "Their childless wives, conducting themselves aright, must be supported;"* will be subsequently shown to intend the wife of an impotent man and so forth.†

22. As for the argument, that the wealth of a regenerate man is designed for religious uses; and that a woman's succession to such property is unfit, because she is not competent to the performance of religious rites; that is wrong: for, if every thing, which is wealth, be intended for sacrificial purposes, then charitable donations, burnt offerings, and similar matters, must remain unaccomplished. Or, if it be alleged, that the applicableness of wealth to those uses is uncontradicted, since sacrifice here signifies religious duty in general; and charitable donations, burnt offerings and the rest are acts of religious duty; still other purposes of opulence and gratification, which are to be effected by means of wealth, must remain unaccomplished: and, if that be the case, there is an inconsistency in the following passages of YAJNYAWALCYA, GAUTAMA and MENU. "Neglect not religious duty,

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declaration of her property being indivisible; and the subsequent passage ("Let them allow a maintenance to his woman for life") contains a separate injunction. BALAM BHATTA.

22. *Sacrifice here signifies religious duty in general.*] The relinquishment of a thing, with the view to its appertaining to a deity, is a sacrifice *(yaga)* or consecration of the thing. The same design, terminated by casting the thing into flames, is a burnt offering *(homa)* or holocaust. The conferring of property on another by annulling a previous right, is a gift *(dana)* or donation. Such is the difference between sacrifice, burnt offering and donation. *Subod'hini.*

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* Vide supra. § 13. † Vide Sect. 10 § 15.

wealth or pleasure in their proper season."* "To the utmost of his power, a man should not let morning, noon or evening be fruitless, in respect of virtue, wealth and pleasure."† The organs cannot so effectually be restrained by avoiding their gratification, as by constant knowledge [of the ills incident to sensual pleasure."‡]

23. Besides, if wealth be designed for sacrificial uses, the argument would be reversed, by which it is shown, that the careful preservation of gold [inculcated by a passage of the *Veda*§] "Let gold be preserved," is intended not for religious ends, but for human purposes.

24. Moreover, if the word sacrifice import religious duty in general, the succession of women to estates is most proper, since they are competent to the performance of auspicious and conservatory acts [as the making of a pool or a garden &c.‖]

25. The text of NAREDA, which declares the dependence of women, ("A woman has no right to independence,"¶) is not incompatible with their acceptance of property; even admitting their thraldom.

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"*In their proper season.*"] This part of the text was wanting in the quotation of it, as here exhibited: but the passage, as it is read in its proper place, by the *Mitacshara*, APARARCA and the *Dipacalica*, contains the words *swacc cale* 'in their proper season.'

23. *The argument would be reversed.*] The reasoning here alluded to occurs in the *Mimansa:* and is the 12th topic of the 4th section of the 3rd chapter. The passage of the *Veda*, which is there examined, and the initial words of which are quoted in the text, enjoins the careful preservation of gold, lest it lose its brightness and be tarnished. The question, raised on it, is whether the observance of the precept be essential to the efficacy of sacrifice or serve only a human purpose; and the result of the reasoning is that the

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* YAJNYAWALCYA, 1. 115. † Not found in GAUTAMA's institutes.
‡ MENU, 2. 96. partially quoted in this place.
§ BALAM-BHATTA. ‖ BALAM-BHATTA. ¶ NAREDA, 13. 31.

26. How then are the passages before cited ("Wealth was produced for the sake of solemn sacrifices &c."*) to be understood? The answer is, wealth, which was obtained [in charity†] for the express purpose of defraying sacrifices, must be appropriated exclusively to that use even by sons and other successors. The text intends that: for the following passage declares it to be an offence [to act otherwise,] without any distinction in respect of sons and successors. "He, who, having received articles for a sacrifice, disposes not of them for that purpose, shall become a kite or a crow."‡

27. It is said by CATYAYANA "Heirless property goes to the king, deducting however a subsistence for the females as well as the funeral charges: but the goods belonging to a venerable priest, let him bestow on venerable priests." "Heirless property," or wealth which is without an heir to succeed to it, "goes to the king," or becomes the property of the sovereign; "deducting however a subsistence for the females as well as the funeral charges:" that is, excluding or setting apart a sufficiency for the food and raiment of the women, and as much as may be requisite for the funer-

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precept affects that person, and not the sacrifice. The reasoning is considered by the author to be incompatible with the notion, that wealth is intended solely for sacrificial uses.

27. *"Let him bestow on venerable priests" . . . . 'let him bestow on a venerable priest.'*] The commentator, BALAM-BHATTA, considers as a variation in the reading of the text, the subsequent interpretation of it, 'let him bestow on a venerable priest:' *srotriyayopapadayet* in place of *srotriyebhyas tad arpayet*. He remarks, however, that the singular number is used generally.

* Vide § 14. † BALAM-BHATTA.

‡ This is a passage of MENU according to BALAM-BHATTA; and a text of the same import, but expressed in other words, occurs in his Institutes, 11. 25.

al repasts and other obsequies in honour of the late owner, the residue goes to the king. Such is the construction of the text. An exception is added: "but the goods belonging to a venerable priest," deducting however a subsistence for the females as well as the charges of obsequies, 'let him bestow on a venerable priest.'

28. This relates to women kept in concubinage: for the term employed is "females" *(yo shid.)* The text of NAREDA likewise relates to concubines; since the word there used is "women" *(stri.)* "Except the wealth of a *Brahmana* [property goes to the king on failure of heirs.] But a king, who is attentive to the obligations of duty, should give maintenance to the women of such persons. The law of inheritance has been thus declared."*

29. But since the term "wife" *(patni)* is here employed, (§2.) the succession of a wedded wife, who is chaste, is not inconsistent with those passages.

30. Therefore the right interpretation is this: when a man, who was separated from his coheirs and not reunited with them, dies leaving no male issue, his widow [if chaste†] takes the estates in the first instance. For partition had been premised; and reunion will be subsequently considered.

31. It must be understood, that the explanation, proposed by SRICARA and others, restricting [the widow's succession] to the case of a small property, is refuted by this [following argument.‡] If there be legitimate sons, it is provided, whether partition be made in the owner's life time or after his decease, that

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28. *The text....relates to concubines.*] Or to twice-married women and others not considered as wives espoused in lawful wedlock BALAM-BHATTA.

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* NAREDA, 13. 51-52.
† BALAM-BHATTA. ‡ Ibid.

the wife shall take a share equal to the son's. "If he make the allotments equal, his wives must be rendered partakers of like portions."* And again: "Of heirs dividing after the death of the father, let the mother also take an equal share."† Such being the case, it is a mere error to say, that the wife takes nothing but a subsistence, from the wealth of her husband, who died leaving no male issue.

32. But it is argued, that, under the terms of the text above cited, ("his wives must be rendered partakers of like portions;" and "let the mother also take an equal share;") a woman takes wealth sufficient only for her maintenance. That is wrong: for the words "share" or "portion," and "equal" or "like," might consequently be deemed unmeaning.

33. Or suppose, that if the wealth be great, she takes precisely enough for her subsistence; but if

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31. *It is a mere error to say, that the wife takes nothing but a subsistence.*] If the wife share a portion equal to that of a son, not an allotment sufficient only for her support, both when the husband is living, and after his decease, though sons exist; more especially should it be affirmed, that she obtains the whole wealth of her husband, who leaves no male issue: and thus, since the widow's succession to the whole estate is established by reasoning *a fortiori*, the assertion, that she obtains no more than food and raiment, is erroneous. Besides, since the wife's participation with a son, who is entitled to take a share of the estate, or, if there be no other son, the whole of it, has been expressly ordained, it is fit that she should, on failure of male issue, take the wealth of her childless husband being separate from his coheirs. *Subod'hini.*

32. *For the words "share" and "equal" might consequently be deemed unmeaning.*]. These terms are commonly employed to signify 'portion' and 'parity.' By abandoning their own signification without sufficient cause, they would appear unmeaning. *Subod'hini.*

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* C. 1. Sect. 2. § 8.
† C. 1. Sect. 7. § 1.

small, she receives a share equal to that of a son. This again is wrong: for variableness in the precept must be the consequence. Thus, if the estate be considerable, the texts above cited, ("his wives must be rendered partakers of like portions;" and "let the mother also take an equal share;") assisted by another passage ["Let them allow a maintenance to his women for life;" § 12*] suggest an allotment adapted for bare support. But, if the estate be inconsiderable, the same passages indicate the assignment of a share equal to a son's.

34. Thus, in the instance of the *Chaturmasya* sacrifices, in the disquisition [of the *Mimansa*] on the pas-

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33. *Variableness in the precept must be the consequence.*] If the passages above cited (§ 31.), assisted by another passage (§ 12.), ordain the widow's receipt of a sufficiency for her support, at the time of making a partition with the sons, whether her husband, who was wealthy, be then alive or dead; but ordain her taking of a share equal to that of a son, if her husband possess little property; then a single sentence, once uttered, is in one case dependant [on a different passage, for its interpretation,] and not so in another instance. Consequently, since it does not retain an uniform import, there is variableness in the precept. *Subod'hini.*

34. *In the instance of the* Chaturmasya *sacrifices.*] These are four sacrifices performed on successive days, according to some authorities; but in the months of *Ashad'ha*, *Cartica*, and *P'halguna* according to others. They are severally denominated *Vaiswedeva*, *Varuna-praghasa*, *Sacamed'ha and Sunasiriga*. The oblations consist of roasted cakes (*Purodasa*); and, at the second of them, two figures of sheep made of ground rice. The cakes are prepared in the usual manner, consisting of rice, kneaded with hot water, and formed into lumps of the shape of a tortoise: these are roasted on a specified number of potsherds (*capala*) placed in a circular hole, which contains one of the three consecrated fires perpetually maintained by devout *Brahmanas*.

In the disquisition on the passage dwayoh pran ayanti.] Part of a

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* *Subod'hini* and BALAM-BHATTA.

sage *dwayoh pran ayanti*;* where it is maintained by the opponent, that the rules for the preparation of the sacrificial fire at the *Soma-yaga* extend to these sacrifices; in consequence of which the injunction not to construct a northern altar (*uttara-vedi*) at the *Vaisweda* and *Sunasiriya* sacrifices, must be understood as a prohibition of such altar; [which should else be constructed at those sacrifices, as at a *Soma-yaga*:] but it is answered by an advocate for the right opinion, that it is not a prohibition of that altar as suggested by extending to these sacrifices the rules for preparing the sacrificial fire at the *Soma-yaga*, but an exception to the express rule "prepare an *uttara-vedi* at this sacrifice [viz. at the *Chaturmasya*;"] it is urged in reply by the opponent, that variableness in the precept must follow, since the same precept thus authorizes the occasional construction of the altar, with reference to a prohibition of it, at the first and last of the [four] periods of sacrifice, and commands the construction of it at the two middle periods, independently of any other maxim: but it is finally shown as the right doctrine, for the very purpose of obviating the objection of variableness in the precept, that the prohibition of the altar at the first and last of the periods of sacrifice is a recital of a constant rule; and that the injunction, "prepare the *uttara-vedi* at this sacrifice," commads its construction

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passage of the *Veda*, which is the subject of a disquisition in the *Mimansa* and which gives name to it. This is the ninth (or, according to one mode of counting, the seventh) topic in the third section of JAIMINI'S seventh chapter. See JIMUTA-VAHANA, Ch. 11. Sect. 5.

Since the same precept authorised the occasional construction of the altar.] Since one precept commands it at a *Chaturmasya* sacrifice, and another forbids it at two of the periods of that sacrifice; the injunction, contrasted with the

* *Mimansa*, 7. 3. 6.

at the two middle periods namely the *Varuna-praghasa* and *Sacamed'ha* with a due regard to that explanatory recital.

35. As for the doctrine, that, from the text of MENU ("Of him, who leaves no son, the father shall take the inheritance, or the brothers,"*) as well as from that of SANC'HA ("The wealth of a man, who departs for heaven, leaving no male issue, goes to his brothers. If there be none, his father and mother take it: or his eldest wife."†) the succession of brothers, to the estate of one who leaves no male issue, is deduced; and that a wife obtains a sufficiency for her support, under the text "Let them allow a maintenance to his women for life:"‡ this being determined, if a rich man die, leaving no male issue, the wife takes as much as is adequate to her subsistence, and the brethren take the rest; but, if the estate be barely enough for the support of the widow, or less than enough, this text ("The wife and the daughters also;"§) is propounded, on the controverted question whether the widow or the brothers inherit, to show, that the first claim prevails. This opinion the reverend teacher does not tolerate: for he interprets the text, "Of him who leaves no son, the

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prohibition, seems to imply an option in this case: but, not being contrasted with any other rule, it becomes a cogent precept in the instance of the two other periods: and thus the rule being cogent in one case and not in the other, is variable in its import and effect.

35. *On the controverted question whether the widow or the brothers inherit.*] Whether the widow inherits, as provided by NAREDA; or the brothers succeed conformably with the texts of MENU and SANC'HA. BALAM-BHATTA.

This opinion the reverend teacher does not tolerate.] Meaning VISWARUPA. *Subod'hini* and BALAM-BHATTA.

* Vide, § 7. † Ibid. ‡ NAREDA. Vide § 7.
§ YAJNYAWALCYA. Vide § 2.

father shall take the inheritance, or the brothers;"* as not relating to the order of succession, since it declares an alternative; but as intended merely to show the competency for inheriting, and as applicable when the preferable claimants, the widow and the rest, fail. The text of SANC'HA too relates to a reunited brother.

36. Besides it does not appear either from this passage [of YAJNYAWALCYA †] or from the context, that it is relative to an inconsiderable estate. If the concluding sentence, "On the failure of the first among these, the next in order is heir;"‡ be restricted to the case of a small property, by reference to another passage, in two instances (of the widow and of the daughters,) but relate to wealth generally in the other instances (of the father and the rest,) the consequent defect of *variableness in the precept* (§ 33.) affects this interpretation.

37. "If a woman, becoming a widow in her youth, be headstrong, a maintenance must in that case be given to her for the support of life."§ This passage of HARITA is intended for a denial of the right of a widow suspected of incontinency, to take the whole estate. From this very passage [of HARITA,‖] it appears that a widow, not suspected of misconduct, has a right to take the whole property.

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The text of Sanc'ha relates to a reunited brother.] It relates to the case of a brother, who, after separation, becomes associated with his coheirs, from affection or any other motive. *Subod'hini.*

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* MENU. Vide § 7.

‡ *Subod'hini.*

† Vide § 2.

§ In the *Vivada-Chintamani* this passage is read without the conditional particle: viz. "A woman .... is headstrong: but a maintenance must ever be given to her ...."

‖ BALAM-BHATTA.

38. With the same view, SANC'HA has said "Or his eldest wife." (§7.) Being eldest by good qualities, and not supposed likely to be guilty of incontinency, she takes the whole wealth; and, like a mother, maintains any other headstrong wife [of her husband.] Thus all is unexceptionable.

39. Therefore it is a settled rule, that a wedded wife, being chaste, takes the whole estate of a man, who, being separated from his coheirs and not subsequently reunited with them, dies leaving no male issue.

SECTION II.

Right of the daughters and daughter's sons.

1. On failure of her, the daughters inherit. They are named in the plural number (Section I. § 2.) to suggest the equal or unequal participation of daughters alike or dissimilar by class.

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1. *They are named in the plural number.*] Here female issue is signified by the original word "daughter" *(duhitri:)* and that is applicable, indifferently, to such as belong to the same or to different tribes. Plurality is denoted by the termination of the plural number, (*as* in *duhitaras*;) which includes, without inconsistency, those who are dissimilar from the parent. Therefore daughters, alike or different by class, are indicated by the original word and its termination. They share equal or unequal portions in the order before mentioned: namely four shares, three, two or one. (C. 1. Sect. 8. § 1.) *Subod'hini.*

2. Thus CATYAYANA says, "Let the widow succeed to her husband's wealth, provided she be chaste; and, in default of her, let the daughter inherit, if unmarried."* Also VRIHASPATI: "The wife is pronounced successor to the wealth of her husband; and, in her default, the daughter. As a son, so does the daughter of a man proceed from his several limbs. How then should any other person take her father's wealth?"

3. If there be competition between a married and an unmarried daughter, the unmarried one takes the succession under the specific provisions of the text above cited ("in default of her, let the daughter inherit, if unmarried.")

4. If the competition be between an unprovided and enriched daughter, the unprovided one inherits; but, on failure of such, the enriched one succeeds: for the text of GAUTAMA is equally applicable to the paternal, as to the maternal, estate. "A woman's separate property goes to her daughters, unmarried or unprovided."†

5. It must not be supposed, that this relates to the appointed daughter: for, in treating of male issue, she and her son have been pronounced equal to the legiti-

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ANNOTATIONS.

4. *The text of Gautama is equally applicable to the paternal . . . estate.* The meaning is this: since the daughter's right is declared with reference to a woman's peculiar property, but it is not intended by using the word "woman's" to restrict it positively to that single object, the parity of reasoning holds good. *Subod'hini.*

5. *For, in treating of male issue, she and her son have been pronounced &c.*] Since she has been noticed while treating of male issue, the introduction of her in this place would be improper. *Subod'hini.*

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* Vide supra. Sect 1. § 6.

† GAUTAMA, 28. 22. Vide supra. C. 1. Sect 3. § 11.

mate son ("Equal to him is the son of an appointed daughter,"* or the daughter appointed to be a son.†)

6. By the import of the particle "also" (Sect. 1. §2.) the daughter's son succeeds to the estate on failure of daughters. Thus VISHNU says, "If a man leave neither son, nor son's son, nor [wife, nor female‡] issue, the daughter's sons shall take his wealth. For, in regard to the obsequies of ancestors, daughter's sons are considered as son's sons."§ MENU likewise declares, "By that male child, whom a daughter, whether formally appointed or not, shall produce from a husband of an equal class, the maternal grandfather becomes the grandsire of a son's son; let that son give the funeral oblation and possess the inheritance."‖

SECTION III.

Right of the Parents.

1. On failure of those heirs, the two parents, meaning the mother and the father, are successors to the property.

ANNOTATIONS.

6. *The daughter's son succeeds to the estate on failure of daughter's.*] According to the commentary of BALAM-BHATTA, the daughter's daughter inherits in default of daughter's sons. He grounds this opinion, for which however there is no authority in VIJNYANESWARA's text, upon the analogy, which this author had admitted in another case, between the succession to a woman's separate property and the inheritance of the paternal estate. (Vide § 4.)

* C. 1. Sect. 11. § 1. † C. 1. Sect. 11. § 3. ‡ BALAM-BHATTA.

§ Not found in VISHNU's institutes: but cited under his name in the *Smriti-Chandrica*.

‖ MENU, 9. 136.

2. Although the order, in which parents succeed to the estate, do not clearly appear [from the tenour of the text; Sect. 1. § 2.] since a conjunctive compound is declared to present the meaning of its several terms at once;* and the omission of one term and retention of the other constitute an exception† to that [complex expression;] yet, as the word 'mother' stands first in the phrase into which that is resolvable, and is first in the regular compound *(matapitarau)* 'mother and father'‡ when not reduced [to the simpler form *pitarau* 'parents'] by the omission of one term and retention of the other; it follows from the order of the sense which is thence deduced, and according to the series thus presented in answer to an inquiry concerning the

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ANNOTATIONS.

2. *Although the order .... do not clearly appear.*] It is declared, that the two parents are successors to the property, if there be no daughter nor daughter's son. Since the term *(pitarau)* 'parents' is formed by omitting one and retaining the other member of a complex expression (mother and father;) shall they conjointly take the estate, or severally? and is the order of succession optional, or fixed and regulated? The author replies to those questions. *Subod'hini.*

A conjunctive compound is declared &c.] A compound term is formed, as directed by PANINI and his commentators, § when two or more nouns occur with the import of the conjunction 'and,' in two of its senses (viz. reciprocation and cumulation.‖) This is limited by the emendatory rule of CATYAYANA to the case where the sense conveyed by each word is presented at once: while the same terms, connected in a phrase by the conjunction copulative, would present the sense of each successively.

The omission of one term and retention of the other constitute an exception.] When the word *pitri* 'father' occurs with *matri* 'mother,' it may be retained and the other term be rejected. This is an exception to the general

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* *Vartica*, 1. on PANINI, 2. 2. 29.
† PANINI, 1. 2. 70.
‡ *Vartica*, 3. on PANINI, 2. 2. 34.
§ Vide infra. Sect 11. § 20.
‖ See Dictionary of AMERA, Book 3. Chap. 4 Sect. 28. Verse 2.

order of succession, that the mother takes the estate in the first instance; and, on failure of her, the father.

3. Besides the father is a common parent to other sons, but the mother is not so; and, since her propinquity is consequently greatest, it is fit, that she should take the estate in the first instance, conformably with the text. "To the nearest *sapinda*, the inheritance next belongs."*

4. Nor is the claim in virtue of propinquity restricted to (*sapindas*) kinsmen allied by funeral oblations:

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rule of composition. It is optional; and the regular form may be retained in its stead. Ex. *Pitarau* 'two parents;' or *Matapitarau* 'mother and father.' PANINI, 1. 2. 70. and 2. 2. 29.—34.

The word mother stand first in the phrase into which that is resolvable.] The compound term, whether reduced to the simpler expression or retaining its complex form, is resolvable into the phrase *mata cha pita cha* 'both the mother and the father.' This, however, is only the customary order of terms, not specially enjoined by any rule of syntax.

Is first in the regular compound.] Conformably with one of CATYAYANA'S emendatory rules on PANINI'S canon for the collocation of terms in composition. (2. 2. 34.) That rule requires the most revered object to have precedence: and the example of the rule as given in PATANJALI'S *Mahabhashya* and VAMANA'S *Casica-vritti*, is this very compound term *matapitarau* 'mother and father.' The commentators, CAIYATA and HARADATTA, assign reasons why a mother is considered to be more venerable than a father.

It follows, from the order of the terms.] The compound terms *matapitarau* 'mother and father,' as well as the abridged and simpler expression *pitarau* 'parents,' is resolvable into the same phrase *mata cha pita cha* 'both the mother and the father.' Thus, in every form of expression, 'mother' stands first. Hence the author infers, that the mother's priority in regard to succession to wealth is intended by the text (Sect. 1. § 2.)

3. *The father is a common parent to other sons.*] The matter is, in respect of sons, not a common parent to several sets of them; and her propinquity is therefore more immediate, compared with the father's. But his paternity is

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* MENU, 9. 187.

but, on the contrary, it appears from this very text, (§3.) that the rule of propinquity is effectual, without any exception, in the case of (*samanodacas*) kindred connected by libations of water, as well as other relatives, when they appear to have a claim to the succession.

5. Therefore, since the mother is the nearest of the two parents, it is most fit, that she should take the estate. But, on failure of her, the father is successor to the property.

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common, since he may have sons by woman of equal rank with himself, as well as children by wives of the *Cshatriya* and other inferior tribes; and his nearness is therefore mediate, in comparison of the mother's. The mother consequently is nearest to her child; and she succeeds to the estate in the first instance, since it is ordained by a passage of MENU, that the person, who is nearest of kin, shall have the property. *Subod'hini.*

5. *On failure of her, the father is successor to the property.*] The commentator, BALAM-BHATTA, is of opinion, that the father should inherit first and afterwards the mother; upon the analogy of more distant kindred, where the paternal line has invariably the preference before the maternal kindred; and upon the authority of several express passages of law. NANDA PANDITA, author of commentaries on the *Mitacshara* and on the institutes of VISHNU, had before maintained the same opinion. But the elder commentator of the *Mitacshara*, VISWESWARA-BHATTA has in this instance followed the text of his author in his own treatise entitled *Madana-Parijata*, and has supported VIJNYANESWARA's argument both there and in his commentary named *Subod'hini.* Much diversity of opinion does indeed prevail on this question. SRICARA maintains, that the father and mother inherit together: and the great majority of writers of eminence, (as APARARCA and CAMALACARA, and the authors of the *Smriti-chandrica*, *Madana-ratna*, *Vyavahara-mayuc'ha* &c.) gives the father the preference before the mother. JIMUTA-VAHANA, and RAGHUNUNDANA have adopted this doctrine. But VACHESPATI MISRA, on the contrary, concurs with the *Mitacshara* in placing the mother before the father; being guided by an erroneous reading of the text of VISHNU (Sect. 1. § 6.), as is remarked in the *Viramitrodaya*. The author

SECTION IV.

Right of the Brothers.

1. On failure of the father, brethren share the estate. Accordingly MENU says, "Of him, who leaves no son, the father shall take the inheritance or the brothers."*

2. It has been argued by D'HARESWARA, that, under the following text of MENU, "Of a son dying childless, the mother shall take the estate; and, the mother also being dead, the father's mother shall take the heritage;"† 'even while the father is living, if the mother be dead, the father's mother, or in other words the paternal grandmother, and not the father himself,

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of the latter work proposes to reconcile these contradictions by a personal distinction. If the mother be individually more venerable than the father, she inherits; if she be less so, the father takes the inheritance.

1. *Brethren.*] The commentators, NANDA PANDITA and BALAM-BHATTA, consider this as intending 'brothers and sisters,' in the same manner in which "parents" have been explained 'mother and father,' (Sect. 3. § 2.) and conformably with an express rule of grammar (PANINI, 1. 2. 68.) They observe that the brother inherits first: and, in his default, the sister. This opinion is controverted by CAMALACARA and by the author of the *Vyavahara-mayuc'ha.*

2. *It has been argued by* D'HARESWARA.] It had been shown (Sect. 3), that the father inherits on failure of the mother. But that is stated otherwise by different authors. To refute the opinion maintained by one of them, the author reverts to the subject by a retrospect analogous to the backward look of the lion. *Subod'hini* and BALAM-BHATTA.

* MENU, 9. 185. Vide Sect. 1. § 7. † MENU, 9. 217. Vide Sect. 1. § 7.

shall take the succession: because wealth, devolving upon him, may go to sons dissimilar by class; but what is inherited by the paternal grandmother, goes to such only as appertain to the same tribe: and therefore the paternal grandmother takes the estate.'

3. The holy teacher (VISWARUPA*) does not assent to that doctrine: because the heritable right of sons even dissimilar by class has been expressly ordained by a passage above cited: "The sons of a *Brahmana*, in the several tribes, have four shares, or two, or one."†

4. But the passage of MENU, expressing that "The property of a *Brahmana* shall never be taken by the king," ‡ intends the sovereign, not a son [of the late owner by a woman of the royal or military tribe.]

5. Among brothers, such, as are of the whole blood, take the inheritance in the first instance, under the text

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Because wealth, devolving on him, may go to sons dissimilar.] The meaning is this: if the succession be taken by the father, the property becomes a paternal estate, and may devolve on his sons whether belonging to the *Murdd'havasicta* [or another mixt§] tribe or to his own class. But, if it be taken by the grandmother, it becomes a maternal estate and devolves on persons of the same tribe, namely her daughters; or successively on failure of them, her daughter's sons, her own sons, and so forth. *Subod'hini* and BALAM-BHATTA.

4. *Intends the sovereign, not a son.*] It does not prohibit the succession of a *Brahmana's* son by a *Cshatriya* wife, denominated king as being of his mother's tribe, which is the royal or military one. But it relates to an escheat to the sovereign. Therefore it is not an exception to the passage cited in the preceding paragraph: and VISWARUPA's reasoning holds good, that 'D'HAREAWARA's objection would be valid, if there were any harm in the ultimate succession of sons dissimilar by class. But that is not the case. On the contrary, they are expressly pronounced by the text here cited, to be partakers of inheritance.' *Subod'hini.*

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* The name is supplied by the *Subod'hini.*

† YAJNYAWALCYA, 2. 126. Vide supra. C. 1. Sect. 8. § 1.

‡ MENU, 9. 189. Vide infra. Sect. 7. § 5. § BALAM-BHATTA.

before cited: "To the nearest *sapinda*, the inheritance next belongs."* Since those of the half blood are remote through the difference of the mothers.

6. If there be no uterine (or whole) brothers, those by different mothers inherit the estate.

7. On failure of brothers also, their sons share the heritage in the order of the respective fathers.

8. In case of competition between brothers and nephews, the nephews have no title to the succession: for their right of inheritance is declared to be on failure of brothers ("both parents, brothers likewise, and their sons." Sect. 1. § 2.†)

9. However, when a brother has died leaving no male issue (her other nearer heir,‡) and the estate has consequently devolved on his brothers indifferently, if any one of them die before a partition of their brother's estate takes place, his sons do in that case acquire a title through their father: and it is fit, there-

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ANNOTATIONS.

6. *If there be no uterine (or whole) brothers, those by different mothers inherit.*] The author of the *Vyavahara-mayuc'ha* censures the preference here given to the brothers of the half blood before the nephews, being sons of brothers of the whole blood.

7. *Their sons share the heritage.*] Including, say NANDA PANDITA and BALAM-BHATTA, the daughters as well as the sons of brothers, and the sons and daughters of sisters. This consequently will comprehend all nephews and nieces.

In the order of the respective fathers.] In their order as brothers of the whole blood, and of the half blood. BALAM-BHATTA.

By analogy to the case of grandsons by different fathers (Chap. 1. Sect. 8.), the distribution of shares shall be made, through allotments to their respective fathers, and not in their own right, whether there be one, two, or many sons of each brother. *Subod'hini.*

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* MENU, 9. 187. Vide Sect. 3. § 3.

† *Subod'hini* and BALAM-BHATTA. ‡ BALAM-BHATTA.

fore, that a share should be allotted to them, in their fathers's right, at a subsequent distribution of the property between them and the surviving brothers.

SECTION V.

Succession of kindred of the same family name: termed Gotraja, *or gentiles.*

1. If there be not even brother's sons, gentiles share the estate. Gentiles are the paternal grandmother and relations connected by funeral oblations of food and libations of water.

2. In the first place the paternal grandmother takes the inheritance. The paternal grandmother's succession immediately after the mother, was seemingly suggested by the text before cited, "And, the mother also being dead, the father's mother shall take the heritage:"* no place, however, is found for her in the compact series of heirs from the father to the nephew: and that text ("the father's mother shall take the heritage") is intended only to indicate her general compe-

ANNOTATIONS.

That is wrong: for the brethren had not a vested interest in their brother's wealth before their decease; property was only vested in the nephews by the owner's demise. BALAM-BHATTA.

1. *Gentiles.*] *Gotraja* or persons belonging to the same general family (*Gotra*) distinguished by a common name: these answer nearly to the *Gentiles* of the *Roman* law.

* Sect. 1. § 7.

tency for inheritance. She must, therefore, of course succeed immediately after the nephew; and thus there is no contradiction.

3. On failure of the paternal grandmother, the *(gotraja)* kinsmen sprung from the same family with the deceased and *(sapinda)* connected by funeral oblations namely the paternal grandfather and the rest, inherit the estate. For kinsmen sprung from a different family, but connected by funeral oblations, are indicated by the term cognate (*Bandhu* Sect. 6.)

4. Here, on failure of the father's descendants, the heirs are successively the paternal grandmother, the paternal grandfather, the uncles and their sons.

5. On failure of the paternal grandfather's line, the paternal great grandmother, the great grandfather, his sons and their issue, inherit. In this manner must be understood the succession of kindred belonging to the same general family and connected by funeral oblation.

ANNOTATIONS.

2. *She must, therefore, of course succeed.*] Some copies of the *Mitacshara* read this passage differently. The variation is noticed in the commentary of BALAM-BHATTA, viz. 'She succeeds, after the preceding claimants, if they be dead,' *uparitana-mritanantaram* instead of *utcarshe tat sutanantaram*. The commentary remarks, that the 'preceding *(uparitana)* claimants' are the father and the rest down to the brother's son.

3. *On failure of the paternal grandmother....the paternal grandfather.*] BALAM-BHATTA insists, that the grandfather inherits before the grandmother, as the father before the mother. See Section 3.

5. *In this manner must be understood the succession of kindred.*] The *Subodhini*, commenting on the first words of the following section, carries the enumeration a little further: viz. 'the paternal great grandfather's mother, great grandfather's father, great grandfather's brothers and their sons. The paternal great grandfather's grandmother, great grandfather's grandfather, great grandfather's uncles and their sons. The same analogy holds in the succession of kindred connected by a common libation of water.'

6. If there be none such, the succession devolves on kindred connected by libations of water : and they must be understood to reach to seven degrees beyond the kindred connected by funeral oblations of food : or else, as far as the limits of knowledge as to birth and name extend. Accordingly *Vrihat*-MENU says "The relation of the *sapindas*, or kindred connected by the funeral oblation, ceases with the seventh person : and that of *samanodacas*, or those connectd by a common libation of water, extend to the fourteenth degree ; or as

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ANNOTATIONS.

The scholiast of VISHNU, who is also one of the commentators of the *Mitacshara*, states otherwise the succession of the near and distant kindred, in expounding the passage of VISHNU "if no brother's son exist, it passes to kinsmen (*bandhu* ;) in their default, it devolves on relations (*saculya*):"* where BALAMBHATTA, on the authority of a reading found in the *Madana-ratna*, proposes to transpose the terms *bandhu* and *saculya* ; for the purpose of reconciling VISHNU with YAJNYAWALCYA, by interpreting *saculya* in the sense of *gotraja* or kinsmen sprung from the same family. NANDA PANDITA, preserving the common reading, says 'kinsmen (*bandhu*) are *sapindas* : and these may belong to the same general family or not. First those of the same general family (*sogotra*) are heirs. They are three, the father, paternal grandfather, and great grandfather ; as also three descendants of each. The order is this : In the father's line, on failure of the brother's son, the brother's son's son is heir. In default of him, the paternal grandfather, his son and grandson. Failing these, the paternal great grandfather, his son and grandson. In this manner the succession passes to the fourth degree inclusive ; and not to the fifth : for the text expresses. "The fifth has no concern with the funeral oblations."† The daughters of the father and other ancestors must be admitted, like the daughters of the man himself, and for the same reason. 'On failure of the father's kindred connected by funeral oblations, the mother's kindred are heirs : namely the maternal grandfather, the maternal uncle and his son ; and so forth. In default of these, the successors are the mother's sister, her son and the rest.'

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* VISHNU, 17. 10.—11.

† MENU, 9. 186.

some affirm, it reaches as far as the memory of birth and name extends. This is signified by *gotra* or the relation of family name."*

ANNOTATIONS.

The commentator takes occasion to censure an interpretation, which corresponds with that of the *Mitacshara* as delivered in the following section (S. 6, § 1.); and according to which the cognate kindred of the man himself, of his father and of his mother are the sons of his father's sister and so forth: because it would follow, that the father's sister's son and the rest would inherit, although the man's own sister and sister's sons were living. BALAM-BHATTA, however, repels this objection by the remark, that the sister and sister's sons have been already noticed as next in succession to the brother and brother's sons: which is indeed NANDA PANDITA's own doctrine.

He adds, 'after the heirs abovementioned, the *saculya* or distant kinsman is entitled to the succession: meaning a relation in the fifth or other remoter degree.'

This whole order of succession, it may be observed, differs materially from that which is taught in the text of the *Mitacshara*. On the other hand, the author of the *Viramitrodaya* has exactly followed the *Mitacshara*; and so has CAMALACARA; and it is also confirmed by MAD'HAVA ACHARYA, in the *Vyavahara Mad'hava*, as well as by the *Smriti-chandrica*.

But the author of the *Vyavahara-myuc'ha* contends for a different series of heirs after the brother's son: '1st the paternal grandmother; 2d the sister; 3d the paternal grandfather and the brother of the half blood, as equally near of kin; 4th the paternal great grandfather, the paternal uncle and the son of a brother of the half blood, sharing together as in the same degree of affinity.' He has not pursued the enumeration further; and the principle stated by him, nearness of kin, does not clearly indicate the rule of continuation of this series.

* The first part of this passage occurs in MENU's institutes. 5. 60. The remainder of the text differs.

SECTION VI.

On the succession of cognate kindred, Bandhu.

1. On failure of gentiles, the cognates are heirs. Cognates are of three kinds; related to the person himself, to his father, or to his mother: as is declared by the following text. "The sons of his own father's sister, the sons of his own mother's sister, and the sons of his own maternal uncle, must be considered as his own cognate kindred. The sons of his father's paternal aunt, the sons of his father's maternal aunt, and the sons of his father's maternal uncle, must be deemed his father's cognate kindred. The sons of his mother's paternal aunt, the sons of his mother's maternal aunt, and the sons of his mother's maternal uncle, must be reckoned mother's cognate." *

ANNOTATIONS.

1. *The cognates are heirs.*] *Band'hu*, cognate or distant kin, corresponding nearly to the *Cognati of the Roman* law.

Cognates are of three kinds.] BALAM-BHATTA notices a variation in the reading, *bandhavah* for *band'havah*. It produces no essential difference in the interpretation.

Related to the person himself, or to his mother.] APARARCA, as remarked by CAMALACARA, disallows the two last classes of cognate kindred, as having no concern with inheritance; and restricts the term *band'hu*, in the text, to the kindred of the owner himself. The author of the *Vyavahara-mayucha* confutes that restriction.

* The text is seemingly ascribed by the commentator BALAM-BHATTA to *Vridd'ha* SATATAPA. But it is quoted in the *Vyavahara-Mad'hava* as a text of BAUDHAYANA.

2. Here, by reason of near affinity, the cognate kindred of the deceased himself, are his successors in the first instance: on failure of them, his father's cognate kindred: or, if there be none, his mother's cognate kindred. This must be understood to be the order of succession here intended.

SECTION VII.

On the succession of strangers upon failure of the kindred.

1. If there be no relations of the deceased, the preceptor, or, on failure of him, the pupil, inherits, by the text of APASTAMBA. "If there be no male issue, the nearest kinsman inherits: or, in default of kindred, the preceptor; or failing him, the disciple."

2. If there be no pupil, the fellow student is the successor. He, who received his investiture, or instruction in reading or in the knowledge of the sense of scripture, from the same preceptor, is a fellow student.

3. If there be no fellow students, some learned and venerable priest should take the property of a *Brahmana*, under the text of GAUTAMA: "Venerable priests should share the wealth of a *Brahmana*, who leaves no issue."*

4. For want of such successors, any *Brahmana* may be the heir. So MENU declares: "On failure of all

ANNOTATIONS.

2. *This must be understood to be the order of succession.*] See a note at the close of the last section.

* GAUTAMA, 28. 39.

those, the lawful heirs are such *Brahmanas*, as have read the three *Vedas*, as are pure in body and mind, as have subdued their passions. Thus virtue is not lost."*

5. Never shall a king take the wealth of a priest: for the text of MENU forbids it: "The property of a *Brahmana* shall never be taken by the king: this is a fixed law."† It is also declared by NAREDA: "If there be no heir of a *Brahmana's* wealth, on his demise, it must be given to a *Brahmana*. Otherwise the king is tainted with sin."‡

6. But the king, and not a priest, may take the estate of a *Cshatriya* or other person of an inferior tribe, on failure of heirs down to the fellow student. So MENU ordains; "But the wealth of the other classes, on failure of all [heirs,] the king may take."‖

SECTION VIII.

On succession to the property of a hermit or of an ascetic.

1. It has been declared, that sons and grandsons [or great grandsons§] take the heritage; or, on failure of them, the widow or other successors. The author now propounds an exception to both those laws: "The heirs of a hermit, of an ascetic, and of a professed student, are, in their order, the preceptor, the virtuous pupil, and the spiritual brother and associate in holiness."¶

ANNOTATIONS.

1. "*A virtuous pupil.*"] The condition, that he be virtuous is intended generally. Hence the preceptor and the fellow hermit are successors in

* MENU, 9. 188. † MENU, 9. 189. ‡ Not found in the institutes of NAREDA
‖ MENU, 9. 189. § BALAM-BHATTA. ¶ YAJN YAWALCYA. 2. 138.

2. The heirs to the property of a hermit, of an ascetic, and of a student in theology, are in order, (that is, in the inverse order,) the preceptor, a virtuous pupil, and a spiritual brother belonging to the same hermitage.

3. The student *(brahmechari)* must be a professed or perpetual one: for the mother and the rest of the natural heirs take the property of a temporary student; and the preceptor is declared to be heir to a professed student as an exception [to the claim of the mother and the rest.*]

4. A virtuous pupil takes the property of a *yati* or ascetic. The virtuous pupil, again, is one who is assiduous in the study of theology, in retaining the holy science, and in practising its ordinances. For a person, whose conduct is bad, is unworthy of the inheritance, were he even the preceptor or [standing in] any other [venerable relation.]

5. A spiritual brother and associate in holiness takes the goods of a hermit *(vánaprast'ha.)* A spiritual brother is one who is engaged as a brotherly companion [having consented to become so.†] An associate in holiness is one appertaining to the same hermitage. Being a spiri-

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ANNOTATIONS.

their respective cases, provided their conduct be unexceptionable. With a view to this, YAJNYAWALCYA has placed the words "virtuous pupil" in the middle of the text, to indicate the connexion of the epithet with the preceding and following terms. *Subod'hini &c.*

4. *A yati or ascetic.*] The term 'ascetic' is in this translation used for the *yati* or *sannyasi*; and 'hermit' 'or anchoret' for the *vanaprast'ha*. In former translations, as in the version of MENU by Sir WILLIAM JONES, the two last terms were applied severally to the two orders of devotion.

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* *Subod'hini.*

† *Subod'hini.*

tual companion, and belonging to the same hermitage, he is a spiritual brother associate in holiness.

6. But, on failure of these (namely the preceptor and the rest,) any one associated in holiness takes the goods; even though sons and other natural heirs exist.

7. Are not those, who have entered into a religious profession, unconcerned with hereditable property? since VASISHT'HA declares, "They, who have entered into another order, are debarred from shares."* How then can there be a partition of their property? Nor has a professed student a right to his own acquired wealth: for the acceptance of presents, and other means of acquisition, [as officiating at sacrifices and so forth,†] are forbidden to him. And, since GAUTAMA ordains, that "A mendicant shall have no hoard;"‡ The mendicant also can have no effects by himself acquired.

8. The answer is, a hermit may have property: for the text [of YAJNYAWALCYA] expresses "The hermit may make a hoard of things sufficient for a day, a month, six months, or a year; and, in the month of *Aswina*, he should abandon [the residue of] what has been collected."‖ The ascetic too has clothes, books and other requisite articles: for a passage [of the *Veda*§] directs, that "he should wear clothes to cover his privy parts;" and a text [of law¶] prescribes, that "he should take the requisites for his austerities and his sandals." The professed student likewise has clothes to cover his body; and he possesses also other effects.

9. It was therefore proper to explain the partition or inheritance of such property.

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* VASISHT'HA, 17. 43. Vide infra Sect. 10. § 3. † BALAM-BHATTA.

‡ GAUTAMA. 3. 6. ‖ YAJNYAWALCYA, 3. 47. See MENU, 6. 15.

§ BALAM-BHATTA. ¶ BALAM-BHATTA.

SECTION IX.

On the re-union of kinsmen after partition.

1. The author next propounds an exception to the maxim, that the wife and certain other heirs succeed to the estate of one who dies leaving no male issue. "A re-united [brother] shall keep the share of his re-united [co-heir,] who is deceased; or shall deliver it to [a son subsequently] born."*

2. Effects, which had been divided and which are again mixed together, are termed re-united. He, to whom such appertain, is a reunited parcener.

3. That cannot take place with any person indifferently; but only with a father, a brother, or a paternal uncle: as VRIHASPATI declares. "He, who, being once separated, dwells again through affection with his father, brother, or paternal uncle, is termed re-united."

4. The share or allotment of such a re-united parcener deceased, must be delivered by the surviving re-united parcener, to a son subsequently born, in the case where the widow's pregnancy was unknown at the time of the distribution. Or, on failure of male issue, he, and not the widow, nor any other heirs, shall take the inheritance.

ANNOTATIONS.

4. *Or, on failure of male issue, he, and not the widow &c. shall take the inheritance.*] The singular number is here indeterminate. Therefore, if there be two or more re-united parceners, they shall divide the estate. A maintenance must be allowed to the widow. BALAM-BHATTA.

* YAJNYAWALCYA, 2. 139.

5. The author states an exception to the rule, that a re-united brother shall keep the share of his re-united co-heir: "But an uterine [or whole] brother shall thus retain or deliver the allotment of his uterine relation.*

6. The words "re-unitedb rother" and "re-united co-heir" are understood. Hence the construction, as in the preceding part of the text, is this: The allotment of a re-united brother of the whole blood, who is deceased, shall be delivered, by the surviving re-united brother of the whole blood, to a son born subsequently. But, on failure of such issue, he shall retain it. Thus, if there be brothers of the whole blood and half blood, an uterine [or whole] brother, being re-united parcener, not a half brother who is so, takes the estate of the re-united uterine brother. This is an exception to what had been before said (§ I.)

7. Next, in answer to the inquiry, who shall take the succession when a re-united parcener dies leaving no male issue, and there exists a whole brother not re-united, as well as a half brother who was associated with the deceased? the author delivers a reason why both shall take and divide the estate. "A half brother being again associated, may take the succession, not a half brother though not re-united: but one, united [by blood, though not by coparcenery,] may obtain the property; and not [exclusively] the son of a different mother."†

ANNOTATIONS.

6. *A son born subsequently.*] The widow's pregnancy not having been apparent at the time of the partition.

7. "*A half brother, being again associated &c.*"] The text admits of different interpretations besides variations in the reading. See JIMUTAVAHANA, C. 11. Sect. 5. § 13.—14.

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* YAJNYAWALCYA, 2. 139.

† YAJNYAWALCYA, 2. 140.

8. A half brother, (meaning one born of a rival wife,) being a reunited parcener, takes the estate; but a half brother, who was not re-united, does not obtain the goods. Thus, by the direct provisions of the text, and by the exception, reunion is shown to be a reason for a half brother's succession.

9. The term "not re-united" is connected also with what follows: and hence, even one who was not again associated, may take the effects of a deceased reunited parcener. Who is he? The author replies: "one united;" that is, one united by the indentity of the womb [in which he was conceived;] in other words, an uterine or whole brother. It is thus declared, that relation by the whole blood is a reason for the succession of the brother, though not re-united in coparcenery.

10. The term "united" likewise is connected with what follows: and here it signifies re-united [as a coparcener.] The words "not the son of a different mother" must be interpreted by supplying the affirmative particle (*eva*) understood. Though he be a reunited parcener, yet, being issue of a different mother, he shall not exclusively take the estate of his associated coheir.

11. Thus by the occurrence of the word "though" (*api*) in one sentence ("though not re-united" &c. § 7.)

ANNOTATIONS.

9. *The term "not re-united" is connected also with what follows.*] It is connected with both phrases, like a crow looking two ways at once. Hence it constitutes, with what follows, another sentence. *Subod'hini.*

One united by the indentity of the womb.] In like manner, a father, though not re-united with the family, shall take a share of the property of his son; and a son, though not re-united, shall receive a share of the estate of his father, from a re-united parcener. This, according to the author of the *Subod'hini*, is implied: the *Veda* describing the wife as becoming a mother to her husband, who is identified with his offspring. But BALAM-BHATTA does not allow the inference.

and by the denial implied in the restrictive affirmation (*eva* "exclusively,") understood in the other, ("one united may take the property, and not *exclusively* the son of a different mother;") it is shown, that a whole brother not re-united, and a half brother being re-united, shall take and share the estate: for the reasons of both rights may subsist at the same instant.

12. This is made clear by MENU, who, after premising partition among re-united parceners ("If brethren, once divided and living again together as parceners, make a second partition;"*) declares "should the eldest or youngest of several brothers be deprived of his allotment at the distribution, or should any one of them die, his share shall not be lost; but his uterine brothers and sisters, and such brothers as were re-united after a separation, shall assemble together and divide his share equally."†

13. Among re-united brothers, if the eldest, the youngest or the middlemost, at the delivery of shares, (for the indeclinable termination of the word denotes any case;) that is, at the time of making a partition, lose, or forfeit his share by his entrance into another order [that of a hermit or ascetic.‡] or by the guilt of sacrilege, or by any other disqualification; or if he be dead; his allotment does not lapse, but shall be set apart. The meaning is, that the re-united parceners shall not exclusively take it. The author states the appropriation of the share so reserved: "His uterine brothers and sisters &c." (§ 12.) Brothers of the whole

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ANNOTATIONS.

11. *The reasons of both rights may subsist at the same instant.*] The reunion of the half brother in family partnership, and the whole brother's relation by blood. BALAM-BHATTA.

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* MENU, 9. 210. † MENU, 9. 211.—212.

‡ BALAM-BHATTA.

blood, or by the same mother, though not re-united, share that allotment so set apart. Even though they had gone to a different country, still, returning thence and assembling together, they share it; and that "equally;" not by a distribution of greater and less shares. Brothers of the half blood, who were re-united after separation, and sisters by the same mother, likewise participate. They inherit the estate and divide it in equal shares.

SECTION X.

On exclusion from inheritance.

1. The author states an exception to what has been said by him respecting the succession of the son, the widow and other heirs, as well as the re-united parcener. "An impotent person, an outcast, and his issue, one lame, a madman, an idiot, a blind man, and a person afflicted with an incurable disease, as well as others [similarly disqualified,] must be maintained; excluding them, however, from participation."*

ANNOTATIONS.

13. *They inherit the estate and divide it in equal shares.*] This supposes the brothers of the half blood to belong to the same tribe. But, if they are of different tribes, the shares are four, three, two or one, in the order of the classes; since there is no reason for restricting that rule of distribution. BALAM-BHATTA.

1. "*An impotent person, an outcast and his issue.*"] The initial words are transposed by JIMUTA-VAHANA. C. 5. § 10.

* YAJNYAWALCYA, 2. 141.

2. "An impotent person," one of the third gender (or neuter sex.) "An outcast;" one guilty of sacrilege or other heinous crime. "His issue;" the offspring of an outcast. "Lame;" deprived of the use of his feet. "A madman;" affected by any of the various sorts of insanity proceeding from air, bile, or phlegm, from delirium, or from planetary influence. "An idiot;" a person deprived of the internal faculty: meaning one incapable of discriminating right from wrong. "Blind:" destitute of the visual organ. "Afflicted with an incurable disease;" affected by an irremediable distemper, such as marasmus or the like.

3. Under the term "others" are comprehended one who has entered into an order of devotion, an enemy to his father, a sinner in an inferior degree, and a person deaf, dumb, or wanting any organ. Thus VASISHT'HA says, "They, who have entered into another order are debarred from shares,"* NAREDA also declares, "An enemy to his father, an outcast, an impotent person, and one who is addicted to vice, take no shares of the inheritance even though they be legitimate: much less, if they be sons of the wife by an appointed kinsman."† MENU likewise ordains, "Impotent persons and outcasts are excluded from a share of the heritage; and so are persons born blind and deaf, as well as mad men, idiots,

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ANNOTATIONS.

"*An impotent person.*"] Whether naturally so, or by castration. BALAM-BHATTA.

The offspring of an outcast.] Of one who has not performed the requisite penance and expiation. BALAM-BHATTA.

3. "*They, who have entered into another order.*] Into one of devotion. The orders of devotion are, 1st, that of the professed or perpetual student; 2d, that of the hermit; 3d, the last order or that of the ascetic. BALAM-BHATTA.

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* VASISHT'HA, 17. 43. † NAREDA, 13. 21.

the dumb, and those who have lost a sense [or a limb."*]

4. Those who have lost a sense or a limb.] Any person, who is deprived of an organ [of sense or action] by disease or other cause, is said to have lost that sense or limb.

5. These persons (the impotent man and the rest) are excluded from participation. They do not share the estate. They must be supported by an allowance of food and raiment only: and the penalty of degradation is incurred, if they be not maintained. For MENU says "But it is fit, that a wise man should give all of them food and raiment without stint to the best of his power: for he who gives it not, shall be deemed an outcast."† "Without stint" signifies 'for life.'

6. They are debarred of their shares, if their disqualification arose before the division of the property. But one, already separated from his coheirs, is not deprived of his allotment.

7. If the defect be removed by medicaments or other means [as penance and atonement‡] at a period subsequent to partition, the right of participation takes effect, by analogy [to the case of a son born after separation.] "When the sons have been separated, one,

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ANNOTATIONS.

5. "*A wise man should give all of them food and raiment.*"] Other authorities (as DEVALA and BAUD'HAYANA) except the outcast and his offspring. That exception not being here made, it is to be inferred, that one, whose offence may be expiated and who is disposed to perform the enjoined penance, should be maintained; not one whose crime is inexpiable. BALAM BHATTA.

6. *If their disqualification arose before the division of the property.*] The disqualification of the outcast and the rest who are not excluded for natural defects. BALAM-BHATTA.

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* MENU, 9. 201. † MENU, 9. 202. ‡ BALAM-BHATTA.

who is afterwards born of a woman equal in class, shares the distribution."*

8. The masculine gender is not here used restrictively in speaking of an outcast and the rest. It must be therefore understood, that the wife, the daughter, the mother, or any other female, being disqualified for any of the defects which have been specified, is likewise excluded from participation.

9. The disinherison of the persons above described seeming to imply disinherison of their sons, the author adds: "But their sons, whether legitimate, or the offspring of the wife by a kinsman, are entitled to allotments, if free from similar defects."‡

10. The sons of these persons, whether they be legitimate offspring or issue of the wife, are entitled to allotments, or are rightful partakers of shares; provided they be faultless or free from defects which should bar their participation, such as impotency and the like.

11. Of these [two descriptions of offspring‡] the impotent man may have that termed issue of the wife; the rest may have legitimate progeny likewise. The specific mention of "legitimate" issue and "offspring of the wife" is intended to forbid the adoption of other sons.

12. The author delivers a special rule concerning the daughters of disqualified persons: "Their daughters must be maintained likewise, until they are provided with husbands."§

13. Their daughters, or the female children of such persons, must be supported, until they be disposed of in marriage. Under the suggestion of the words "likewise," the expenses of their nuptials must be also defrayed.

14. The author adds a distinct maxim respecting the wives of disqualified persons: "Their childless

* YAJNYAWALCYA, 2. 123. Vide supra. C. 1. Sect. 6. § 1.

† YAJNYAWALCYA, 2. 142. ‡ BALAM-BHATTA. § YAJNYAWALCYA, 2. 142.

wives, conducting themselves aright, must be supported; but such, as are unchaste, should be expelled: and so indeed should those, who are perverse."*

15. The wives of these persons, being destitute of male issue, and being correct in their conduct, or behaving virtuously, must be supported or maintained. But, if unchaste they must be expelled; and so may those, who are perverse. These last may indeed be expelled: but they must be supported, provided they be not unchaste. For a maintenance must not be refused solely on account of perverseness.

SECTION XI.

On the separate property of a woman.

1. After briefly propounding the division of wealth left by the husband and wife, ("Let sons divide equally both the effects and the debts, after the demise of their two parents,"†) the partition of a man's goods has been described at large. The author, now intending to explain fully the distribution of a woman's property, begins by setting forth the nature of it: "What was given to a woman by the father, the mother, the husband, or a brother, or received by her at the nuptial fire, or presented to her on her husband's marriage to another wife, as also any other separate acquisition, is denominated a woman's property."‡

ANNOTATIONS.

1. *As also any other separate acquisition.*] In JIMUTA-VAHANA'S quotation of the text, (C. 4. Sect 1. § 13.) the conjunctive and pleonastic

* YAJNYAWALCYA, 2. 143.
† YAJNYAWALCYA, 2. 118. Vide Supra. C. 1. Sect 3. § 1.
‡ YAJNYAWALCYA, 2. 144.

2. That, which was given by the father, by the mother, by the husband, or by a brother; and that, which was presented (to the bride) by the maternal uncles and rest (as paternal uncles, maternal aunts, &c.*) at the time of the wedding, before the nuptial fire; and a gift on a second marriage, or gratuity on account of supersession, as will be subsequently explained, ("To a woman whose husband marries a second wife, let him give an equal sum as a compensation for the supersession." § 34.) and also property which she may have acquired by inheritance, purchase, partition, seizure or finding,† are denominated by MENU and the rest 'woman's property.'

3. The term (woman's property) conforms, in its import, with its etymology, and is not technical: for, if the literal sense be admissible, a technical acceptation is improper.

4. The enumeration of six sorts of woman's property by MENU ("what was given before the nuptial fire, what was presented in the bridal procession, what has

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ANNOTATIONS.

particles *chaiva* (*cha-eva*) are here substituted for the suppletory term *adya*. That reading is censured by BALAM-BHATTA.

2. *Before the nuptial fire.* Near it. *Subod'hini.*

On account of supersession.] Supersession is the contracting of a second marriage through the influence of passion, while a first wife lives, who was married to fulfil religious obligations. *Subod'hini.*

Property which she may have acquired by inheritance.] The commentator BALAM-BHATTA, defends his author against the writers of the eastern school (JIMUTA-VAHANA &c.) on this point. Wealth, devolving on a woman by inheritance, is not classed by the authorities of that school with 'woman's property.' See JIMUTA-VAHANA, C. 4. 11. Sect. 1. § 8.

3. *The term 'woman's property' is not technical.*] That is contrary to the doctrine of JIMUTA-VAHANA, C. 4.

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* BALAM-BHATTA. † Vide C. 1. Sect. 1. § 8.

been bestowed in token of affection or respect, and what has been received by her from her brother, her mother, or her father are denominated the six-fold property of a woman;*) is intended, not as a restriction of a greater number, but as a denial of a less.

5. Definitions of presents given before the nuptial fire and so forth have been delivered by CATYAYANA: "What is given to women at the time of their marriage, near the nuptial fire, is celebrated by the wise as woman's property bestowed before the nuptial fire. That, again, which a woman receives while she is conducted from her father's house (to her husband's dwelling,) is instanced as the property of a woman, under the name of gift presented in the bridal procession. Whatever has been given to her through affection by her mother-in-law or by her father-in-law, or has been offered to her as a token of respect, is denominated an affectionate present.

ANNOTATIONS.

4. "*Bestowed in token of affection or respect.*" This passage is read differently in the *Retnacara* and by JIMUTA-VAHANA (C. 4. Sect. 1. § 4.) It is here translated conformably with BALAM-BHATTA'S interpretation grounded on the subsequent text of CATYAYANA (§ 5.); Where two reasons of an affectionate gift are stated: one, simple affection; the other, respect shown by an obeisance at the woman's feet.

5. "*From her father's house.*"] The *Retnacara and Chintamani* read "from the parental abode." See JIMUTA-VAHANA, C. 4. Sect 1. § 6.

"*Offered to her as a token of respect.*"] Given to her at the time of making an obeisance at her feet. *Smriti-chandrica.*

"*Denominated an affectionate present.*"] This reading is followed in the *Smriti-chandrica, Viramitrodaya &c.*. But the *Retnacara, Chintamani,* and *Vivada-chandra* read 'denominated an acquisition through loveliness;' *lavanyarjitam* instead of *priti-dattam.*

"*From her brother or from her parents.*"] The *Culpataru* reads "from her husband." See JIMUTA-VAHANA, C. 4. Sect. 2. § 21.

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* MENU, 9. 194.

That which is received by a married woman or by a maiden, in the house of her husband or of her father, from her brother or from her parents, is termed a kind gift."

6. Besides (the author says,) "That which has been given to her by her kindred; as well as her fee or gratuity, or any thing bestowed after marriage."* What is given to a damsel by her kindred; by the relations of her mother, or those of her father. The gratuity, for the receipt of which a girl is given in marriage. What is bestowed or given after marriage, or subsequently to the nuptials.

7. It is said by CATYAYANA, "What has been received by a woman from the family of her husband at a time posterior to her marriage, is called a gift subsequent; and so is that, which is similarly received from the family of her father." It is celebrated as woman's property: for this passage is connected with that which had gone before. (§5.)

8. A woman's property has been thus described. The author next propounds the distribution of it: "Her kinsmen take it, if she die without issue."†

9. If a woman die "without issue;" that is, leaving no progeny; in other words, having no daughter nor

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ANNOTATIONS.

"*Termed a kind gift.*"] So the commentary of [BALAM-BHATTA. explains *saudayica*, as bearing the same sense with its etymon *sudaya*. He censures the interpretation which JIMUTA-VAHANA has given (C. 4. Sect. 1. § 22.)

6. *The gratuity, for the receipt of which a girl is given in marriage.*] This relates to a marriage in the form termed *Asura* or the like. BALAM-BHATTA.

7. "*Similarly received from the family of her father.*] The *Retnacara* reads 'from her own family;' JIMUTA-VAHANA, 'from the family of her kindred.' See JIMUTA-VAHANA, C. 4. Sect. 1. § 2.

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* YAJNYAWALCYA, 2. 145.

† YAJNYAWALCYA, 2. 145.

daughter's daughter nor daughter's son, nor son, nor son's son; the woman's property, as above described, shall be taken by her kinsmen; namely her husband and the rest, as will be (forthwith*) explained.

10. The kinsmen have been declared generally to be competent to succeed to a woman's property. The author now distinguishes different heirs according to the diversity of the marriage ceremonies. "The property of a childless woman, married in the form denominated *Brahma*, or in any of the four (unblamed modes of marriage,) goes to her husband: but, if she leave progeny, it will go to her (daughter's) daughters: and, in other forms of marriage (as the *Asura* &c.) it goes to her father (and mother, on failure of her own issue."†)

11. Of a woman dying without issue as before stated, and who had become a wife by any of the four modes of marriage denominated *Brahma*, *Daiva*, *Arsha* and *Prajcpatya*, the (whole‡) property, as before described, belongs in the first place to her husband, On failure of him, it goes to his nearest kinsmen *(sapindas)* allied by funeral oblations. But, in the other forms of marriage called *Asura*, *Gand'harba*, *Racshasa* and *Paisacha*; the property of a childless woman goes to her parents, that is, to her father and mother. The succession devolves first (and the reason has been before explained,§) on the mother, who is virtually exhibited (first) in the elliptical *pitrigami* implying 'goes *(gach'hati* to both parents *(pitarau;)* that is,

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ANNOTATIONS.

11. *Dying without issue as before stated.*] Without any of the five descendants abovementioned (§ 9.) BALAM-BHATTA.

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* BALAM-BHATTA.

† YAJNYAWALCYA, 2. 146.

‡ BALAM-BHATTA.

§ Sect. 3.

to the mother and to the father.' On failure of them, their next of kin take the succession.

12. In all forms of marriage, if the woman "leave progeny;" that is, if she have issue; her property devolves on her daughters. In this place, by the term "daughters," granddaughters are signified; for the immediate female descendants are expressly mentioned in a preceding passage: "the daughters share the residue of their mother's property, after payment of her debts."*

13. Hence, if the mother be dead, daughters take her property in the first instance: and here, in the case of competition between married and maiden daughters the unmarried take the succession; but, on failure of them, the married daughter: and here again, in the case of competition between such as are provided and those who are endowed, the unendowed take the succession first; but, on failure of them, those who are endowed. Thus GAUTAMA says "A woman's property goes to her daughters unmarried, or unprovided,"† 'or provided,' as is implied by the conjunctive particle in the text. "Unprovided" are such as are destitute of wealth or without issue.

14. But this (rule, for the daughter's succession to the mother's goods,‡) is exclusive of the fee or gratuity. For that goes to brothers of the whole blood, conformably with the text of GAUTAMA: "The sister's fee belongs to the uterine brothers: after (the death of) the mother."§

ANNOTATIONS.

12. *In all forms of marriage.*] Several variations in the reading of this passage are noticed by BALAM-BHATTA: as *sarveshw api*, *or sarveshw eva*, or *sarveshu*. There is only a shade of difference in the interpretation.

14. "*After the death of the mother.*"] This version is according to the

* YAJNYAWALCYA, 2. 118 Vide supra, C. 1. Sect. 3. § 8.
† GAUTAMA, 28. 22. Vide supra, C. 1. Sect. 3. § 11.
‡ BALAM-BHATTA. § GAUTAMA, 28. 23.

15. On failure of all daughters, the granddaughters in the female line take the succession under this text: "if she leave progeny, it goes to her [daughter's] daughters."*

16. If there be a multitude of these [granddaughters †] children of different mothers, and unequal in number, shares should be allotted to them through their mothers, as directed by GAUTAMA: "Or the partition may be according to the mothers: and a particular distribution may be made in the respective sets."‡

17. But if there be daughters as well as daughter's daughters, a trifle only is to be given to the granddaughters. So MENU declares: "Even to the daughters of those daughters, something should be given, as may be fit, from the assets of their maternal grandmother, on the score of natural affection."§

18. On failure also of daughter's daughters, the daughter's sons are entitled to the succession. Thus

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ANNOTATIONS.

interpretation given in the *Subod'hini*: which agrees with that of the scholiast of GAUTAMA, the *Culpataru* and other authorities. But the text is read and explained differently by JIMUTA-VAHANA, (C. 4. Sect. 3. § 27.)

BALAM-BHATTA understands by the term 'mother,' in this place, the woman herself, or in short the sister, after whose death her fee or nuptial gratuity goes to her brothers.

16. *Children of different mothers, and unequal in number.*] Where the daughters were numerous, but are not living; and their female children are unequal in number, one having left a single daughter; another, two; and a third, three; how shall the maternal grandmother's property be distributed among her granddaughters? Having put this question, the author reminds the readers of the mode of distribution of a paternal grandfather's estate among his grandsons. (C. 1. Sect. 5.). *Subod'hini.*

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* Vide § 10. & 12.

† BALAM-BHATTA.

‡ GAUTAMA, 28. 15.

§ MENU, 9. 193.

NAREDA says, "Let daughters divide their mother's wealth; or, on failure of daughters, their male issue."* For the pronoun refers to the contiguous term "daughters."

19. If there be no grandsons in the female line, sons take the property: for it has been already declared, "the [male] issue succeeds in their default."† MENU likewise shows the right of sons, as well as of daughters, to their mother's effects: "When the mother is dead, let all the uterine brothers and the uterine sisters equally divide the maternal estate."‡

20. 'All the uterine brothers should divide the maternal estate equally: and so should sisters by the same mothers.' Such is the construction: and the meaning is, not that 'brothers and sisters share together;' for reciprocation is not indicated, since the abridged form of the conjunctive compound has not been employed: but the conjunctive particle *(cha)* is

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ANNOTATIONS.

18. "*Their male issue.*"] Several variations in the reading of the last term are noticed in the commentary of BALAM-BHATTA; making the term either singular or plural, and putting it in the first or in the seventh case. He deduces, however, the same meaning from these different readings.

The pronoun refers to the contiguous term.] JIMUTA-VAHANA, citing this passage for the succession of sons rather than of grandsons, seems to have understood the pronoun as referring to the remoter word 'mother.' See JIMUTA-VAHANA. C. 4. Sect 2. § 13.

19. "*Let all the uterine brothers.....equally divide.*"] In the *Calpataru* the text is read "let all the sons by the same mother divide;" *sarve putrah sahodarah* instead of *saman sarve sahodara.*

20. *Since the abridged form of the conjunctive compound has not been employed.*] Nouns coalesce and form a single word denominated *dwandwa*

NAREDA, 13. 1.

† YAJNYAWALCYA, 2. 118. Vide supra. C. 1. Sect. 3. § 12.

‡ MENU, 9. 192.

here very properly used with reference to the person making the partition; as in the example, DEVADATTA practises agriculture, and so does YAJNYADATTA.

21. "Equally" is specified (§ 19.) to forbid the allotment of deductions [to the eldest and so forth]. The whole blood is mentioned to exclude the half blood.

22. But, though springing from a different mother, the daughter of a rival wife, being superior by class, shall take the property of a childless woman who belongs to an inferior tribe. Or, on failure of the step-daughter, her issue shall succeed. So MENU declares: "The wealth of a woman, which has been in any manner given to her by her father, let the *Brahmani* damsel take; or let it belong to her offspring."*

ANNOTATIONS.

or conjunctive compound, when the sense of the conjunctive particle (*cha* 'and') is denoted. PANINI, 2. 2. 29. Vide supra Sect. 3. § 2.

The import of the particle, here intended, is either *reciprocation* (*itaretara*) explained to 'be the union, in regard to a single matter, of things specifically different, but mutually related, and mixed or associated, though contrasted;' or it is *cumulation* (*samahara*) explained as the 'union of such things, in which contrast is not marked.' The other senses of the conjunctive particle are *assemblage* (*samuchchaya*) or 'the gathering together of two or more things independent of each other, but assembled in idea with reference to some common action or circumstance:' and *superaddition* (*anwachaya*) or 'the connexion of a secondary and unessential object with a primary and principal one, through a separate action or circumstance consequent to it.' In the two last senses of the conjunctive particles, there is not such a connexion of the terms as authorizes their coalition to form a compound term. CAIYATA, *Padamanjari &c.*

If *reciprocation*, as above explained, were meant to be indicated in the text of MENU (§ 19.), the word *bhratrj* "brother" would have been used, inflected however in the dual number to denote 'brother and sister' (PANINI, 1. 2. 68.)

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* MENU, 9. 198.

23. The mention of a *Brahmini* includes any superior class. Hence the daughter of a *Cshatriya* wife takes the goods of a childless *Vaisya*: (and the daughter of a *Brahmani*, *Cshatriya* or *Vaisya* inherits the property of a *Sudra*.*)

24. On failure of sons, grandsons inherit their paternal grandmother's wealth. For GAUTAMA says, "They who share the inheritance, must pay the debts:"† and the grandsons are bound to discharge the debts of their paternal grandmother; for the text expresses "Debts must be paid by sons and son's sons."‡

25. On failure of grandsons also, the husband and other relatives above-mentioned§ are successors to the wealth.

ANNOTATIONS.

or else 'children,' or some generic term, would have been employed in the plural (PANINI 1. 2. 64.) But the text is not so expressed. Consequently *reciprocation* is not indicated. *Subod'hini* and BALAM-BHATTA.

The conjunctive particle is here very properly used.] 'It is employed in one of the acceptations, as in the example which follows. 'D. practises agriculture; and so does Y.' 'Brothers share equally; so do sisters.'

With reference to the person making the partition.] 'Another reading of this passage is noticed in the commentary of BALAM-BHATTA: "with the import of superaddition relatively to the person who makes the partition," *vibhaga-cartritwen'anwachayen'api* instead of *vibhaga-cartritw'anwayen'api*.

23. *Hence the daughter of a* Cshatriya *wife takes the goods of a childless* Vaisya.] This inference is contested by SRICRISHNA in his commentary on the *Dayabhaga* of JIMUTA-VAHANA.

24. *The grandsons are bound to discharge the debts.*] 'Since one text declares them liable for the debts; and the other provides, that the debts shall be paid by those who share the inheritance; it follows, that they share the heritage. *Subod'hini*, &c.

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* *Subod'hini* and BALAM-BHATTA.

† GAUTAMA, 12. 32.

‡ YAJNYAWALCYA, 2. 50.

§§ 9.—11.

26 On occasion of treating of woman's property, the author adds something concerning a betrothed maiden: "For detaining a damsel, after affiancing her, the offender should be fined, and should also make good the expenditure together with interest."*

27. One, who has verbally given a damsel [in marriage] but retracts the gift, must be fined by the king, in proportion to [the amount of] the property or the magnitude of] the offence; and according to (the rank of the parties, their qualities,† and) other circumstances. This is applicable, if there be no sufficient motive for retracting the engagement. But if there be good cause, he shall not be fined, since retractation is authorized in such a case. "The damsel, though betrothed, may be withheld, if a preferable suitor present himself."‡

28. Whatever has been expended, on account of the espousals, by the [intended] bridegroom, (or by his father or guardian,§) for the gratification of his own or of the damsel's relations, must be repaid in full, with interest, by the affiancer to the bridegroom.

29. Should a damsel, any how affianced, die before the completion of the marriage, what is to be done in that case? The author replies, "If she die (after troth plighted,) let the bridegroom take back the gifts which he had presented; paying however the charges on both sides."‖

30. If a betrothed damsel die, the bridegroom shall take the rings and other presents, or the nuptial gratuity which had been previously given by him (to the bride,)

ANNOTATIONS.

29. *Any how affianced.*] By a religious rite, or by taking of hands, or in any other manner. BALAM-BHATTA.

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* YAJNYAWALCYA, 2. 147. † BALAM-BHATTA. ‡ YAJNYAWALCYA, 1. 65.
§ BALAM-BHATTA. ‖ YAJNYAWALCYA, 2. 147.

"paying however the charges on both sides:" that is, clearing or discharging the expense which has been incurred both by the person who gave the damsel and by himself, he may take the residue. But her uterine brothers shall have the ornaments for the head, and other gifts, which may have been presented to the maiden by her maternal grand-father, (or her paternal uncle,*) or other relations; as well as the property, which may have been regularly inherited by her. For BAUD'HAYANA says: "The wealth of a deceased damsel, let the uterine brethren themselves take. On failure of them, it shall belong to the mother; or, if she be dead, to the father.

31. It has been declared, that the property of a woman leaving no issue, goes to her husband. The author now shows, that, in certain circumstances, a husband is allowed to take his wife's goods in her lifetime, and although she have issue: "A husband is not liable to make good the property of his wife taken by him in a famine, or for the performance of a duty, or during illness, or while under restraint."†

32. In a famine, for the preservation of the family, or at a time when a religious duty must indispensably be performed, or in illness, or "during restraint" or

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ANNOTATIONS.

30. *Clearing or discharging.*] The common reading of the passage is *vigamya* "accounting" but BALAM-BHATTA rejects that reading, and substitutes *vigamya* "removing" or 'discharging.'

He may take the residue.] The meaning is this: after deducting from the damsel's property, the amount which has been expended by the giver or acceptor of the maid, or by their fathers or other relations on both sides, in contemplation of the marriage, let the residue be delivered to the bridegroom. *Subod'hini.*

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* BALAM-BHATTA. † YAJNYAWALCYA, 2. 148.

confinement in prison or under corporal penalties, the husband, being destitute of other funds and therefore taking his wife's property, is not liable to restore it. But, if he seize it in any other manner (or under other circumstances,) he must make it good.

33. The property of a woman must not be taken in her lifetime by any other kinsman or heir but her husband: since punishment is denounced against such conduct; ("The kinsmen, who take their goods in their lifetime, a virtuous king should chastise by inflicting the punishment of theft:"*) and it is pronounced an offence; "Such ornaments, as are worn by women during the life of their husband, the heirs of the husband shall not divide among themselves: they, who do so, are degraded from their tribe."†

34. A present made on her husband's marriage to another wife has been mentioned as a woman's property (§ 1.) The author describes such a present: "To a woman, whose husband marries a second wife, let him give an equal sum, (as a compensation) for the supersession, provided no separate property have been bestowed on her: but, if any have been assigned, let him allot half."‡

35. She is said to be *superseded*, over whom a marriage is contracted. To a wife so superseded, as much should be given on account of the supersession, as is expended (in jewels and ornaments, or the like,§) for the second marriage: provided separate property had not been previously given to her by her husband; or

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ANNOTATIONS.

32. *Is not liable to restore it.*] He is not positively required to make it good. BALAM-BHATTA.

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* NAREDA, as cited by BALAM-BHATTA; but not found in his Institutes.

† MENU, 9. 200. Vide supra. C. 1. Sect 4. § 19.

‡ YAJNYAWALCYA, 2. 143. § BALAM-BHATTA.

by her father-in-law. But, if such property had been already bestowed on her, half the sum expended on the second marriage should be given. Here the word 'half' *(arddha)* does not intend an exact moiety. So much therefore should be paid, as will make the wealth, already conferred on her, equal to the prescribed amount of compensation. Such is the meaning.

SECTION XII.

On the Evidence of a Partition.

1. Having thus explained partition of heritage, the author next propounds the evidence by which it may be proved in a case of doubt. "When partition is denied, the fact of it may be ascertained by the evidence of kinsmen, relatives and witnesses, and by written proof, or by separate possession of house or field."*

ANNOTATIONS.

35. *Here the word half does not intend an exact moiety.*] The term, as it stands in the original text, is not neuter, that it should signify an equal part or exact moiety: but it is masculine and signifies portion in general. *(Amera* 11. 2. 17.*) Subod'hini.*

BALAM-BHATTA, citing a passage of the *Mahabhashya* to prove that *arddha* in the masculine signifies half, interprets the quotation from the *Amera Cosha* (11. 2. 17.) as exhibiting *arddha*, masculine and neuter, in the sense of moiety. He therefore rejects the foregoing explanation, and considers the word 'half' as employed in the text for an indefinite sense.

* YAJNYAWALCYA, 2. 150.

2. If partition be denied or disputed, the fact may be known and certainty be obtained by the testimony of kinsmen, relatives of the father or of the mother, such as maternal uncles and the rest, being competent witnesses as before described;* or by the evidence of a writing, or record of the partition. It may also be ascertained by separate or unmixed house and field.

3. The practice of agriculture or other business pursued apart from the rest, and the observance of the five great sacramentst and other religious duties performed separately from them, are pronounced by NAREDA to be tokens of a partition. "If a question arise among co-heirs in regard to the fact of partition, it must be ascertained by the evidence of kinsmen, by the record of the distribution, or by separate transaction of affairs. The religious duty of unseparated brethren is single. When partition indeed has been made, religious duties become separate for each of them."‡

4. Other signs of previous separation are specified by the same author: "Separated and unseparated brethren may reciprocally bear testimony, become sureties, bestow gifts, and accept presents."§

ANNOTATIONS.

2. *By the testimony of kinsmen.*] Or rather strangers belonging to the same tribe with the parties. BALAM-BHATTA.

3. "*By the record of the distribution.*"] Another reading is noticed by BALAM-BHATTA: "by occupancy or by a writing;" *bhoga-lechhyena* instead of *bhaga-lechhyena*. See JIMUTA-VAHANA, C. 14. § 1.

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* In the preceding book on Evidence.

† MENU, 3. 69.

‡ NAREDA, 13.—36. 37.

§ NAREDA, 13. 39.

APPENDIX.

TABLE OF SUCCESSION

ACCORDING TO THE

MITACSHARA.

HEIRS OF THE DECEASED PROPRIETOR.

	Order of Succession.
Son	1
Grandson	2
Great grandson	3
Wife	4
Unmarried daughter ...	5
Married unprovided daughter	6
Married provided daughter...	7
Daughter's son	8
Mother	9
Father	10
Uterine brother	11
Step brother	12
Uterine brother's son ...	13
Step brother's son	14
Grandmother	15
Grandfather...	16
Father's uterine brother ...	17
Father's step brother ...	18
Father's uterine brother's son	19
Father's step brother's son	20
Great grandmother ...	21
Great grandfather ...	22
Grandfather's brother ...	23
Grandfather's step brother	24
Grandfather's brother's son	25
Grandfather's step brother's son	26
Great great grandmother...	27
Great great grandfather ...	28
Great grandfather's brother	29
Great grandfather's step brother	30
Great grandfather's brother's son	31
Great grandfather's step brother's son	32

	Order of Succession.
Grandfather's great grandmother	33
Grandfather's great grandfather	34
Great great grandfather's brother	35
Great great grandfather's step brother	36
Great great grandfather's brother's son	37
Great great grandfather's step brother's son ...	38
Grandfather's great great grandmother	39
Grandfather's great great grandfather	40
Grandfather's great grandfather's brother	41
Grandfather's great grandfather's step brother ...	42
Grandfather's great grandfather's brother's son ...	43
Grandfather's great grandfather's step brother's son	44
*Samanodacas**	45
Father's sister's son ...	46
Mother's „ „ ...	47
Maternal uncle†	48
Maternal uncle's son ...	49
Father's paternal aunt's son	50
Father's maternal aunt's son	51
Father's maternal uncle†..	52
Father's maternal uncle's son	53
Mother's paternal aunt's son	54
Mother's maternal aunt's son	55
Mother's maternal uncle's son	56
Preceptor	57
Pupil	58
Fellow Student	59
Learned Brahmin‡ ...	60
King	61

* The relation of the *Samanodacas*, or those connected by a common libation of water, extends to the fourteenth degree.—Chap. II. Sec. 5. cl: 6.

† The enumeration of Bandhus, or cognate kindred, given in Mitacshara II., Section 6, Art I., is not exhaustive. The maternal uncle and the father's maternal uncle will take as heirs in preference to the Crown.—Bengal Law Reports, Privy Council Cases, Vol. I. p. 44.

‡ This succession has been disallowed by the Privy Council. Vide *Collector of Maslipatam versus Cavaly Vencata Narrainapah*.—Moore's Indian Appeals, vol. viii. p. 500.

HEIRS TO THE SEPARATE PROPERTY OF THE DECEASED PROPRIETRESS.

	Order of Succession.		Order of Succession.
Maiden daughter	1	Daughter's son	5
Unendowed married daughter	2	Son	6
Endowed married daughter..	3	Grandson	7
Daughter's daughter ...	4	Husband*	8

HEIRS TO THE SEPARATE PROPERTY OF AN UNMARRIED PROPRIETRESS.

	Order of Succession.		Order of Succession.
Uterine brother	1	Father	3
Mother	2		

* Of a woman dying without issue (that is, leaving no daughter nor daughter's daughter nor daughter's son, nor son, nor son's son,) and who had become a wife by any of the four modes of marriage denominated *Brahma*, *Daiva*, *Arsha*, and *Prajapatya*, the whole property belongs in the first place to her husband. On failure of him, it goes to his nearest kinsmen *(sapindas)* allied by funeral oblations. But in the other forms of marriage called *Asura*, *Gandharba*, *Racshasa* and *Paisacha*; the property of a childless woman goes to her parents, that is to her father and mother. On failure of them, their next of kin take the succession.—Chap. II. Section XI. cl: 11.

A

COLLECTION OF PRECEDENTS

FROM THE

DECISIONS OF THE PRIVY COUNCIL

ON INDIAN APPEALS

AND OF THE

SUDDER AND HIGH COURTS

OF THE

THREE PRESIDENCIES.

—oo—

ADOPTION.

1. An adoption by a widow after her husband's death, without any authority from him, is invalid in the Zillah of Etawa, in provinces ceded by the Nabob of Oude, in 1801. During the pendency of a suit instituted by a person claiming as an adopted son against a widow, the widow dies, and proclamation is made for her heirs to come in and defend the suit, and the claimant is put in possession of the property in dispute by the Collector. The Court of Sudder Dewany Adawlut decide that the claimant has not made out his title, and direct the Collector to put in possession of the property another person who had come in under the proclamation, but produced no evidence of his title. Held, that the latter part of the decree must be reversed.—*Knapp's Privy Council Reports*, vol. II. p. 203.

2. The greatest strictness is required in evidence to prove an adoption in a Hindoo family.—*Knapp's P. C. R.* p. 287.

2A. An adopted son, according to the Hindoo Law, is entitled to succeed to his collateral as well as his direct relations by adoption.—*Ditto* vol. III. p. 55.

3. A Hindoo father may, by will, direct that his son shall not have the power to adopt an heir to his (the testator's) property until the son arrive at an age fixed by his father exceeding the age of legal majority, but he cannot bar his son's right to adopt an heir general.—*Fulton's Supreme Court Reports.* vol. I. p. 393.

4. Where the parties are Sudras and there is no ceremony but marriage for them, the performance of the ceremony of tonsure in the house of the natural father, is no bar to the son being adopted.—*Ditto* p. 75.

5. By Hindoo Law an only son may be adopted: the adoption of an only son is no doubt blameable by Hindoo Law, but when done it is valid.—*Ditto.*

6. A childless Hindoo, by Deed, directed his wife to adopt a child. After his death his widow brought a suit for a partition, and to be put in possession of her husband's share, in the joint undivided estate. Pending the suit, she adopted a son. By the Hindoo Law, the act of adoption divested the property from the widow and vested it in the adopted son, subject to the maintenance of the widow. Notwithstanding the adoption, the suit was prosecuted in the widow's name, and a decree made directing her to be put in possession.

Held in such circumstances, that she prosecuted the suit as the guardian of the adopted son, and was put into possession as his trustee, and accountable to him for the profits of the property so decreed to her.—*Moore's Indian Appeals* vol. III. p. 229.

7. V., a Zemindar, in the Northern Circars at Madras, of the Soodra caste, being childless, adopted, with the consent of his wife, a son J. At the time of this adoption, he executed a deed with the natural father of J., by which he undertook to make him heir to his zemindary and wealth. V. subsequently married a second wife, and during the life time of his adopted son,

J., adopted a second son R. Both these adopted sons lived in V.'s house, who, while they were minors, made a division of his ancestral and other estate, between them, in certain proportions. J. when he came of age, entered into possession of his share: but R., being a minor, V. managed his share for him, and died during his minority. At V.'s death, J. claimed the right of succession to the whole of V.'s estate and property, insisting, that V. was precluded from alienating any portion of the estate, to his, the first adopted son's prejudice; and that the adoption of R., during his life time, was illegal and void. The Sudder Dewany Adawlut at Madras, decided that the second adoption was valid. Held, upon appeal, by the Judicial Committee of the Privy Council, reversing that decree:—

First.—That, according to the Hindoo Law, a second adoption of a son, the first adopted son being alive, and retaining the character of a son, was an illegal and void act. *Secondly.*—That J.'s acquiescence in the division, after he came of age, did not preclude his right to recover the ancestral estates, as V. had no power to alienate any portion of the ancestral estate to J.'s prejudice. But, *thirdly* that (upon the principle that a party cannot affirm and disaffirm the same transaction) effect must be given to the intentions of V. so far as V. had power of disposing of his property, by an act, *inter vivos;* and in which J. had acquiesced; and that as J. took the whole of the ancestral property of V. he must give up for the benefit of R. that part of V.'s other property, included in his share in the division, and to give effect to which his consent was not necessary.

Among the Soodras, a childless Hindoo may adopt a son from a *Gotrum* different from his own.

The consent of a wife to the adoption of a son, by her husband, a childless Hindoo, is not essential to the validity of the adoption. Adoption is the act of the husband alone; although the wife may join in it.—*Moore's Indian Appeals* vol. IV. p.p. 1 & 2.

8. A verbal power to adopt is good by the Hindoo Law.—*Ditto* vol. VII. p. 54.

9. Adoption by a childless Hindoo of the Vaisya or third class of Hindoos, of his sister's son is valid under the Hindoo Law.—*Moore's Indian Appeals* vol. IX. p. 506.

10. A widow is competent to adopt, even without the injunction of her husband, the son of her husband's brother; and he thereupon succeeds to the property of her late husband. But she cannot adopt any other but her husband's brother's son during his existence; nor, as it appears, can she adopt any other but such son without the consent of her husband.—*Morley's Digest* vol. I. Adoption N. 7.

11. Where a Hindoo died in gaol, where he had been confined in execution of a decree for debt, it was held that his son, adopted by another person, was not liable for his debts, as an adopted son is not liable for any debts left by his own father.—*Ditto* Adoption N. 100.

A Hindoo having adopted a boy, cannot disinherit him by will.—*Ditto* N. 101.

12. Under the Hindoo Law a daughter cannot be adopted.—*Ditto* vol. II. p. 134.

13. The Hindoo Law does not allow of the adoption of a *paluk putro*.—*Sutherland's Weekly Reporter*, vol. II. p. 281.

14. No stereotyped form is prescribed for deeds of permission to adopt.—*Ditto* vol. VI. p. 137.

15. Under the precedents of the Sudder Court, the adoption of the eldest, though improper, is nevertheless not illegal.—*Hay's High Court Reports* vol. I. p. 260.

16. The adoption of an only son is, when made, valid according to Hindoo Law.—*Stokes' Madras High Court Reports* vol I. p. 54.

17. According to Hindoo Law an orphan cannot be adopted.—*Ditto*. vol. II. p. 129.

18. A widow can adopt a son without the consent of her husband according to Hindoo Law. —*Ditto*. p. 206.

19. Where a widow adopted a son with the assent of the majority of the surviving kindred of her husband, the adoption was held to be valid. In such a case if the requirement of the

consent of the sapindas be any thing more than a moral precept, the assent of any one of the sapindas will suffice.—*Stokes' Madras High Court Reports*, vol. I. p. 206.

20. An adoption by a widower is valid according to Hindoo Law.—*Ditto*, p. 367.

21. An adopted son and heir is not liable for the debts of his adoptive parent, unless he succeeds to and appropriates his estates.—*Weekly Reporter* vol. XII. p. 41.

22. According to the doctrines of the Benares and Maharathi schools, a Hindoo widow can adopt a son without her husband's express authority, if the adoption be made with the consent of her husband's kindred.—*Ditto* (*Privy Council Decisions May* 1868.)

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ALIENATION.

1. Among the holders of separate shares of an hereditary zemindary each, according to the Hindoo Law, may sell his share to whom he pleases.—*Select Reports*. vol. I. p. 1.

2. A Hindoo widow cannot, except under special circumstances, alienate more than a moiety of her deceased husband's moveable property.—*Ditto*. vol. II. p. 23.

3. A Hindoo widow cannot, under any circumstances, alienate the whole of his immoveable property, nor can she alienate any part without the express consent of the heirs, except under special circumstances.—*Ditto* p. 24.

4. By the Hindoo Law, a daughter has no power to alienate by gift her ancestral property, to the detriment of the other heirs of her father.—*Ditto* vol. IV. p. 330.

5. Sale of joint landed property, situated in the District of Mirzapore, by one partner without the consent of the rest, set aside as being contrary to the Hindoo Law.—*Ditto*. p. 159.

6. In a case which arose in the Behar Province, Pundit of the S. D. A. explains gifts illegal under the Hindoo Law. A father may give a small part of the ancestral estate, for a pious purpose without consent of sons.—*Ditto*. vol. V. p. 28.

7. According to the Law as current in Behar, the alienation by a Hindoo father of immoveable ancestral property without the consent of his sons, except on proof of necessity, is illegal.—*Select Reports* vol. VI. p. 71.

8. According to the *Mitacshara* and other Hindoo Law tracts which are current in the Western Provinces, the sale by a widow to her daughter's son of joint property derived from her husband is invalid.—(*See* Note) *Ditto*. p. 60.

9. Under the *Mitacshara*, a father is not incompetent to sell immoveable property acquired by himself.

Landed property acquired by a grand-father and distributed by him among his sons, does not, by such gift, become the self-acquired property of the sons so as to enable them to dispose of it by gift or sale without the consent, and to the prejudice, of the grand-sons. The sale by a father of ancestral immoveable property without the concurrence of his sons is not necessarily void, though it may be avoided, unless the purchaser can show that it was made, during a season of distress, for the sake of the family or for pious purposes. In the absence of evidence to the contrary it must be assumed that the price received by the father became a part of the assets of the joint family; and therefore, if the son seeks the aid of the Court to set aside the purchase, he must do equity and offer to repay the purchase money, unless he can show that no part of such purchase money or the produce of it has ever come to his hands.—*Weekly Reporter* vol. VI. p. 71.

10. The *Mitacshara* makes a distinction between ancestral and self-acquired property with regard to a father's right to dispose of it; but such right is not affected by the fact of his being an out-caste.—*Ditto* p. 77.

11. The existence of a debt, liquidation of which is provided by lease of ancestral property, is no justification for alienation of such property by a Hindoo widow during her life tenancy.—*Ditto* vol. VII. p. 450.

12. The cession of her right by a Hindoo widow, during enjoyment, to the heir of her husband is valid; the recipient be-

coming absolutely entitled to the property which passes on his death to his heirs.—*Weekly Reporter* vol. VIII. p. 500.

13. A Hindoo widow takes, with her husband's estate, the power of alienation; and conveyance made by her gives a good title, liable only to the superior claim of such of her husband's heirs as may be alive at the time of her death. Following a decision of a Division Bench of the High Court, it was held that on the death of a Hindoo widow, her deceased husband's heirs become entitled to all his immoveable property which was in her hands, except only so much as might have been disposed of by her under circumstances which would render her alienations binding against them.

The sale of a Hindoo widow's rights and interests in her husband's estate, in execution of a money-decree against her, does not touch the estate.—*Ditto* p. 519.

14. According to the *Mitacshara* Law, a son acquires by birth a right in ancestral property, and has a right during his father's lifetime to compel a partition of such property. The father cannot, without the consent of the son, alienate such property except for sufficient cause, and the son may not only prohibit the father from so doing, but may sue to set aside the alienation, if made. The cause of action to the son accrues when possession is taken by the purchaser. A new cause of action does not accrue upon the subsequent birth of a younger brother, either to the elder brother alone, or to him and his brother jointly.—*Ditto* p. 15.

15. Under the *Mitacshara*, when partition has actually been carried out, a Hindoo widowed mother can claim a share, but not before. Till then she has only a right to maintenance, and has no power to alienate, in anticipation of partition, the share which, for the purposes of maintenance, would be assinged to her after partition.—*Wyman's Revenue and Criminal Reporter*, vol. V. (*Civil Rulings.*) p. 55.

16. A Hindoo widow, acting as guardian of a minor son, sold certain properties burdened with zurpeshgee mortgages to pay off her husband's debts. The purchasers were zurpeshgeedars. The minor, on coming of age, disputed these sales. Held that the zur-

peshgeedars stood in a fiduciary relation to the widow, who was also a *purdahnisheen*, and that the *onus* lay therefore doubly upon them to show that the purchase money was sufficient, and that the sums paid to them in redemption of the mortgage debt were duly calculated.—*Wyman's Revenue and Criminal Reporter* vol. V. p. 168.

17. A conveyance by a Hindoo widow, for other than allowable causes, of property which has descended to her from her husband is not an act of waste destroying the widow's right and vesting the property in the reversioners, but is binding only during the widow's lifetime. The reversioner can, during the widow's lifetime, sue to obtain a declaration that the conveyance is not binding beyond the lifetime of the widow, and also to prevent waste.—*Sutherland's Full Bench Rulings.* p. 165.

18. By the Hindoo Law, as applied in Madras, a member of an undivided family may alienate the share of the family property to which, if a division took place, he could be individually entitled.—There may be a valid sale of such share under execution in an action for damages for a loot.—*Grady's Hindoo Law of Inheritance* p. 136.

19. An alienation made by a Hindoo with the consent of his son cannot, under the *Mitacshara,* be questioned by the grandson.—*Weekly Reporter.* vol. IX. p. 337.

20. Under the *Mitacshara* the son's power to prevent alienations by the father extends to acts of waste, and not to alienations for the payment of joint family debts and for the maintenance of the family.—*Ditto.* vol. I. p. 96.

21. Son not competent to prefer a suit for possession of ancestral property, in his father's lifetime, by cancelment of a sale executed by the father on the ground of its illegality.—*Selected Decisions,* N.-W. P. for 1863, p. 519.

22. An alienation made by the managing member of a joint Hindoo family cannot be questioned by another member, if he stands by, and sees to the application of, the purchase money for the benefit of the whole family, without refusing to participate in it.—*Hay's High Court Reports,* No. 5. p. 567.

23. A Hindoo widow is incompetent to alienate the real property derived from her husband.—*Selected S. Decisions*, N. W. P. vol I. p. 52.

24. Alienation of hereditary property by the head of the family during the minority of sons and brothers is lawful, if made for their support or for the services of religion, or other pressing necessity.—*Ditto* vol. I. p. p. 77, 173.

25. The father is incompetent under the Hindoo law to give, sell or otherwise alienate immovables or bipeds when a legitimate son is living, *without* his consent.—*Agra Sudder Court Reports* for 1846 p. 275.

26. Held by the majority of the Court that, in order to maintain a suit for restraint of alienation, some act of alienation either inchoate or complete must be stated as the ground of action; a suit to restrain *generally* the power of alienation will not lie; seeing that under certain circumstances a Hindoo widow has under Hindoo law a right to alienate, a suit to declare that under *no* circumstances could alienation be valid, would be contrary to that law, and consequently not sustainable; moreover where no particular act of alienation either inchoate or complete is set forth, the plaint would disclose no legal *injury* warranting the bringing of the action.—*Calcutta Sudder Court Decisions* for 1856, p. 494.

27. The consent of nephews to the sale by the uncle of his share of ancestral property is requisite neither according to the *Mitacshara*, nor to the Hindoo Law as current in Mithila. The consent of sons and grandsons is alone necessary to the sale, by the father, of ancestral property. The principle of the distinction, as stated in the *Mitacshara*, is that a son has an inchoate right in the possessions of his father from the time of his birth, whereas a nephew has no right at all in the ancestral property in the possession of his uncle until after the death of the latter.—*Ditto* for 1859, p. 1314.

28. Under the Law of Mithila as well as of the *Mitacshara* the father is only joint owner with his sons of ancestral estate, and can only exercise the power of alienation in the case of a minor son existing at the time, under circumstances of legal necessity.—

Calcutta Sudder Decns. for 1861, p. 212. *See Select Reports* vol. VI. p. 71.

29. By the Hindoo Law, a Zemindar having no issue is capable of alienating, by deed or will, a portion of his estate, which in default of lineal male issue, and intestacy, would vest in his wife without her consent.—*Moore's Indian Appeals* vol. II. p. 54.

30. A widow may give the estate to the person who, as heir of her husband, is entitled to take it at her death, as such gift would be merely a relinquishment of her temporary interest to the person entitled to succeed her.—*Select Reports* vol. I. p. 64. *See Note.*

31. A Hindoo widow can alienate lands to pay her husband's debts without consent of heirs; and such sale, even without possession, is valid.—*Ditto* vol. VII. p. 354.

32. Lands endowed for religious purposes are not hereditable as private property, and consequently are not subject to private alienation. The management of them alone, for religious purposes, may pass by inheritance.—*Ditto* vol. I. p. 180.

33. Lands assigned by a Zemindar to his stepmother for her maintenance cannot be alienated by her. On her death, they will revert to the Zemindar.—*Ditto* vol. I. p. 259.

34. Widow may alienate her husband's property, or a portion thereof, to pay his *bona fide* debts.—*Ditto* vol. I. p. 359.

35. By the Mithila Shasters, a father cannot give away the whole ancestral estate to one son to the prejudice of the rest; for the father and sons have equal right in ancestral immoveable property.—*Ditto* vol. II. p. 74.

36. Persons in the position of managing members and guardians may jointly sell part of the ancestral estate to provide for the necessities of the family.—*Madras Sudder Dec.* for 1859 p. 142.

37. An undivided member of a Hindoo family cannot sell a portion of the ancestral estate unless driven thereto by pressing necessity.—*Ditto* for 1859 p. 270 and *Ditto* for 1860 p. 49.

38. The sale of property by an undivided member is not valid, even if falling within the limits of his individual share, unless made under emergent circumstances and with reservation of the shares

of his sons and a sufficiency for the maintenance of his wife and daughters.—*Madras Sudder Dec.* for 1860 p. p. 17 and 67.

39. A father is not competent to alienate his immoveable property, whether ancestral or self-acquired, to the prejudice of his sons, except under urgent necessity.—*Ditto* p. 227.

40. Alienation of a share in an undivided property to a relative of donor, without consent of the coparceners, held to be opposed to Hindoo Law.—*Agra Sudder C. R.* for 1860. p. 162.

41. In provinces where succession among Hindoos is governed by the *Benares* Shasters, alienation of joint property, even to the extent of the alienor's own share, is invalid; but if the property be partitioned, the transfer is legal.—*Ditto* for 1864 p. 299.

42. Two cousins were joint sharers in land. The share of one was sold by auction and partitioned. The share of the other was inherited by his widow in failure of more direct heirs, and held by her as a separate property. Held, in conformity with Hindoo Law Officer's *bywastha*, that an alienation by gift to her daughter's son by the widow was valid, and that the heirs of the party whose share was sold by auction, have no reversionary right to the share of the widow.—*Ditto* for 1860 p. 222.

43. Held that a sale by a childless male sharer in undivided ancestral land to another copartner though opposed to the general Hindoo Law, current in these provinces, is good and valid, if the coparcenary brethren have, at the time of the settlement, or otherwise entered into a compact to permit alienation provided the conditions of the agreement be not infringed. The ruling in the present case is distinguishable from, but reconcilable with that in the case of Runjeet Sing and others *versus* Mussumut Hurkomwar and others, in p. 8 vol. I of *Selected Reports* North-Western Provinces.—*Ditto* for 1862 p. 47.

44. Under the *Mitacshara* Law, an alienation by a son is invalid without the father's consent.—*Weekly Reporter*, vol. VII. p. 449.

45. According to the *Mitacshara* Law, a son has an equal right with his father in ancestral property. He can compel the father to divide it during his life-time, and will not be bound by

any alienation made after his birth without his consent, unless under legal necessity. If the father, during the minority of the son, alienate any property in fraud of his creditors, such fraud would not bind the son, who was neither a party nor a privy to such fraud.—*Weekly Reporter*, vol. VII. p. 502.

46. Under the *Mitacshara* Law, a father can dispose of self-acquired property, and unequally distribute it among his heirs.—*Ditto*. vol. X. p. 287.

47. A Hindoo wife or widow may alienate her *stridhun* whether it be moveable or immoveable, with the exception, perhaps, of land given to her by her husband.—*Stokes' Madras High Court Reports*, vol. I. p. 85.

48. According to the Hindoo Law current in Madras, the member of an undivided family may alien the share of the family property to which, if a partition took place, he would be individually entitled.—*Ditto*. p. 471.

49. According to the *Mitacshara*, a conveyance or transfer of joint property by one member of a family is illegal without the consent of the other members.—*Weekly Reporter*, vol. III. p. 210.

50. According to the *Mitacshara* an estate cannot be burdened with the debts of one of its joint owners after his decease.—*Ditto*. p. 210.

51. Under the Mithila Law, the father of a Hindoo family cannot give a mokurrari lease of land, at a nominal rent, as a reward for faithful service, when his children, being infants, do not consent to such a grant.—*Bengal Law Reports*, vol. III. p. 21.

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GUARDIAN.

1. A suit cannot be brought on behalf of a Hindoo minor to secure his share in undivided family property, unless there is evidence of such malversation as will endanger the minor's interest if his share be not separately secured.—*Stokes' Madras H. C. R.* vol. I. p. 105.

2. The stepmother of a Hindoo minor, and not his paternal uncle, is his guardain ; and she can exercise her powers as such, even though the parents of the said minor should have made him over to the paternal uncle.—*Selected S. Decisions, N. W. P.* for 1847. p. 116.

3. According to Hindoo law a paternal grandmother has a preferential right over a stepmother to the guardianship of a minor. The paternal grandmother, with the assent of the nearest male kinsman on the father's side, has (in preference to the stepmother) the right to dispose of a minor in marriage.—*Weekly Reporter* vol. VII. p. 321

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MAINTENANCE.

1. A son, whether adopted or begotten, can claim maintenance of his father until put into possession of his share of the ancestral estate.—*Stokes' M. H. C. R.* vol. II. p. 45.

2. Suit by a *femme couverte* to set apart for her maintenance a portion of her husband's property held by him in commonalty with others of his family is inadmissible under the Hindoo Law.—*Sudder Decisions, N. W. P.*, for 1848. p. 170.

3. Where the widow of a Hindoo is excluded by law from inheriting her husband's property, the courts are authorized to fix the amount of maintenance receivable by her, from her husband's heirs with reference to the circumstances of the family.—*Select Reports*, vol. III. p. 223.

4. A claim by a Hindoo widow for an allowance from her husband's family dismissed with reference to her own conduct which, in the opinion of the Court, deprived her of all claim to a maintenance from them.—*Ditto*, vol. VII. p. 144.

5. According to Hindoo Law, a son's widow is entitled to maintenance so long as she leads a chaste life, whether she elects to live with her father-in-law or with her own relations.—*Weekly Reporter*, vol. II. p. 134.

6. It is not necessary that a Hindoo widow should be maintained in the same state as her husband would maintain her.—*Ditto*, vol. IV. p. 65.

The fact of A. having been long supported by B. or of his having been purchased either as a slave or as a "*Chella*" will not entitle him to claim perpetual maintenance for himself and his heirs, especially where A. does not shew that he has been deprived of ordinary means of livelihood which he might otherwise have commanded.—*Weekly Reporter*, vol. VII. p. 137.

8. A right to future maintenance cannot be sold in execution of a decree.—*Ditto*, p. 311. (*See* also vol. V., p. 111 and vol. III. p. 16, *Miscellaneous Rulings*.)

9. Arrears of maintenance are capable of being attached as a debt due to a widow in execution of a decree against her.—*Ditto*. vol. VIII. p. 41.

10. Where a husband does not object to his wife's leaving his house to carry on an independent calling or give her notice to return, she is, when desirous of returning, entitled to maintenance.—*Ditto* vol. IX. p. 475.

11. An adulterous wife not being entitled to maintenance, may claim, under certain circumstances, a bare subsistence.—*Thomson's Hindoo Law*, p. 74.

12. Held, by Peacock, C. J. and Macpherson, J. (deciding the case,) a daughter-in-law cannot maintain an action for maintenance against her deceased husband's father when she refuses to live with him, and where he has no ancestral or other property charged with her maintenance. His obligation towards her is purely moral. Held by Kemp and Loch J. J., that the obligation is legal, and can be enforced so long as the daughter-in-law continues chaste, whether she live with the father-in-law or not.—*Wyman's R. C. C. Reporter*, vol. V. p. 305.

13. A. was liable to pay B., a widow, a monthly allowance for maintenance. A. obtained a decree against B. as heir of her husband, for a debt of her husband. Held that he was not entitled to attach the maintenance under the decree.—*Marshall's Calcutta High Court Reports* vol. I. p. 2.

14. When the maintenance of a Hindoo widow was not made by her deceased husband dependent on her living with his family,

she is entitled to it notwithstanding she leave the house of his family and go to that of her father.—*Madras H. C. R.* vol. I. p. 4.

15. Forfeiture of ancestral and other property under Bengal Regulation XI. of 1796 for acts committed by the sons of A. does not affect the rights of A.'s widow who was entitled to maintenance out of the whole estate that was ancestral.—*Moore's Indian Appeals*, vol. VI. p. 246.

16. Although the courts in India recognize the power of a Hindoo to make a will, yet the extent of the power of disposition by a testator is to be regulated by the Hindoo law and cannot interfere with the widow's right to a proper maintenance.—*Ditto*, vol. VIII. p. 66.

17. The widow of a Hindoo, who died before his father, is entitled to food and raiment only.—*Select Reports*, vol. III. p. 33.

18. A widow (Hindoo) has no claim on her step-grandson, or her step-son's widow for maintenance, while she has a step-son living, who alone is bound to maintain her even though the others are in joint possession with him of her husband's estate.—*Ditto*, p. 70.

19. Allotment of maintenance to a Hindoo widow must be proportionate to the returns of her husband's estate.—*Ditto*, vol. IV. p. 422. (*See* also *Agra Sudder Court Reports* for 1862, p. 96.)

20. The mere receipt for some time by a Hindoo widow of a small money allowance of food and raiment, does not bar her from suing for a maintenance, proportionate to the returns of her husband's estate.—*Calutta Sudder Court Decisions* for 1850, p. 422.

21. Under the Hindoo Law and published precedents of the court, a widow is entitled to maintenance from the heir of the family.—*Ditto* for 1852, p. 796.

22. A Hindoo widow does not forfeit her claim to maintenance, unless she voluntarily leaves the house of her father-in-law.—*Ditto*.

23. A claim for maintenance in arrears is unsustainable.—*Madras Sudder Court Decisions*, for 1858, p. 236.

24. Maintenance will not be awarded when the defendant's property is inadequate to bear the charge.—*Ditto* for 1857, p. 82.

25. Maintenance will not be awarded unless it be proved that the party is in possession of an income upon which it may be charged.—*Madras S. C. Decns.* for 1859. p. 265.

26. A Hindoo leaves *all* his property to his sons, by will, and a partition is effected among them according to the terms of his will. The Court will grant maintenance to his widow after the partition, and direct each of the sharers to contribute.—*Fulton's Calcutta Supreme Court Reports.*—vol. I. p. 189.

27. A brother's widow is only entitled to separate maintenance out of ancestral property.—*Madras S. A. Decs.* for 1859, p. 272.

28. A widow is entitled to demand an allowance in money for her separate maintenance.—*Ditto,* for 1849. p. 1.

29. The widow of a member of a joint family destitute of paternal property, is entitled to be supported by the parceners so long only as she lives in their house and under their care.—*Ditto,* p. 5.

30. A widow afflicted with blindness is disqualified from inheriting her husband's estate; but his heir is bound to maintain her and clothe her during her life in a respectable manner.—*Borrodaile's Bombay Sudder Court Reports,* vol. I. p. 411.

31. A separate maintenance will not be awarded where the party sued has merely a floating and uncertain income.—*Madras S. A. Decs.* for 1859. p. 272.

32. The support of a widow by her parents is optional. Should they refuse, her husband's heirs are bound to maintain her even though she had not arrived to maturity at the time of her husband's death.—*Ditto,* 1858, p. 154.

32. A mother notwithstanding that she has quitted her son's protection without adequate cause, is entitled to look to him for an allowance.—*Madras S. A. Decisions* vol. I. p. 170.

33. A widow of a deceased Hindoo succeeding to his property is bound to maintain, according to her means, the widow of her adopted son who died first.—*Borrodaile's Bombay Sudder Reports,* vol. II. p. 446.

34. An illegitimate son of a Rajput or any of the three superior tribes, by a woman of the Sudra or other inferior class, is entitled to maintenance only.—*Select Reports*, vol. III. p. 132.

35. Where A. is proved to be the natural son of his deceased father B., a Hindoo gentleman, and to have been recognized by B. as such, it is not essential to A.'s title to maintenance out of B.'s estate that he should be shown to have been born in the house of his father or of a concubine possessing a peculiar status therein.—*Weekly Reporter*, vol. XI. (*Privy Council Rulings*) p. 6.

36. Alienations made for maintenance of cadet by head of Hindoo family, do not revert to the head, unless the cadet die without heirs. Provision made by cadet from saving for his illegimate sons not resumable by head of family.—*Wyman's R. C. C. Reporter*, vol. II. p. 298.

37. A wife who without her husband's sanction leaves him to live with her family, forfeits her right to maintenance.—*Ditto*, p. 123.

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PARTITION.

1. Under the *Mitakshara* there may be a partition without an actual division of the lands amongst the sharers to be held by them in severalty.—*Weekly Reporter*, vol. VI. p. 139.

2. Under the *Mitakshara* Law, there may be a partition of an estate without a regular separation and actual division of lands.—*Ditto*, vol. VII. p. 488.

3. The mother and widow of a Brahmin divided between them his property consisting of *Dewutter* land, and right of officiating in a temple, reserving to each the power of alienating her own share. Such partition is invalid by the Hindoo Law, in consequence of the incompetency of the parties; and a sale, executed by the mother on the strength of it, set aside.—*Select Reports*. vol. IV. p. 337.

4. In a case which arose in Ramghur, the Sudder Dewany Adawlut recognized the doctrine obtained from two precedents

(cited) but dismissed the case against his coparceners by a Member of a Hindoo joint family—on defect of proof that the estate claimed had (as charged) been solely acquired by him without aid of common stock or labor.—*Select Reports* vol. V. p. 12.

5. When property was acquired by several joint brothers who contributed unequally means and labor in the acquisition, S. D. A. without reference to its Pandit adjudged that by usage and Hindoo Law, the brother who contributed most to the acquisition should receive a larger share.—*Ditto*, p. 335.

6. An uncle and nephews were in a state of general severalty, but held some ancestral property in common. Such tenure by the Hindoo Law of the Western Schools, will not establish the right of the nephews to take their uncle's estate before his wife and daughter's son.—*Ditto* p. 349.

7. A private partition, in the absence of any regular butwarah by the Collector, constitutes a legal severalty for all purposes under the Hindoo Law.—*Ditto*, vol. VI. p. 273.

8. Any act or declaration showing an unequivocal intention on the part of any shareholder to hold or enjoy his own share separately, and to renounce all rights upon the shares of his co-parceners, constitutes a complete severance or partition.—*Weekly Reporter*, vol. III. p. 41.

9. A member of a Hindoo family is not barred from his right of requiring a partition of the family property, unless his conduct has led the other members of the family into a reasonable well-grounded supposition that there has been a separation on his part, and an acceptance of a defined portion of the property instead of his family share.—*Ditto* p. 61.

10. A deed of partition between two brothers based on a compromise of suit, ratified by a decree of the Sudder Court, and putting an end to litigation previously entered into by their father, cannot be set aside without strict proof of haste and precipitancy of the settlement, inequality, restraint or coercion, or fraud.—*Ditto* vol. III. (*Privy Council Rulings.*) p. 51.

11. A person, admitting that brothers have been joint in estate, and alleging a partition at a particular place and time

must take upon himself the burden of proving that partition.—*Ditto*, vol. II. (*P. C. Rulings*) p. 31.

12. Co-partners may, on partition, retain possession severally of such joint lands as they may have taken separate possession of with the consent of all or at least of a majority of the co-partners.—*Ditto*, vol. V. p. 208.

13. The *onus* of proof is on the party seeking to except any property from the general rule of partition according to Hindoo Law.—*Ditto* (*P. C. Rulings*) p. 67.

14 According to Hindoo Law, the declaration of an intention to become divided in estate amounts to a valid separation, though not immediately perfected by an actual partition of the estate by metes and bounds.—*Ditto* vol. VIII. p. 83.

15 An actual partition by metes and bounds is not necessary to render a division of undivided property complete. But when the members of an undivided family agree among themselves, with regard to particular property, that it shall henceforth be the subject of ownership in certain defined shares, then the character of undivided property and joint enjoyment is taken away from the subject matter so agreed to be dealt with; and each member thenceforth has in the estate a definite and certain share which he may claim the right to receive and to enjoy in severalty, although the property itself has not been actually served and divided.—*Ditto* (*P. C. Rulings*,) p. 1.

16 According to the *Mitakshara*, the mother, or the grandmother, is entitled to a share *when* sons, or grandsons, divide the family estate between themselves; but she cannot be recognized as the owner of such share until the division is *actually* made; she has no pre-existing right in the estate except a right of maintenance. Under the Hindoo Law two things at least are necessary to constitute partition: the shares must be defined, and there must be distinct and independent enjoyment.

Whatever is acquired at the charge of the patrimony is subject to partition; but if the common stock is improved, an equa share is ordained. Where a coparcener, with comparatively small detriment to the joint estate, acquires any separate property by his

own labor or capital, the property is nevertheless to be considered joint, although the acquirer gets a double share.—*Weekly Reporter* vol. IX. p. 61.

17 Where certain land in dispute is found to be the plaintiff's share, the defendant holding his separately, no further formal partition is necessary.—*Ditto* p. 115.

18. A family joint in mess is not necessarily joint in estate; nor is a partition by metes and bounds necessary before a division can take place: an agreement amongst the members that the ownership is to be in certain defined shares, takes away the character of joint enjoyment. On the death without issue of one of several uterine brothers undivided in estate, the surviving brothers succeed equally to his share.—*Ditto* p. 87.

19 Partition of a dwelling house may be claimed as of right by a Hindoo.—*Marshall's Calcutta High Court Reports.* vol. I. p. 1.

20. As a general rule, any sharer in a joint property is entitled to claim a separation of his share in course of law, but where the division is obviously detrimental to the interests of the other sharers in the property, the Courts would be justified in withholding a decree.—*Selected Sudder Decisions, N. W. P.* vol. I. p. 279.

21. A deed of partition executed by an elder brother on his own part and on that of his minor brother and which act was recognized by the latter, on attaining his majority, cannot be questioned by the Courts.—*Ditto* p. 358.

22. To constitute a partition of a joint undivided estate, within the Hindoo law, so as to give to each shareholder, a right to dispose of his own share of ancestral property, acquired with joint funds or by joint exertion, different from what he possessed while the family remained undivided, there must be an actual not merely a nominal separation. A mere agreement or express intention to divide is not sufficient to create separate properties.—*Ditto* vol. VII. p. p. 62 and 504.

23. When partition is denied, the fact may be ascertained by reference to separate possession of house, or separate transaction of affairs.—*Select Reports* vol. VII. p. 87.

24. Ancestral property is liable to partition on the demand of any of the coparceners.—*Madras Sudder Adawlut Dec.* vol. I. p. 210.

25. A minor can sue for division only on the ground of malversation or danger to his interest while the property is in the hands of a managing member.—*Madras Sudder Decs. for* 1859, p. 263.

26. To sustain a claim to a share of a deceased brother's property, it being admitted that there was no inheritance from the father, the claimant must show that the property in question was acquired by the joint labors and exertion of the deceased and himself.—*Ditto* vol. I. p. 101.

27. A will showing a wish on the part of the testator that his sons should enjoy his estate jointly, is no bar to a suit for partition of the estate after his death.—*Ditto* p. 495.

28. Land granted for the maintenance of the rank and dignity of a family is exempted from partition, but if the members subsequently divide they may respectively enjoy the annual produce in such proportions as they may be found legally entitled.—*Ditto* for 1851. p. 87.

29. A grandson may, by Hindoo Law, irrespective of all circumstances, maintain a suit against his father for compulsory division of ancestral family property.—*Stokes' M. H. C. Reps.* vol. I. p. 77.

30. While the members of a Hindu family enjoy in common undivided property, money expended in its improvement or repair is considered as spent on behalf of all the members alike and all have the benefit of the outlay when a division takes place.—*Ditto* p. 309.

31. Where one of four brothers sued, as a member of the united family, for his share of the profits of a firm composed of one brother's son and certain Mahomedan parties, it was held that he was entitled to such share on the concurrent authority of the custom of the country and Hindoo law, that all the members of an undivided family share all profits equally. The other parceners however were decreed to retain their shares untouched, as they could not be supposed to have been necessarily informed either of the

laws or customs of another religion so as to make these binding upon them.—*Borodaile's Bombay Sudder Reports*, vol. II. p. 2.

32. The mere execution of a deed of division does not alter the status of an undivided family unless actual possession of the shares has been taken by the shareholders under the terms of the deed.—*Madras Sudder Decs.* for 1853, p. 125.

33. Where a division of family property had taken place in which for 19 years a party had acquiesced, it was presumed that he consented to the share allotted to him, though under the Hindoo law he was entitled to a larger share.—*Ditto* for 1859, p. 84.

34. The possession of certain lands appertaining to a joint estate, in lieu of an annual dividend of the profits of the estate left under the management of one or more sharers, is sufficient to maintain a right of partition in the joint estate when required.—*Select Reports* vol. I. p. 225.

35. A partition *in fact* is as binding as a partition by agreement.—*Fulton's Calcutta Supreme Court Reports*, vol. I. p. 132.

36. The sole manager of the joint stock of a Hindoo family, supposing that joint stock to be augmented by his sole exertions, is not entitled to a double share of the amount of the augmentation for his trouble.—*Ditto* p. 165.

37. The acquisition of a distinct property by a member of a joint family without the aid of the joint funds or joint labor gives a separate right and creates separate estate.—*Ditto* p. 166.

38. The union with the joint fund of that which might otherwise have been held in severalty, gives it the character of a joint and not of a separate property.—*Ditto.*

39. Held, following the recorded opinion of the Hindoo Law Officer, that a father who, after dividing his property among the sons by first marriage, retaining a maintenance for himself, afterwards remarries and acquires fresh property, exceeding his former property in value, is competent to transfer the property thus remaining and acquired, to his second wife, provided that it is done for the benefit of the issue by the second marriage.—*Agra S. C. R.* for 1862 p. 71.

40. One guilty of concealing any portion of the common property with the view of defrauding his co-heirs of their share therein, upon division forfeits his share. (*Mitacshara I. IX.* 4—12; *Judgment of the Madras Sudder Court in Special Appeal No.* 40 *of* 1858.)

41. A party suing for division, and dying while the suit is pending, is held to be still undivided. His widow, consequently, is not entitled to demand his share.—(*Judgment of Ditto in Regular Appeal No.* 86 *of* 1864.)

42. An agreement between two heirs to separate, whether partially carried into execution, or not carried into execution at all, may be enforced by action by the widow of a deceased parcener.—*Grady's Hindoo Law of Inheritance*, p. 318.

43. Under the Hindoo law, as prevalent in Madras, sons or grandsons may compel a division against the will of the father or grandfather of ancestral family property, leaving the question open as to a division of acquired property.—*Ditto* p. 351.

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PRESUMPTION.

1. Some brothers having possessed property jointly, the presumption is that their representatives are entitled only to the shares which belonged to the brothers under whom they respectively claim.—*Weekly Reporter*, vol. II. p. 123.

2. The presumption obtains of a continuance of the joint right to ancestral property of a member of a joint Hindoo family, unless it is shown that he has, either by his own act or by the act of some one competent to bind him, parted with that right.—*Ditto*, p. 288.

3. When one of two brothers (who were once joint) and his heirs have been in exclusive possession and enjoyment of a purchased property for a long time, the presumption is that the purchase was made by that brother, and that the other brother had no right, title, or interest in it.—*Ditto*, vol. III. p. 153.

4. Where brothers are found to be living together as a joint Hindoo family, they must be presumed to be joint in property until the contrary is proved. This presumption would, to a certain extent, be rebutted by a clear admission or clear proof of the non-existence of ancestral property.—*Weekly Reporter* vol. V. p. 145.

5. Where the manager of a joint Hindoo family re-purchases *benamee*, the presumption is that the property so re-purchased is held by him for the benefit of the joint family.—*Ditto*, p. 155.

6. The presumption that a Hindoo family, immigrating into Bengal from the N. W. Provinces, imports its own customs and law as regulating the succession and the ceremonies of Hindoo Law in that family, may be rebutted by showing that, except as regards marriage, all other ceremonies are performed according to the Law of the Bengal School and by Bengal priests.—*Ditto*, vol. VI. p. 295.

7. Where a Hindoo family lives joint in food and estate, the presumption of law is that all the property they are in possession of is joint property, until it is shown by evidence that one member of the family is possessed of separate property.

The purchase of a portion of the property in the name of one member of the family and the existence of receipts in his name respecting it, may be perfectly consistent with the notion of its being joint. The criterion in such cases in India is to consider from what source the purchase money comes.—*Ditto* (*P. C. Rulings*,) p. 43.

8. The presumption of Hindoo Law as to joint property cannot apply in a case where the property is claimed through a son-in-law living in the house of his father-in-law.—*Ditto*, vol. VII. p. 249.

9. So long as no partition is proved, the presumption is that the property is joint. Certain parcels being held in severalty, does not rebut the presumption as regards the rest of the estate.—*Ditto*, p. 451.

10. The common presumption of Hindoo Law in favor of members of a joint family, does not apply to a case in which 11 years after separation, one of the parties sues the others alleging

that certain immoveable property possessed by them on the allegation of exclusive purchase was acquired by joint ancestral income.—*Ditto*, vol. IX. p. 558.

11. The presumption of law is, that the whole of the property of an undivided Hindoo family is in coparcenary. The *onus* lies on a member of such family to prove that it was separately acquired.—*Moore's Indian Appeals* vol. III. p. 229. *See* also *Agra Sudder C. Reports* for 1863, p. 228.

12. In cases in which a Hindoo widow, having a minor son living, sells or mortgages from necessity any portion of the real estate of her infant son which she holds in trust for him; the burden of proof of such necessity, if it be called in question by the minor after reaching his majority, as in all cases in which special pleas are pleaded, lies on the mortgagee or purchaser.—*Calcutta Sudder Reports* for 1856 p. 980.

13. In a Hindoo undivided family, the mere fact that one brother's name was used in documents relating to property, affords no presumtion of his being sole proprietor; especially where he is the eldest brother, or is shown to be the managing member of the family.—*Marshall's Calcutta High Court Reports* vol I. part 1. *See also Weekly Reporter* vol I. p. 38.

14. In a case where a Hindoo family migrate from one territory to another, if they preserve their ancient religious ceremonies, they also preserve the law of succession. The presumption is, until the contrary is proved, that the family so migrating have brought with them, and retain, all their religious ceremonies and customs; especially when the family is shown to have brought with it its own priests, who, and their descendants after them, continue their ministrations down to the period of contest.—*Marshall's Calcutta High Court Reports*, vol. I. p. 2.

15. In conformity to the repeated rulings of Her Majesty's Council and the late Sudder Court, the properties purchased in one brother's name in a joint Hindoo family are joint, and not self-acquired and separate, and the *onus* of rebutting such a presumption falls upon the party making the special plea.—*Ditto*

p. 169. *See* also *Select Agra Court Reports*, vol. II. p. p. 24, 27 and 70.

16. In conformity with the decisions of the late Sudder Court, where properties are admittedly not ancestral, the ordinary presumption of the joint interest does not arise from the fact of the members of the family living in commensality.—*Hay's High Court Reports* for 1862, p. 433.

17. The mere circumstance of messing together is in law no conclusive proof of coparcenary in property.—*Select Reports* vol. I. p. 35.

18. When the presumption of joint property in a joint Hindoo family is rebutted by production of an exclusive and separate title, the party against whom such a title is produced is bound to show that the title is not really exclusive and separate.—*Weekly Reporter* vol. I. p. 107.

19. A reversionary contingent interest subject to the life estate of a Hindoo widow may be assigned. The assignee of such an interest is entitled to restrain the widow from committing waste by taking possession of the estate upon giving security to account for the usufruct during the widow's lifetime.—*Marshall's Calcutta High Court Reports*. vol. I. p. 622.

20. A debt incurred by the head of a Hindoo family residing together is under ordinary circumstances presumed to be a family debt.—*Stokes' M. H. C. R.* vol. I. p. 378.

21. The presumption is that a Hindoo's property is ancestral and not self-acquired.—*Ditto* p. 334.

22. The father and the son under the *Mitakshara* Law are in the position of a joint Hindoo family, and when ancestral estates are admitted to exist, the presumption of law is that all property they are in possession of is joint property, until it is shown by evidence that one member of the famliy is possessed of separate property. The burden of proof, therefore, is on the member alleging self-acquisition.—*Weekly Reporter*, vol. XI. p. 436.

23. In a suit for the division of the property of an undivided Hindoo family, the whole of the property of each individual is presumed to belong to the common stock, and it lies upon the

party who wishes to except any of it from the division, to prove that it comes within one of the exceptions recognized by the Hindoo Law.—*Knapp's Privy Council Reports*, vol. II. p. 60.

24. Absence on the part of a husband for nine years does not furnish a presumption, in the eyes of the Hindoo Law, that he is dead.—*Wyman's R. C. C. Reporter*, vol. IV. p. 252.

25. Mere separation in mess is not sufficient to rebut the presumption of joint ownership which arises when there is a nucleus of joint property, either admitted by the party pleading sole acquisition, or proved against him by his opponents.—*Ditto*, p. 132.

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PROPERTY. *(Ancestral.)*

1. The power of a manager for an infant heir to charge ancestral estate by loan or mortgage, is, by the Hindoo law, a limited and qualified power, which can only be exercised rightly by the manager in a case of need or for the benefit of the estate. But where the charge is one that a prudent owner would make in order to benefit the estate, a *bonafide* lender is not affected by the precedent mismanagement of the estate. The actual pressure on the estate, the danger to be averted, or the benefit to be conferred, in the particular instance, are the criteria to be regarded. If that danger arises from any misconduct to which the lender has been a party, he cannot take advantage of his own wrong to support a charge in his favor against the heir, grounded on a necessity which his own wrong has helped to cause.—*Moore's Indian Appeals* vol. VI. p. 393.

2. According to the *Mitacshara*, sons have in ancestral property a vested interest which is saleable in satisfaction of claims.—*Weekly Reporter* vol. V. p. 54.

3. Under the *Mithila law*, as expounded by the *Vivada Chintamani*, and supplemented where deficient by the *Mitakshara*, a son has ownership in ancestral property even during his father's lifetime; and such ownership accrues on the son's birth, from which

period the father and son are joint owners. The existence of a decree against the father is not sufficient evidence of the necessity for his selling his son's interest in ancestral property.—*Ditto* vol. IX p. 469.

4. Under the *Mitacshara law*, a son is entitled to recover from the purchasers from his father ancestral property, improperly sold by the father, and in the absence of proof of circumstances which would give the purchaser an equitable right to compel a refund from the son, the latter would be entitled to recover without refunding any part of the purchase-money. But if it is proved that the son got the benefit of his share of the purchase-money, the son must refund his share of the property sold. And where the purchase-money has been applied to pay off a valid incumbrance on the estate, the right of the son to recover will be subject to that of the purchaser to stand in the place of the incumbrance. The *onus* in such cases to prove the application of the purchase-money lies on the purchaser.—*Ditto* p. 511.

5. Collectorate Challauns acknowledging the receipt of Government revenue, were held to be no evidence of the necessity for the sale of the ancestral property on account of which the revenue was paid.—*Weekly Reporter* vol. VIII. p. 519.

6. Property purchased by a father in possession of ancestral property as manager for himself and his sons, from the profits of such ancestral property, is itself ancestral property.—*Ditto* vol IX. p. 256.

7. Shares in ancestral property may be sued for, whether they are held jointly or separately.—*Ditto* vol. III. p. 108.

8. In a suit by a son to annul an alienation of ancestral property by his father, the *onus* is not on the son to prove the absence of necessity for the sale, but on the purchaser to prove the existence of the necessity. When the necessity is shown, it is not for the lender to see to the application of his money, nor can his title be vitiated even if the borrower wastes the loan and neglects to appropriate it to the purpose for which it was borrowed.—*Ditto* vol. II. p. 292.

9. Where ancestral property is sold by the father, and the son sued to cancel the sale, and oust the purchaser therefrom, the Court held the son entitled to sue for cancelment of such sale.—*Moonshee Honooman Persaud's High Court Reports N. W. P.* vol. I. p. 86.

10. When a Hindoo dies indebted, his estate does not, in whole or in part sufficient to pay off the debt, vest in the creditor as if by hypothecation; but the entire estate absolutely passes to the heirs with full power to deal with the whole estate before satisfaction of the debts.—*Ditto* p. 72.

11. Where a mokuraree lease, at a nominal rent of a small portion of ancestral property, was granted for long and faithful service to a Dewan of the family by the father, without the concurrence of his infant children, the grant was held to be invalid under the Mitakshara Law.—*Weekly Reporter* vol. XI. p. 343.

12. Under the *Mitakshara* Law, a son is equally entitled with his father, as well to the profits of ancestral property as to the property itself, from the moment of his birth or adoption.—*Ditto* p. 436.

13. A Hindoo father has no power to settle ancestral property by conveyance in his lifetime or by will to take effect after his death, without the consent of all his sons living at the time. Where such a settlement is not assented to by the sons living at the time, and another son is afterwards born no subsequent assent of the former would be binding on the latter.—*Ditto* p. 48.

14. Under the Hindoo law in force in these Provinces, a suit may be brought by the son for the prevention or annulment of an illegal alienation of ancestral property by his father, during the latter's lifetime. Held also that under the existing law and practice, it is not improper, when a suit is brought for the annulment of an illegal transfer, and also for possession of such property, to decree the former, and dismiss the latter portion of the claim, the precedents of the 28th November last, 21st February 1853 and 31st July 1852 and other similar precedents notwithstaning.—*Agra Law Journal* vol. I. p. 34. *See also Select Agra Court Decisions.* vol. I. p.p. 206 and 286.

15. A distribution of ancestral property which has been acquiesced in by both parties, need not be set aside though contrary to the ordinary rules of Hindoo law.—*Selected Decisions N. W. P.* vol. II. p. 69.

16. Under the Hindoo law the sale of the rights and interests of a father in ancestral property in payment of a debt incurred for the benefit of the family extinguishes the contingent interest of his sons in this property and gives to the auction purchaser a right to the possession of the entire property sold.—*Agra S. R.* vol. II. p. 469.

17. Ancestral property is not to be confined to such as the father had derived from his ancestors, but included paternal property or such as had been acquired by the father by whatever title, and was possessed by him at the time of his decease.—*Moore's Indian Appeals* vol. VIII. p. 91.

18. Under the Hindoo law the sale of the rights and interests of a father in ancestral property in payment of a debt incurred for the benefit of the family extinguishes the contingent right of his sons in this property and gives to the auction purchaser a right to the possession of the entire property sold.—*Agra Sudder Reports* vol. II. p. 469.

PROPERTY. *(Self-Acquired.)*

1. Under the Hindoo law acquisitions, whether of real or personal property, by one of two brothers with his own funds and by unaided exertions, are his sole property, and the other brothers cannot claim to share therein, although the brothers may be living together in a state of union.—*Selected Decisions* N. W. P. vol. II. p. 438.

2. Under the Hindoo Law acquisition by the managing partner is for common benefit and the money borrowed for the purpose is payable by each sharer in proportion.—*Select Reports* vol. I. p. 76.

3. One of four Hindoo brothers, while living in family partnership with the rest, obtaining a considerable grant of land, is held to be exclusively entitled to it by Hindoo law; it not being

shown that he obtained it by means of aid from any joint funds of the family,—*Select Reports* vol. I. p. 178.

4. Two Hindoo brothers, living together without any paternal estate, purchase sundry lands and hold them for several years in common tenancy. Claim by the younger against the elder for a moiety of the lands. It appearing that the defendant chiefly contributed the capital of the purchase money, both giving their labor to the improvement of it, one-third of the joint estate was adjudged to the plaintiff.—*Ditto* vol. I. p. 335.

5. Lands purchased by the father in the name of his son, though registered in the name of the latter, being in the possession of the former and *bona fide* his property, the son has no right to dispose of them.—*Select Reports* vol. III. p. 363.

REVERSIONER.

1. The reversionary heirs to an estate of a sonless Hindoo, vacated by the widow's death, to which she succeeded, are his heirs surviving at her decease;—so that of several kinsmen of equal degree who would have jointly succeeded, but for the widow, if any die in the interim between the deaths of the husband and widow, their heirs are excluded.—*Select Reports*, vol. V. p. 282.

2. Suit to set aside alienations made by the grandmother of the plaintiff. The plaintiff's mother, the immediate reversioner, being in possession of a part of the property comprised in the disputed alienations, and not being in a position to institute proceeding,—Held that the plaintiff, as the next reversioner, was entitled to sue to protect his own future rights.—*Weekly Reporter*, vol. II. p. 255.

3. A reversioner cannot, during the lifetime of a Hindoo widow, sue to set aside a sale made by her if 12 years have elapsed since the date of sale, though he may, during her lifetime, sue to have the sale declared void and to prevent waste. Such limitation does not affect the right of suit of the reversioner after the widow's death when he succeeds as heir.—*Ditto*, p. 272.

4. The right of reversioner entitled to succeed on the death of a childless Hindoo widow, if he shall happen to survive her, cannot be sold in execution of a decree of Court.—*Weekly Reporter* vol. VI. p. 34.

5. A reversioner in the position of a son or step grandson may sue in the lifetime of a Hindoo widow in possession, to prevent waste.—*Ditto*, vol. VII. p. 119.

6. A sale by a Hindoo widow is not invalid, but is limited to her life-interest, and the reversioner is only entitled to a declaration, that the sale will not affect his interests beyond the widow's life.—*Ditto*, p. 167.

7. A reversioner may be entitled to a declaration, whether the alienations made by a Hindoo widow are valid and binding on the absolute heir; and if he can prove that wilful default is about to take place, he will be entitled to relief from the Court.—*Ditto* p. 303.

8. The right of a reversionary heir to succession on the death of a widow in possession is a contingent one. It is only on the death of the widow, when his rights as reversioner are converted into a right to immediate possession, that he is required to sue for possession of the estate. The mere fact of the adoption of another party does not prejudice his rights. Those rights are invaded only when the adopted son, on the death of the widow, takes possession of the property as adopted son. Section 11 Act 14 of 1859 has no application to such a case.—*Ditto*, p. 357.

9. On the death of a Hindoo widow, her husband's heirs are entitled to all his immoveable property, except so much as she may have disposed of under circumstances making her alienations binding.—*Ditto*, vol. VII. p. 519.

10. The mere fact of alienations by a Hindoo widow, not binding on reversioner after her death, does not entitle him to a declaratory decree. Waste on the part of the widow must be proved to entitle him to such a decree.—*Weekly Reporter*, vol. IX. p. 460.

11. When a childless Hindoo widow is the heiress and legal representative of her husband, the reversionary heirs are bound

by decrees relating to her husband's estate, which are obtained against her without fraud or collusion; and they are also bound by limitation, by which she, without fraud or collusion, is bound. When alienations of her husband's estate are improperly made by the widow, they are good as against her for life; and the reversionary heir's cause of action does not accrue until her death. But when property belonging to the husband's estates is held adversely to the widow, and never reaches her hands, the cause of action accrues to her, and a suit, whether by her or by the reversionary heir, must be brought within the usual period counting from the commencement of the adverse possession.—*Weekly Reportr*, vol. IX. p. 506.

12. A pottah granted by a Hindoo widow after the assignee of the reversionary heir has been appointed manager of her estate, is good and valid against her, and therefore against him.—*Ditto*, p. 598.

13. The sale by a Hindoo widow of a larger portion of her husband's estate than is necessary to raise an amount authorized by the law, is not absolutely void as against the reversioners, who can only set it aside by paying the amount she is entitled to raise with interest.—*Ditto*, p. 107.

14. Plaintiff claims as heir of her father; she does not claim as heir of her sister, and although she and her sisters took the estate as heirs of the father, still her sisters had merely the right which a female takes by inheritance, *namely*, a right which continues only during her life. The sisters could not transmit the estate to their heirs, but the estate upon their death passed to the plaintiff as the heir of her father. Therefore the plaintiff is not bound by the decrees which were obtained against the sisters during their lives.—*Wyman's R. C. C. Reporter*, vol. III. p. 44.

15. A reversioner, if he can show that a wilful default of revenue is about to be made by lifeholder, in order to bring the estate to sale, is entitled to such relief from the Court as will prevent the apprehended occurrence of a sale for arrears. A reversioner has a right to sue to prevent waste, and such a sale would be wilful, and fraudulent real waste of the property.—*Ditto*, p. 206.

STRIDHAN.

1. The word "inherited" used in the *Mitacshara* in regard to a woman's *Stridhan* refers to personal property alone.—*Weekly Reporter*, vol. III. p. 105.

2. According to the *Mitacshara* and *Vivada Chintamonee*, *all* property inherited by a woman does not become *Stridhan*; immoveable property, inherited from her son, descends on her death to his heirs.—*Ditto*, p. 140.

3. An adopted son has all the rights and privileges of a son born, and is also entitled to succeed to the mother's *Stridhan* in the absence of daughters.—*Ditto*, p. 49.

4. A gift of money by a son to his mother for the purposes of maintenance of the mother, comes within the meaning of *Stridhan* in the *Hindoo Law*.—*Ditto*, vol. V. p. 53.

5. According to the law of the Benares School, no part of her husband's estate, whether moveable or immoveable, to which a Hindoo widow succeeds by inheritance, forms part of her *Stridhan* or peculiar property; and the text of *Katyayana*, cited, must be taken to determine, *first*, that her power of disposition over both is limited to certain purposes: and *secondly* that on her death both pass to the next heir of her husband.—*Ditto*, (*P. C. Rulings*) p. 23.

6. Where with the acquiescence of kin, widows took by gift from their husband an interest, which otherwise would only have been for life or have passed to the kin, the Pandit of the S. D. A., treats the same as *Stridhan*.—*Select Reports*, vol. V. p.

7. Under the Hindoo Law a gift of property to a woman by her relation is her *Saudayica* or gift from affectionate kindred and is at her entire disposal.—*Ditto*, vol. VI. p. 77.

8. Every thing acquired by a married female, by any of the recognized modes of acquisition, descends in the same manner to her daughters' daughters, &c. There is only one point on which this interpretation of the *Mitacshara* has been restricted by the several judgments of the High Court of Bombay. It has been ruled that the property acquired by a woman, through inheritance from her

husband, is not *Stridhan* according to the *Mitaschara*. In the judgment of the High Court, Appellate side, in the case of Jamiyatras and Uttamram *versus* Bai Jama.—(*Bombay High Court Reports*, vol. II. page 10,) the following passage occurs :—

9. "The notion that according to the *Mitacshara* such (immoveable) property (inherited from a sonless husband) forms part of the widow's *Stridhan*, and as such goes on her death to her heirs, not to her husband, was founded on a passage of Sir T. Strange (p. 248, 4th Clause,) which was itself based on a mistaken reference to the *Mitacshara*. The Mit. Chapter II. Sec. II. Cl. 2, undoubtedly classes property acquired by inheritance under the widow's *Stridhan*; but (as pointed out in Devacooverbai's case) Clause 4 of the same Chapter and Section conclusively shows that the words acquired by inheritance, as used in Clause 2, relate only to what has been received by the widow from her brother, her mother, or her father, *i. e.* from her only family."—*West and Buhler's Digest of Hindoo Law* (Introduction) p. LXIV.

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SUCCESSION.

1. Property real and personal, having been given by a Hindoo to his concubine, and descended at her death to two surviving daughters; on the demise of one daughter, the sister takes her share: the lawful wife of the father has no claim.—*Select Reports*. vol. I. p. 8.

2. According to the Hindoo law as current in Agra, a childless widow, after her husband's death, will succeed to the moiety of a village granted to him and to his brother, by the Rajah of the country, on a rent-free tenure; partition being presumed. She has only a life-interest therein, and cannot alienate it. After her death it will go to her husband's heirs.—*Ditto* vol. II. p. 320.

3. According to the Hindoo law as current in the West, the daughter of a son who died before his father, the original acquirer of the property at issue, has no right during the lifetime of the widow of a grandson in the male line of such original acquirer.—*Ditto* vol. VII. p. 59.

4. Where a suit was brought for a declaration that the defendant had forfeited her right to the estate of her deceased husband by reason of a proved act of unchastity committed after the estate had vested in her, Peacock C. J. held, on appeal, that unchastity, even if accompanied by degradation and expulsion from caste, would work a forfeiture. Taking the same view of Act XXI. of 1850 as Sir L. Peel had done in Sammonee Dossee, he considered it to abolish Hindoo law, so far as it inflicted forfeiture of property or impaired or affected rights of inheritance by reason, of degradation from caste. Sreemutty Mutunginy Dabea *versus* Joycally Dabea.—*The Englishman*, 12th March 1869.

5. The appellant (a Hindoo woman who had embraced the Mohamedan faith) sued her husband to recover property which devolved on her at the death of her parents. A *Punchayit* decided that she (previous to her apostacy) had forfeited all claim to the property in question by her profligate conduct. Their award was upheld and the claim dismissed.—*Select Reports* vol. II. p. 257.

6. By the law current in the Madras Presidency, on the death of an undivided Hindoo without male issue, his self-acquired property, unless it has been previously disposed of, devolves on his surviving coparceners and his widow is only entitled to maintenance.—*Stokes' Madras High Court Reports*, vol. I. p. 412.

7. According to the *Mitacshara* a step-brother inherits after the widows if he survives them, otherwise an uterine brother's son succeeds.—*Weekly Reporter* vol. II. p. 123.

8. Married daughters are not excluded from succession by either *Dyabhaga* or *Mitakshara*.—*Ditto* p. 176.

9. According to the *Mitacshara* Law, a widow cannot succeed when the property is joint and undivided even if her husband's brothers withdraw their claim to his share. She is entitled to maintenance only.—*Ditto* vol. V. p. 176.

10. Where the *Mitacshara* Law prevails, the widow of a member of a joint Hindoo family cannot succeed to her husband in preference to his brother, and is no heir to her brother-in-law or to his widow.—*Ditto* vol. VII. p. 292.

11. On the death of a Hindoo (who had been separate in estate from his brothers), and during the life-time of his widow, his brother's sons having claimed as his heirs, and obtained mutation of their names on the Collector's rent-roll. Held that as under the *Mitacshara* (under which the case came) the widow would succeed, the act of the nephews was hostile to her, and their possession for more than 12 years was adverse possession barring her claim. Held, that if a widow without fraud or collusion would be barred, the reversioners claiming to succeed on her death would also be barred.—*Weekly Reporter* vol. XI. p. 9.

12. The general rule of Hindoo Law, which gives a preference as heir to the whole blood over the half blood, extends also to a raj, in the absence of evidence showing that the family custom by which the succession to the rajdom is governed supersedes the general law. Where a custom is proved to exist, it supersedes the general law, but the general law still regulates all beyond the custom.—*Ditto* vol. XII. (*Privy Council Rulings*) p. 21.

13. The sister of a Hindoo whose property has devolved upon his widow, is not in a position to contest the actions of the widow with regard to the property she has inherited, she not being included among the Bundhoos or Cognates.—*Agra Law Journal* vol. I. p. 15.

14. According to the *Mitacshara* law widow of the deceased takes the precedence of the brother in a divided Hindoo family.—*Hay's High Court Reports* for 1862, No. 2, p 119.

15. Property accruing to an individual by his own labor devolves under the Hindoo Law where there is no son nor adopted son upon the widow.—*S. D. A. Decisions N. W. P.* vol. I. p. 28.

16. The right of inheritance to the estate of a deceased *guroo* much less of a division of property left by him, whether hereditary or self-acquired, amongst his *chelas*, does not exist, but the right of succession depends upon the nomination made by the deceased *guroo*, confirmed by the mohunts of the sect on the occasion of their assembling for the performance of their duty.—*Ditto*, p. 309.

17. The right of succession to the property of a *gossain* being

mohunt of a temple, is regulated by the rules applicable to the *Sunnyasees*. The marriage of such a *mohunt* is not valid, and his widow has no right to inherit.—*S. Decns. N. W. P.* vol. II. p. 49.

18. Though a female may be the disciple of a *gossain*, she cannot, under the Hindoo Law, succeed to his property, the succession being confined to male pupils. Lands bestowed by a zemindar in perpetuity upon a *gossain*, escheat upon the death of the donee without legal heirs together with any buildings or graves standing thereon, to the ruling power and does not revert to the donor.—*Ditto*, p. 235.

19. The illegitimate children of a deceased Brahmin, *Cshetrya* or *Vyasa* have no claim in his estate beyond maintenance.—*Ditto* p. 491.

20. An illegitimate son of a *Cshetrya*, one of the three regenerate castes, by a Sudra woman, cannot by the Hindoo law of inheritance, succeed to the inheritance of his putative father; but is entitled to maintenance out of his deceased father's estate. In the case of the Sudra class, illegitimate children are qualified to inherit.—*Moore's Indian Appeals* vol. VII. p. 18. (*See Select Reports*, vol. III. p. 132.)

21. One adopted by the *Critrima* form, which is in use in Behar, Tirhoot, &c., takes inheritance both in his own family and that of his adoptive father.—*Select Reports*, vol. I. p. 15. *Note.*

22. According to the law current in Behar, a widow is not entitled to her husband's share of joint property, but to maintenance only.—*Ditto*, vol. I. p. 16. *Note.*

23. The mere act of performing the funeral rites of a deceased Hindoo gives no title to succession, without proof of right.—*Ditto* vol. I. p. 20.

24. The proprietor of a *talook* in Benares died, leaving three sons. The first son died leaving a son, the plaintiff: afterwards the second son died. The grandson sued defendant, the third son, for a partition, and his share. There were surviving, besides the parties, two widows of the second son. Adjudged that the plaintiff and defendant take half and half by inheritance; and that the widows receive maintenance.—*Ditto*, vol. I. p. 59.

25. Sons by different mothers share equally. A distribution is made among them *per capita* and not *per stirpes*, not according to the mothers, but with reference to the number of sons.—*Select Reports* vol. II. p. 116.

26. The brother's daughter's son, and the grandson of a daughter's son, cannot inherit, even though there should be no other heirs.—*Ditto*, vol. III. p. 37.

27. According to the law current in Benares, if the family be not joint, but divided, the property of the deceased would devolve on his daughter; if joint and undivided, on his brother's son, who would share alike. By the law current in Bengal it would devolve on the daughter, whether the family were united or separated.—*Ditto*, vol. III. p. 236.

28. By the law current in the West, a widow does not inherit the property of her husband when held in co-parcenary, but only when held in severalty. In the former case, she is only entitled to maintenance out of it.—*Ditto* vol. III. p. 330.

29. The reversionary heirs to the estate of a sonless Hindoo (vacated by the widow's death) to which she succeeded, are the heirs who survived at her decease; so that of the several kinsmen of equal degree who would have jointly succeeded, but for the widow, if any die *in the interim* between the deaths of the husband and widow, their heirs are excluded.—*Ditto* vol. V. p. 282.

30. An uncle and nephews were in a state of general severalty, but held some ancestral property in common. Such tenure by the Hindoo law of the Western Schools, will not establish the right of the nephews to take their uncle's estate before his wife and daughter's son.—*Ditto* vol. V. p. 349.

31. A Hindoo woman of Behar, who had inherited the entire estate of her father, died, leaving a sister's son's sons, and a daughter. Held that the former succeed, and that *per capita* and not *per stirpes*.—*Ditto* vol. VI. p. 301.

32. In the event of joint succession by a Hindoo family to ancestral property, joint tenancy will be presumed until the contrary is proved.—*Ditto* vol. VII. p. 26.

33. A party having become a *byragee* (but mixed in worldly

affairs) was held not to have become an ascetic to such an extent as to exclude his adopted son from succeeding to his property.—*Calcutta Sudder Decns.* for 1852, p. 1089.

34. Under the Hindoo law though an insane cannot succeed to the inheritance of property, a person who has once succeeded to property is not to be dispossessed of it, if he subsequently becomes insane.—*Ditto* for 1854, p. 244.

35. Suit by a Hindoo widow to recover from a second widow her half share of the deceased husband's estate. Held that incontinence of plaintiff is established, and the right of succession which by the Hindoo Law she has thereby forfeited is not affected by the provisions of Act XXI. of 1850, which refer to the renunciation of the Hindoo religion and not to a case of incontinence.—*Ditto*, for 1858, p. 1891.

36. By the *Mitacshara* law, the *stridhan* property of a woman goes on her death to her husband and failing him to his nearest kinsman allied by funeral oblations.—*Ditto*, for 1860, p. 641.

37. In cases of inheritance, in order to legalise any deviation from the strict letter of the law, it is necessary that the usage authorising such deviation should have been prevalent during a long succession of ancestors in the family, when it becomes known by the name of *Kulachar*, and has the prescriptive force of law.—*Select Reports* vol. II. p. 116.

38. On failure of undivided members, those who are divided may inherit.—*Madras Sudder Dec.* for 1859, p. 35.

39. If one who has been adopted die without issue, the property of the adopter goes to his natural heirs.—*Ditto* p. 265.

40. The person introduced into a family as a son obtained by gift being cut off from alliance, under the Hindoo law, with his natural kindred, they forfeit all claims to succeed to his estate, which on his demise without issue reverts to the adoptive family. —*Ditto* for 1855, p. 125.

41. Except in the case of regalities and certain ancient zemindaries which vest in the eldest son, to render an unequal distribution of ancestral property amongst his sons by a father valid, the distribution must be effected during the lifetime of the father

with the consent of the sons and separate and independent possession of their shares must be at once assumed by the several sharers.—*Madras S. D.* for 1849, p. 127.

42. When two sons of one common ancestor succeed to ancestral property and one of those sons die without male issue, the surviving son and not the deceased's widow or daughter is entitled to the succession.—*Madras Sudder Adawlut Decs.* vol. I. p. 485.

43. The sons of a man who divided his property during his lifetime into three shares, one for each of his sons, and one for himself, his wife and daughter, have no claim to the reserved share upon his death, the widow and daughter surviving him.—*Ditto* vol. II. p. 16.

44. The illegitimate sons of a husband succeed to the property of their father to the total exclusion of the legitimate sons of his brother who also was a bastard.—*Ditto* for 1849, p. 50.

45. The illegitimate son of a Sudra, who died leaving neither son, daughter, nor daughter's son, is entitled to take the heritage, but not if he belonged to one of the superior classes.—*Ditto* vol. I. p. 546.

46. The share of a member of an undivided family dying without issue vests in his brother and not in his widow.—*Ditto* for 1858 p. 125.

47. A Hindoo widow, whether childless or not, stands next in the order of succession on the failure of male issue. Where A. had two wives B. and C., and B. predeceased A. leaving three daughters, and C. survived A. and was childless. Held that C. succeeds to A.'s property, in preference to the three daughters.—*Stokes' M. H. C. Rep.* vol. I. p. 223.

48. Under the Hindoo law, prostitute daughters living with their prostitute mother, succeed to the mother's property in preference to a married daughter living with her husband.—*Calcutta Sudder Decs.* for 1846, p. 298.

49. A widow is not competent to claim a share of undivided ancestral property, nor can she be considered as a coparcener of the estate. If ancestral property of an undivided family has

descended to an adopted son, he becomes the owner of it, and on death his widow succeeds to it to the exclusion of the widow of his adoptive father.—*Madras S. A. Dec.* vol. I. p. 210.

50. A sister as among the heirs taking under the Hindoo law is not recognized.—*Ditto* for 1859, p. 247.

51. The moment a party becomes afflicted with leprosy, he loses his natural right of inheritance and the disqualification descends to his heirs thus afflicted.—*Ditto* for 1857, p. 210.

52. It is only when leprosy assumes a virulent and aggravated type that it is regarded by Hindoo law as a disqualification entailing forfeiture of inheritance. The rights of the party are not affected when attacked by it in a mild and simple form.—*M. S. A. Dec.* for 1860, p. 239.

53. The mental incapacity which disqualifies a Hindoo from inheriting on the ground of idotcy is not necessarily utter mental darkness. A person of unsound mind, who has been so from birth, is in point of law an idiot. The reason for disqualifying a Hindoo idiot is his unfitness for the ordinary intercourse of life.—*Stokes' Madras H. C. Rep.* vol. I. p. 214.

54. According to Hindoo law, the widow of a party who had until his demise lived conjointly with a first cousin, and which widow subsequently to her husband's demise had continued to live on with her husband's said first cousin until he demised, and enjoy a community of goods with him, as in her husband's lifetime, was entitled to succeed to the property acquired by the said first cousin of her husband, in supersession of a lineal descendant of the common ancestor, but belonging to a branch of the family long dissevered from that to which the first cousins belong.—*Agra Sudder Decs.* for 1862. p. 306.

55. Under the Hindoo law, in conformity with the opinion of the Court's Pundit, where one of two brothers took under a will, a joint and equal share in real property bequeathed by their father, a third brother is entitled to succeed by inheritance to half of the moiety possessed by one of the brothers predeceasing him, his holding in severalty notwithstanding.—*Ditto* for 1863, p. 533.

56. Where the plaintiff sued as daughter to succeed to the

property of her deceased father, to the exclusion of the defendant, the childless widow of a son who predeceased his father, and who was in possession of the property, held that, in conformity with the Hindoo law of succession, as laid down by former precedents, the daughter was sole heir to her father, as to hereditary property, but was not entitled to property acquired by the son who had female issue, and to a certain mouzah in regard to which the widow had been recorded as proprietor during her father-in-law's life.—*Agra S. Decns.* for 1864, p. 171.

57. The devolution of *Stridhan* from a childless widow is regulated under the *Mitakshra* by the nature of her marriage, and if it was according to the four approved forms, the *Stridhan* goes to the collateral heirs of her husband.—*Weekly Reporter* vol. X. *(P. C. Rulings)* p. 3.

58. According to Strange, El. H. L., adultery divests the right of a widow to inherit after it has vested.

On the other hand, the Shastri's opinion seems to be supported by the Viramitradaya, where it is said, *f* 221 p. 2. *l.* 8.

"And these persons (those disabled to inherit) receive no share only in case the fault was committed or contracted before the division of the estate. But after the division has been made, a resumption of the divided property does not take place, because there is no authority, (enjoining such a proceeding). Colebrooke, quoted by Strange (App. to Chapter VII. p. 272.) lays down the principle that after the estate has once vested it can be forfeited only by loss of caste. A woman would in general be expelled from caste for proved incontinence, and hence Sir T. Strange (p. 164.) has inferred that a widow holds "dumcasta fuerit" only; but the authorities quoted by Colebrooke do not support the view that any forfeiture of property necessarily attends expulsion from caste. It would follow as a necessary consequence in the case of a member of an undivided family, as all the property would be appropriated by those members who remained in communion with the caste; but this would not be so in the case of a separated person.—*West and Buhler's Digest of Hindoo Law*, p. 300.

59. By the law of inheritance prevailing in *Madras* and

throughout the southern parts of *India*, separate acquired estate descends to a widow, in default of male issue of the deceased husband.—*Moore's Indian Appeals*, vol. IX. p. 539.

60. Held, in accordance with the decision of the Privy Council in Shiba Gunga case (IX. *Moore* p. 609), that a Hindoo, subject to *Mitakshara*, may die possessed of a share in joint family property, and also of separately acquired property, and that the two will not necessarily devolve on the same heir, but that they may either descend to different persons, or if descending to the same persons, may descend in a different way and with different consequences. In that case no presumption exists in favor of the cognate heirs in regard to the self-acquired property. It may be generally laid down that any Hindoo within those provinces whether governed by the Bengal rule of succession *or otherwise*, possesses a power to bequeath an estate by will, co-extensive with his power over the estate in his life time.—*Wyman's R. C. C. Reporter* vol. II. p. 141.

61. Under the *Mitakshra*, a brother's grandson, although not therein enumerated as an heir, may, on default of all heirs, succeed to his grand uncle's estate. The word *sons* in the *Mitakshara*, as a general rule, includes all descendants in the male line who can offer oblations to the deceased.—*Ditto* p. 177.

62. Held, that under the law prevailing in these provinces, the grandsons of a maternal uncle are not considered among the heirs, entitled to succeed to a deceased nephew's property.—*Agra Law Journal*, 1st November, 1865.

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WIDOWS.

1. The right of a Hindoo widow is not necessarily forfeited by her omitting to apply for separate possession of her husband's undivided share for more than 12 years after his death.—*Select Reports* vol. III. p. 30.

2. A Hindoo widow, the mother of two minor children, conditionally sold her husband's estate for the purpose of paying off his debts; held that, under the circumstances, the sale was illegal

in the absence of proof of the necessity for the continuation.—*Select Reports* vol. VI. p. 244.

3. A Hindoo female in possession of property derived from her husband, in which she had a life interest, contracted debts entirely personal, and for purposes of her own. Held that her husband's heirs, on whom the estate devolved at her death, are not responsible for her debts, which can be recovered only from her separate property.—*Ditto* vol. VII. p. 114.

4. A Hindoo widow does not forfeit her right of succession by removing from the family dwelling house of her deceased husband.—*Ditto* p. 270.

5. A Hindoo widow's right to maintenance out of lands which belonged to her husband and have devolved on her son, is a personal right which cannot be transferred.—*Weekly Reporter* vol. V. p. 111.

6. A childless Hindoo widow and nearest heir of deceased husband has, under the *Miktakshara* law, an absolute right over all the moveable property left by him.—*Ditto* p. 141.

7. A purchaser from a Hindoo widow, who is still living, is entitled to possession, whether there was necessity for the sale or not.—*Ditto* vol. VI. p. 36.

8. A Hindoo widow who leaves her husband's family for no improper purpose, does not thereby forfeit her right to maintenance.—*Ditto* p. 37.

9. A decree against a widow for a loan to pay Government revenue, is binding on the reversioner.—*Ditto* p. 52.

10. The sale of the rights and interests of a Hindoo widow in the property left by her husband, conveys an interest in the estate only during the widow's lifetime.—*Ditto* p. 303.

11. Under the *Mitakshara* law, a childless Hindoo widow takes only a limited interest in her husband's estate.—*Ditto* vol. IX. p. 490.

12. A widow has a life interest only in her husband's landed estate, and therefore any alienation of it by her is invalid and void.—*Madras Sudder Adawlut Decrees in Appeal Suits* vol. I. p. 453.

13. A widow cannot during her life constitute by deed any person other than the legal heir successor.—*M. S. A. Decrees &c.*, vol. I. p. 455.

14. A widow cannot alienate immoveable property, but with the consent of her heirs.—*Ditto Decs.* for 1856, p. 14.

15. A widow, although entitled to unreserved possession of her deceased husband's moveable property and life interest in his hereditary landed property, cannot alienate the latter either by gift or sale except with the consent of the heirs or from want of means to perform her husband's funeral ceremonies.—*Ditto* for 1849, p. 115.

16. A widow is competent to sell her deceased husband's landed property when such alienation is necessary to meet her husband's funeral charges and debts and her own maintenance.—*Ditto* for 1860, p. 15.

17. A widow in a divided family has no power to alienate the immoveable property inherited by her from her husband, except a small portion thereof for religious purposes alone, but she has absolute authority over the personal or moveable property to consume or dispose of it at her pleasure.—*Ditto* for 1850, p. 74.

18. A lease granted by a childless Hindoo widow is valid and stands good for the life of the widow.—*Marshall's Calcutta High Court Reports* vol. I., part 2.

19. A Hindoo widow, entitled to a life estate only, granted a *putnee* of the lands. Held, *first* that this did not work a forfeiture entitling the reversioners to enter. *Secondly* (Steer J. dissenting) that the reversioners were not entitled to have the *putnee* set aside. *Thirdly*, that the *putneedar* being a party to the suit was entitled to appeal against that part of the decree which declared that the act of the widow has caused a forfeiture of her estate, as well as against the part of it which set aside his *putnee*. —*Ditto* vol. I. p. 1.

20. Sale, by a Hindoo widow, of a property in which she had merely a life interest annulled, no necessity for such a sale having been shown. Before a decree for immediate possession can be given in such cases to the plaintiffs, it must be clearly proved that the property has deteriorated, owing to the sale, or is wasted by

the purchaser.—*Hay's High Court Reports* for 1862, No. 2 p. 107.

21. An *istifa* given by a Hindoo widow having infant son cannot operate to destroy the title of the infants.—*Ditto*.

22. Ancestral property held separately by the husband and so descending from him to his childless widow, is under the Hindoo law alienable by the widow for worthy, not for frivolous or immoral purposes.—*Agra S. C. R.* vol. I. p. 119. (*See* also vol. III. p. 228, of *Select Reports*.)

23. The term *musleen bad musleen* in a deed does not prevent a widow from inheriting the property covered by it.—*Agra S. C. R.* vol. I. p. 64. (*See also Calcutta Sudder Reports* for 1850 p. 245.)

24. A Hindoo widow is incompetent to alienate the real property derived from her husband.—*Ditto* p. 52.

25. A Hindoo widow does not forfeit her right of succession by removing from the family dwelling house of her deceased husband.—*Select Reports* vol. VII. p. 27.

26. A widow cannot inherit her deceased husband's share in joint undivided property.—*Ditto* vol. II. p. 456.

27. According to the Hindoo law as current in Agra a childless Hindoo widow after her husband's death will succeed to the moiety of a village granted to him and his brother by the ruler of the country on a rent free tenure, partition being presumed, after her death it will go to her husband's heirs.—*Ditto* vol. II. p. 320.

28. The husband's property was declared not liable for his widow's debts.—*Calcutta Sudder Decisions* for 1856 p. 366.

29. A widow holding a power of adoption, is not thereby divested of her life interest in her husband's estate.—*Ditto* for 1850, p. 422.

30. Under Hindoo Law a childless widow, although she has a right to maintenance and to live with her brother-in-law in the family house, has no right to a defined share in the house, even when her brother-in-law owns and occupies the house, still less can she set up a claim, to continued residence when the proprietary right of the owners of the house have passed from

their hands in execution of a decree of Court.—*Agra Sudder Reports* for 1863, p. 638.

31. The right of a widow who had not succeeded by inheritance to the property in suit, but had acquired it by donation during the lifetime of her husband, and had since continued in uninterrupted possession thereof, the property, moreover, having been self-acquired by the husband, who was therefore competent to dispose of it as to him might seem fit, cannot be questioned on the ground that the widow had no right to a share of the property, under the Hindoo law of inheritance.—*Ditto* for 1859, p. 63.

32. A widow of a Hindoo coparcener in a joint undivided estate is incompetent to alienate by sale to a third party the share of her deceased husband, even on the plea of the want of funds to meet family expenses.—*Ditto* for 1860, p. 785.

33. In a case in which two brothers Hindoos owned a joint undivided estate, and one A. died, leaving a childless widow, while the second B. survived for 40 years, and then died leaving similarly a childless widow; after which the widow of A. obtained a decree in her favor, on a suit brought by her claiming half of the whole joint undivided property; held in special appeal that under Hindoo Law, the plaintiff widow's right became limited upon the death of her husband to maintenance only, and no right to share in the property as heir of her deceased husband could revive upon the death of her brother-in-law B. unless it could be proved, which it had not been, that B. had voluntarily conceded to her such right.—*Ditto* for 1860, p. 729.

34. Held after consulting the Hindoo Law Officer that when the owner of a joint ancestral property died, leaving a brother; a minor adopted son who was his brother's son; and a widow: and when on the adopted son's death the widow obtained possession of the property with the consent of the husband's brother, the widow possesses under Hindoo Law no right to alienate the property during the life of her husband's brother. The decision of the Lower Court maintained in this

respect, but modified in regard to that part of the decree which went to interfere with the widow's present possession.—*Agra Sudder Reports* for 1860, p. 361.

35. The decision of the Lower Court ruling that in a joint undivided personalty the widow of a deceased joint sharer (the parties being Hindoos) being childless, was not entitled to a share, affirmed. The decision of the Lower Court whereby bad debts had been included in the divisible assets, and other items had been improperly admitted, modified. A maintenance also assigned to the widow whose right was bare, was denied.—*Ditto* p. 36.

36. A childless widow in an undivided Hindoo family is not entitled, as of right, to possession of her deceased husband's estate, although she may hold jointly with the other co-sharers if she cannot realize her maintenance otherwise.—*Ditto* p. 10.

37. Decision of lower Court reversed as opposed to Hindoo law, and the decretal order being at variance with the claim advanced. A merely ministerial order for record of names does not constitute a judicial decision by a settlement officer. Lapse of time runs against, and not in favor, of a party out of possession. A Hindoo widow is incompetent to alienate joint ancestral property, and a claim grounded on such an alleged transfer is invalid. A decision declaring a party entitled to possession of property which she pleaded to have transferred, is null.—*Ditto* p. 12.

38. Suit to declare an alienation by a widow of her husband's share invalid, on the ground of common descent of plaintiff and the late husband of the widow, was dismissed on special appeal, the Judge having found that no such common descent exists.—*Ditto* p. 661.

39. Where defendant resisted plaintiff's claim to a share in a joint undivided estate in special appeal on the ground of the existence of a general clause in the administration paper allowing shareholders to alienate, held that the deceased sharer being a childless Hindoo widow incapable to alienate the share of her deceased husband under Hindoo Law, the general provision in the administration paper was insufficient to set aside the Law.—*Ditto* p. 658.

40. Held contrary to an opinion delivered by the Hindoo Law Officer of the Court, that where the inheritance of a deceased person was contested between his widow, on the one side, and the widow of a son who had died during his father's lifetime, on the other; the latter has, under Hindoo law, no right of share in the inheritance but a right of suitable maintenance only and right to any personal property of which her husband had possession during his life.—*Agra S. Reports* for 1862, p. 240.

41. A Hindoo widow by her unchastity and desertion of her husband's family, forfeits all claim to maintenance and to participate in the proceeds of her late husband's share of his patrimony and the next of kin to her husband are competent to exclude her from the enjoyment of the family property.—*Ditto* p. 506.

42. Held in conformity with former precedents that a Hindoo widow is incompetent to alienate permanently real property inherited by her in succession to her husband, except for pious and necessary purposes.—*Ditto* for 1863 p. 476. *See* also *ditto* for 1864, p. 185.

43. A transfer of her husband's ancestral estate by a Hindoo widow set aside. Held that the purchaser had not been recognized and accepted as such by the parties who sued for his ejection having signed an agreement together with him and others, on the subject of a supplementary partition of the waste and barren lands of the village, their elder brother having protested against his recognition when the original partition of the village was made.—*Ditto*, for 1863, p. 522.

44. In a suit in which the question raised was the validity of deed by a Hindoo widow, the sons being alive; held, that the plea of necessity for the sale of the house to defray the funeral expenses of the deceased husband, raised by the purchaser of the house, the fact of the necessity being found by the Lower Courts as a valid one, validity of sale deed by widow upheld accordingly.—*Ditto*. for 1864, p. 217.

45. A conveyance by a Hindoo widow, without proof of necessity to justify an alienation of ancestral property, can only operate as a conveyance of her life interest. The purchase of a

kismut sold for government revenue does not destroy the pre-existing rights of the holders of the tenure. Reversioners are as much entitled to have a sale of their share in such a kismut set aside as a sale of any other property by the widow without necessity.—*Weekly Reporter* vol. I. p. 47.

46. A Hindoo widow cannot be compelled without proof of waste to give security for the value received by her of lands belonging to her husband's estate taken by a Railway Company.—*Ditto* vol. I. p. 125.

47. According to the *Mitakshara*, a Hindoo widow may dispose of moveable property inherited from her husband, a power she does not possess under the law of Bengal; but by both laws she is restricted from alienating any immoveable property, whether ancestral or acquired, so inherited. On her death the immoveable and the undisposd of moveable property pass to the next heirs of her husband.—*Ditto* vol. X. (*Privy Council Rulings*) p. 3.

48. A Hindoo widow may convey, the reversioners having previously conveyed to her in fee. A reversioner's heirs claim through their ancestor and are bound by his acts.—*Fulton's Supreme Court Reports* vol. I. p. 73.

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