ESSAY

ON

THE RIGHTS OF HINDOOS

OVER

Ancestral Property,

ACCORDING TO

THE LAW OF BENGAL.

BY

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PRELIMINARY NOTE.

THE translation into English, by the celebrated Mr. H. T. Colebrooke, of the DAYUBHAGU, a work on Succession, and of an extract from the MITAKSHURA, comprising so much of the latter as relates to Inheritance, has furnished the principal basis of the arguments used in the following pages. I have also referred occasionally to the valuable remarks of that eminently learned scholar, in his preface and notes added to the original work. In quoting the Institutes of Munoo, I have had recourse to the translation of this code of Law by the most venerable Sir WILLIAM JONES, that no doubt may be entertained as to the exactness of the interpretation. Only one text of Vrihusputi, the Legislator, and one passage quoted in another part of the *Mitakshura*, which has not been translated by

Mr. Colebrooke, have been unavoidably rendered by myself. I have, however, taken the precaution to cite the original Sungskrit, that the reader may satisfy himself of the accuracy of my translation.

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Ancestrel Property.

INDIA, like other large empires, is divided into several extensive provinces, principally inhabited by Hindoos and Mussulmans. The latter admit but a small degree of variety in their domestic and religious usages; while the Hindoos of each province, particularly those of Bengal, are distinguished by peculiarities of dialect, habits, dress, and forms of worship; and notwithstanding they unanimously consider their ancient legislators as inspired writers, collectively revealing human duties, nevertheless there exist manifest discrepancies among them in the received precepts of civil law.

2. When we examine the language spoken in Bengal, we find it widely different from that of any part of the western provinces, (though both derived from the same origin;) so that the inhabitants of the upper country require long residence to understand the dialect of Bengal; and although numbers of the natives

of the upper provinces, residing in Bengal, in various occupations, have seemingly familiarized themselves to the Bengalese, yet the former are imperfectly understood, and distantly associated with by the latter. The language of Tellingana and other provinces of the Dukhun not being of Sungskrit origin, is still more strikingly different from the language of Bengal and the dialects of the upper provinces. The variety observable in their respective habits, and forms of dress and of worship, is by no means less striking than that of their respective languages, as must be sufficiently apparent in ordinary intercourse with these people.

3. As to the rules of civil law, similar differences have always existed. The Dayubhagu, a work by Jeemootvahun, treating of inheritance, has been regarded by the natives of Bengal as of authority paramount to the rest of the digests of the sacred authorities: while the Mitakshura, by Vignaneshwur, is upheld, in like manner, throughout the upper provinces, and a great part of the Dukhun. The natives of Bengal and those of the upper provinces believe alike in the sacred and authoritative character of the writings of Munoo, and of the other legislating saints; but the former receive those precepts according to the interpretation given them by Jeemootvahun; while the latter rely on the explanation of them by Vignaneshwur. The more modern author, Jeemootvahun, has often found occasion to differ from the other in interpreting sacred passages according to his own views,

most frequently supported by sound reasoning; and there have been thus created everlasting dissensions among their respective adherents, particularly with regard to the law of inheritance*.

4. An European reader will not be surprised at the differences I allude to, when he observes the discrepancies existing between the Greek, Armenian, Catholic, Protestant, and Baptist churches, who, though they all appeal to the same authority, materially differ from each other in many practical points, owing to the different interpretations given to passages of the Bible by the commentators they respectively follow.

5. For further elucidation I here quote a few remarks from the preface to the translation of the Dayubhagu, and of a part of the Mitakshitra, by Mr. Colebrooke, well known in the literary world, which are as follows. "It (the present volume) "comprehends the celebrated "treatise of Jeemootvahun on successions, "which is constantly cited by the lawyers of "*Bengal*, under the emphatic title of *Dayu-*"*bhagu*, or 'inheritance;' and an extract from "the still more celebrated *Mitakshura*, com-"prising so much of this work as relates to "inheritance. The range of its authority and "influence is far more extensive than that of "Jeemootvahun's treatise, for it is received

* Of eighteen Treatises on various branches of Hindoo Law, written by Jeemootvahunu, that on Inheritance alone is now generally to be met with.

"in all the schools of *Hindoo law*, from *Be-*
"*nares* to the southern extremity of the pe-
"ninsula of *India*, as the chief groundwork
"of the doctrines which they follow, and as
"an authority from which they rarely dissent."
(p. 4.) "The *Bengal* school alone, having
"taken for its guide Jeemootvahun's treatise,
"which is, on almost every disputed point, op-
"posite in doctrine to the *Mitakshra*, has no
"deference for its authority." (p. 4.)—"But
"(between the Dayubhagu and the abridgments
"of its doctrines) the preference appeared to be
"decidedly due to the treatise of Jeemootvahun
"himself, as well because he was the founder
"of this school, being the author of the doc-
"trine which it has adopted, as because the sub-
"jects which he discusses, are treated by him
"with eminent ability and great precision."
(p. 5.) "The *following is a saying current*
among the learned of Bengal, confirming the
opinion offered by Mr. Colebrooke; "व्यवस्था
द्विविधा प्रोक्ता दायभाग मतान्मता। दायभाग
विरुद्धा या मता न बधसम्मता।" "Opinions are
"said to be of two kinds, one founded on the
"authority of the Dayubhagu, and the other op-
"posed to it; (but) what is opposed to the Dayu-
"bhagu is not approved of by the learned."

6. From a regard for the usages of the country, the practice of the British courts in Bengal, as far as relates to the law of inheritance, has been *hitherto consistent with* the principles laid down in the Dayubhagu, and

judgments have accordingly been given on its authority in many most important cases, in which it differs materially from the Mitakshura. I notice a few important cases of frequent occurrence, which have been fully discussed, and invariably decided by the judicial tribunals in Bengal, *in conformity with* the doctrines of Jeemootvahun.

First. *If a member of an undivided family dies, leaving no male issue, his widow shall not be entitled to her husband's share, according to the Mitakshura: but, according to the Dayubhagu, she shall inherit such undivided portion.

Second. †A childless widow, inheriting the property of her deceased husband, is authoriz-

* Mitakshura, Ch. II. Sec. i. Article 30. "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."

Dayubhagu, Ch. XI. Sec. i. Art. 43. "But, on failure "of heirs down to the son's grandson, the wife, being in- "ferior in pretensions to sons and the rest, because she "performs acts spiritually beneficial to her husband from "the date of her widowhood, [and not, like them, from "the moment of their birth,] *succeeds to the estate* in "their default."

Ditto ditto, Art. 19. "Some reconcile the contradic- "tion, by saying, that the preferable right of the brother "supposes him either to be not separated or to be re- "united; and the widow's right of succession is relative "to the estate of one *who was separated from his coheirs*, "and *not reunited with them*. (Art. 20.) That is *con-* "*trary* to a passage of Vrihusputi."

† *Mitakshura, Ch. II. Sec. xi. Art. 2.* "That, which "was given by the father, by the mother, by the hus- "band, or by a brother; and that, which was presented "[to the bride] by the maternal uncles and the rest

ed to dispose of it, according to the Mitakshura: but, according to the *Dayubhagu*, she is *not entitled to sell or give it away.* ✕

Third. *If a man dies, leaving one daughter having issue, and another without issue, the latter shall inherit the property left by her father, according to the Mitakshura†; while the former shall receive it, according to the Dayubhagu.

Fourth. ‖If a man dies without issue or brothers, leaving a sister's son, and a paternal

"[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.') And "also property which she may have acquired *by inherit-* "*ance*, purchase, partition, seizure, or finding, are denominated by Munoo, and the rest, *woman's property.*"

Dayubhagu, Ch. XI. Sec. i. Art. 56. "But the wife "must *only* enjoy her husband's estate after his demise. "She is not entitled to make a gift, mortgage, or *sale of it.*"

* Mitakshura, Ch. II, Sec. ii. Art. 4. "If the competition be between an unprovided and an enriched "daughter, *the unprovided one inherits*; but, on failure of "such, the enriched one succeeds," &c. Ch. II. Sec. xi. Art. 13. "Unprovided are such as are destitute of wealth "or without issue." Hence a provided or enriched one, is such as has riches or issue.

Dayubhagu, Ch. XI. Sec. ii. Art. 8. "Therefore, the "doctrine should be respected, which Dieshitu maintains; namely, that a daughter who *is mother of male is-* "*sue*, or who is *likely to become so*, is *competent to inherit*; *not* one, who is a widow, or is barren, or *fails* in "bringing male issue, as bearing none but daughters, or "from some other cause."

† Mitakshura, Ch. II. Sec. v. (beginning with the phrase, "If there be not even brother's sons, &c.) Art. 4. "Here, on *failure of the father's descendants* [including father's sons and grandsons], the heirs are successively "the paternal grandmother, the paternal grandfather, *the* "*uncles* and their sons."

uncle, the latter is entitled to the property, according to the *Mitakshura; and the former*, according to the Dayubhagu.

Fifth. *A man, having a share of undivided real property, is not authorized to make a sale or gift of it without the consent of the rest of his partners, according to the Mitakshura; but according to the Dayubhagu, he can dispose of it at his free will.

Sixth. †A man in possession of ancestrel real property, though not under any tenure

Dayubhagu, Ch. XI. Sec. vi. Art. 8. "But, on failure of heirs of the father down to the great grandson, it must be understood, that the succession devolves on *the father's daughter's son,* [*in preference to the uncle.*"]

* Mitakshura, Ch. I. Sec. i. Art. 30. "The following passage, 'separated kinsmen, as those who are unseparated, are equal in respect of immoveables; for one has not power over the whole, to make a gift, sale or mortgage,' must be thus interpreted: among *unseparated kinsmen, the consent of all is indispensably requisite,* because no one is fully empowered to make an alienation, since the estate is in common; but, among separated kindred, the consent of all tends to the facility of the transaction, by obviating any future doubt, whether they be separate or united: it is not required on account of any want of sufficient power in the single owner, and a transaction is consequently valid even without the consent of separated kinsmen."

Dayubhagu, Ch. II. Sec. xxvii. "For *here* also [in the very instance of land held in common] *as in the case of other goods,* there *equally* exists a property consisting in the *power of disposal at pleasure.*"

† Mitakshura, Ch. I. Sec. i. Art. 27. "Therefore, it is a settled point, that property, in the paternal or ancestrel estate, is, by birth, (although) the father have independent power in the disposal of effects other than immoveables, 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

limiting it to the successive generations of his family, is not authorized to dispose of it by sale or gift without the consent of his sons and grandsons, according to the Mitakshura; while, according to the Dayubhagu, he has the power to alienate the property at his free will.

7. Numerous precedents in the decisions of the civil courts in Bengal, and confirmations on appeal by the King in council, clearly shew that the exposition of the law by the author of the Dayubhagu, as to the last mentioned point, so far from being regarded as a dead letter, has been equally, as in other points, recognized and adopted by the judicial authorities both here and in England. The consequence has been,

"sons and the rest, in regard to the immoveable estate,
"whether acquired by himself or *inherited from his father*
"*or other predecessor*; since it is ordained, 'Though
"immoveables or bipeds have been acquired by a man him-
"self, 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."

Ditto, Ch. I. Sec. v. Art. 10. "Consequently, the differ-
"ence is this; although he have a right by birth in his father's
"and in his grandfather's property, still, since he is de-
"pendant on his father, in regard to the paternal estate, and
"since the father has a predominant interest, as it was ac-
"quired 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 dissi-
"pating the property]."

Dayubhagu, Ch. II. Sec. xxviii. "But the texts of Vyasu,
"exhibiting a prohibition, are intended to show a moral
"offence; since the family is distressed by sale, gift, or
"other transfer, which argues a disposition in the person
"to make an ill use of his power as owner. *They are*
"*not meant to invalidate the sale or other transfer.*"
Ditto, Sec. xxvi, and Sec. xlvi.

that in the transfer of immoveable property the natives of Bengal have hitherto firmly relied on those judicial decisions as confirming the ancient usages of the country, and that large sums of money have consequently been laid out in purchases of land without reference to any distinction between acquired and ancestrel property.

8. Opinions have been advanced for some time past, in opposition to the rule laid down in the Dayubhagu, authorizing a father to make a sale or gift of ancestrel property, without the consent of his sons and grandsons. But these adverse notions created little or no alarm; since, however individual opinions may run, the general principles followed by every Government are entirely at variance with the practice of groundlessly abrogating, by arbitrary decision, such civil laws of a conquered country as have been clearly and imperatively set forth in a most authoritative code, long adhered to by the natives, and repeatedly confirmed, for upwards of half a century, by the judicial officers of the conquerors. But the people are now struck with a mingled feeling of surprize and alarm, on being given to understand that the Supreme Law Authority in this country, though not without dissent on the Bench, is resolved to introduce new maxims into the law of inheritance hitherto in force in the province of Bengal; and has, accordingly, in conformity with the doctrines found in the Mitakshura, declared every disposition by a father of his ancestrel

real property, without the sanction of his sons and grandsons, to be null and void.

9. We are at a loss how to reconcile the introduction of this arbitrary change in the law of inheritance with the principles of justice, with reason, or with regard for the future prosperity of the country:—it appears inconsistent with the principles of justice; because a judge, although he is obliged to consult his own understanding, in interpreting the law in many dubious cases submitted to his decision, yet is required to observe strict adherence to the established law, where its language is clear. In every country, rules determining the rights of succession to, and alienation of property, first originated either in the conventional choice of the people, or in the discretion of the highest authority, secular or spiritual; and those rules have been subsequently established by the common usages of the country, and confirmed by judicial proceedings. The principles of the law as it exists in Bengal having been for ages familiar to the people, and alienations of landed property by sale, gift, mortgage, or succession, having been for centuries conducted in reliance on the legality and perpetuity of the system, a sudden change in the most essential part of those rules cannot but be severely felt by the community at large; and alienations being thus subjected to legal contests, the courts will be filled with suitors, and ruin must triumph over the welfare of a vast proportion of those who have their chief interest in landed property.

10. Mr. Colebrooke justly observes, in his Preface to the translation of the Dayubhagu, that "The rules of succession to property, be-
"ing in their nature arbitrary, are in all systems
"of law merely conventional. Admitting even
"that the succession of the offspring to the pa-
"rent is so obvious as almost to present a na-
"tural and universal law; yet this very first
"rule is so variously modified by the usages of
"different nations, that its application at least
"must be acknowledged to be founded on con-
"sent rather than on reasoning. In the laws
"of one people the rights of primogeniture are
"established; in those of another the equal suc-
"cession of all the male offspring prevails;
"while the rest allow the participation of the
"female with the male issue, some in equal,
"other in unequal proportions. Succession by
"right of representation, and the claim of de-
"scendants to inherit in the order of proximity,
"have been respectively established in various
"nations, according to the degree of favour
"with which they have viewed those opposite
"pretensions. Proceeding from linear to colla-
"teral succession, the diversity of laws prevail-
"ing among different nations, is yet greater,
"and still more forcibly argues the arbitrari-
"ness of the rules." (page 1.)

11. We are at a loss how to reconcile this arbitrary change with reason; because, any being capable of reasoning, would not, I think, countenance the investiture, in one person, of the power of legislation with the office

of judge. In every civilized country, rules and codes are found proceeding from one authority, and their execution left to another. Experience shews that unchecked power often leads the best men wrong, and produces general mischief.

12. We are unable to reconcile this arbitrary change with regard for the future prosperity of the country; because the law now proposed, preventing a father from the disposal of ancestrel property, without the consent of his son and grandson, would immediately, as I observed before, subject all past transfers of land to legal contest, and would at once render this large and fertile province a scene of confusion and misery. Besides, Bengal has been always remarkable for her riches, insomuch as to have been styled by her Mohummudan conquerors "Junnutoolbelad," or paradise of regions; during the British occupation of India especially, she has been manifoldly prosperous. Any one possessed of landed property, whether self-acquired or ancestrel, has been able, under the long established law of the land, to procure easily, on the credit of that property, loans of money to lay out on the improvement of his estate, in trade or in manufactures, whereby he enriches himself and his family and benefits the country. Were the change which it is threatened to introduce into the law of inheritance to be sanctioned, and the privilege of disposing of ancestrel property (though not entailed) without the consent of heirs be denied to landholders,

they being incapacitated from a free disposal of the property in their actual possession, would naturally lose the credit they at present onjoy, and be compelled to confine their concerns to the extent of their actual savings from their income; the consequence would be, that a great majority of them would unavoidably curtail their respective establishments, much more their luxuries; a circumstance which would virtually impede the progress of foreign and domestic commerce. Is there any good policy in reducing the natives of Bengal to that degree of poverty which has fallen upon a great part of the upper provinces, owing, in some measure, to the wretched restrictions laid down in the Mitakshura, their standard law of inheritance? Do Britons experience any inconvenience or disadvantage owing to the differences of legal institutions between England and Scotland, or between one county of England and another? What would Englishmen say, were the Court of King's Bench to adopt the law of Scotland, as the foundation of their decisions regarding legitimacy; or of Kent, in questions of inheritance? Every liberal politician will, I think, coincide with me, when I say, that in proportion as a dependent kingdom approximates to her guardian country in manners, in statutes, in religion, and in social and domestic usages, their reciprocal relation flourishes, and their mutual affection increases.

13. It is said that the change proposed has forced itself on the notice of the Bench upon the following premises:—

1st. Certain writings, such as the institutes of Munoo and of others, esteemed as sacred by Hindoos, are the foundation of their law of inheritance. 2dly. That Jeemootvahun, the author of the Dayubhagu, is but a commentator on those writings. 3rdly. That from these circumstances, such part of the commentary by Jeemootvahun as gives validity to a sale or gift by a father of his ancestrel immoveables, without the consent of his son and grandson, being obviously at variance with sacred precepts found on the same subject, should be rejected, and all sales or gifts of the kind be annulled.

14. I agree in the first assertion, that certain writings received by Hindoos as sacred, are the origin of the Hindoo law of inheritance; but with this modification, that the writings supposed sacred are only, when consistent with sound reasoning, considered as imperative; as Munoo plainly declares: "He "*alone* comprehends the system of duties, "religious and civil, who can reason, by rules "of logic, agreeably to the Ved, on the general "heads of that system as revealed by the holy "sages." Ch. xii. v. 106.—Vrihusputi, "Let no "one found conclusions on the mere words of "Shastrus: from investigations without reason, "religious virtue is lost*." As to the second position, I first beg to ask, whether or not it be meant by Jeemootvahun's being styled a *commentator* that he wrote commentaries upon all

* केवलं शास्त्रमाश्रित्य न कर्त्तव्योऽर्थनिर्णयः। युक्तिहीनविचारेण धर्महानिः प्रजायते॥ (बृहस्पतिः)॥

or any of those sacred institutes. The fact is, that no one of those sacred institutes bears his comment. Should it be meant that the author of the Dayubhagu was so far a commentator, that he collected passages from different sacred institutes, touching every particular subject, and examining their purport separately and collectively, and weighing the sense deducible from the context, has offered that opinion on the subject which appeared to agree best with the series of passages cited collectively; and that when he has found one passage apparently at variance with another, he has laid stress upon that which seemed the more reasonable and more conformable to the general tenor, giving the other an interpretation of a subordinate nature; I readily concur in giving him the title of a commentator, though the word expounder would be more applicable. By way of illustration, I give here an instance of what I have advanced, that the reader may readily determine the sense in which the author of the Dayubhagu should be considered as a commentator.

15. In laying down rules "on succession "to the estate of one who leaves no male issue," this author first quotes (Ch. xi. page 158,) the following text of Vrihusputi. "In scripture "and in the code of law, as well as in popular "practice, a wife is declared by the wise to be "half the body of her husband, equally sharing "the fruit of pure and impure acts. Of him, "whose wife is not deceased, half the body

"survives: how then should another take his "property, while half his person is alive? Let "the wife of a deceased man, who left no male "issue, take his share, notwithstanding kins- "men, a father, a mother, or uterine brother, "be present," &c. &c. He next cites the text of Yagnuvulkyu, (p. 160,) as follows:—"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." The author then quotes a text from the Institutes of Vishnoo, ordaining that "the wealth of him "who leaves no male issue, goes to his wife; "on failure of her, it devolves on daughters; if "there be none, it belongs to the mother," &c. &c. Having thus collected a series of passages from the Institutes of Vrihusputi, Yagnuvulkyu, and Vishnoo, and examined and weighed the sense deducible from the context, the author offers his opinion on the subject. "By this "text, [by the seven texts of Vrihusputi, and "by the text of Yagnuvulkyu,] relating to "the order of succession, the right of the widow, "to succeed in the first instance, is declared." "Therefore, the widow's right must be affirm- "ed to extend to the whole estate." (p. 161.)

16. The same author afterwards notices, in page 163, several texts of a seemingly contrary nature, but to which he does not hesitate to give

a reconciling interpretation, without retracting or modifying his own decision. He quotes Sunkhu and Likhitu, Paitheenusi, and Yum, as declaring, "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, or a kins-"man, a pupil, or a fellow student." Pursuing a train of long and able discussion, the author ventures to declare the subordinacy of the latter passage to the former, as the conclusion best supported by reason, and most conformable to the general tenor of the law. He begins saying, (p. 169,) "From the text of Vishnoo "and the rest (Yagnuvulkyu and Vrihusputi) "it clearly appears, that the succession devolves "on the widow, by failure of sons and other "[male descendants,] and this is reasonable; "*for the estate of the deceased should go first to* "*the son, grandson, and great grandson.*" He adds in page 170, pointing out the ground on which the priority of a son's claim is founded, a ground which is applicable to the widow's case also, intimating the superiority of a widow's claim to that of a brother, a father, &c. "So "Munoo declares the right of inheritance to be "founded on benefits conferred. 'By the old-"est son as soon as born, a man becomes the "father of male issue, and is *exonerated from debt* "*to his ancestor; such a son, therefore, is entitled* "*to take the heritage.*'" The author next shews, that as the benefits conferred by a widow on her deceased husband, by observing a life of austo-

rity, are inferior only to those procured to him by a son, grandson, and great grandson, her right to succession should be next to theirs in point of order, (page 173.) "But, on failure of heirs down "to the son's grandson, the wife, being inferior "in pretensions to sons and the rest, because "she performs acts spiritually beneficial to her "husband from the date of her widowhood, "(and not, like them, from the moment of their "birth,) succeeds to the estate in their default." He thus concludes: "Hence [since the wife's right of succession is founded on reason] "the "construction in the text of Sunkhu, &c. must "be arranged by connexion of remote terms, in "this manner; 'The wealth of a man, who de-"parts for heaven, leaving no male issue, let his "eldest [that is, his most excellent] wife take; "or, in her default, let the parents take it: on "failure of them, it goes to the brothers.' The "terms 'if there be none, [that is, if there be no "wife,] which occur in the middle of the text, "are connected both with the preceding sen-"tence 'it goes to his brothers,' and with the "subsequent one, 'his father and mother take "it.' "For the text agrees with passages of "Vishnoo and Yagnuvulkyu, [which declare "the wife's right,] and the reasonableness of "this has been already shown." (p. 174.)

17. It is however evident that the author of the Dáyubhagu gives here an apparent preference to the authority of one party of the saints over that of the other, though both have equal claims upon his reverence. But admitting that

a Hindoo author, an expounder of their law, sin against some of the sacred writers, by withholding a blind submission to their authority, and likewise that the natives of the country have for ages adhered to the rules he has laid down, considering them reasonable, and calculated to promote their social interest, though seemingly at variance with some of the sacred authors; it is those holy personages alone that have a right to avenge themselves upon such expounder and his followers; but no individual of mere secular authority, however high, can, I think, justly assume to himself the office of vindicating the sacred fathers, and punishing spiritual insubordination, by introducing into the existing law an overwhelming change in the attempt to restore obedience.

18. In this apparent heterodoxy, I may observe, Jeemootvahun does not stand single. The author of the Mitakshura also has, in following, very properly, the established privilege of an expounder, reconciled to reason, by a construction of his own, such sacred texts as appeared to him, when taken literally, inconsistent with justice or good sense. Of this, numerous instances might easily be adduced; but the principle is so invariably adopted, by this class of writers, that the following may suffice for examples. The author of the Mitakshura first quotes (Ch. I. Sec. iii. Art. 3 and 4, p. 263—265) the three following texts of Munoo, allotting the best portion of the heritage to the eldest brother at the time of partition. "The portion deducted for the eldest

"is the twentieth part of the heritage, with "the best of all the chattels; for the middle-"most, half of that; for the youngest, a quarter "of it."—"If a deduction be thus made, let "equal shares of the residue be allotted; but "if there be no deduction, the shares must be "distributed in this manner; let the eldest "have a double share, and the next born a "share and a half, and the younger sons each "a share: thus is the law settled*." The author of the Mitakshura then offers his opinion in direct opposition to Munoo, saying, "The "author himself† has sanctioned an une-"qual 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 in-"troduced, requiring that sons should divide "only equal shares? (Art. 4.) The question is "thus answered: True, this unequal partition "is found in the sacred ordinances; but "*it must not be practised*, because it is "abhorred by the world; since that is forbid-"den by the maxim, 'Practise not that which "is legal, but is abhorred by the world, [for] it "secures not celestial bliss§;' as the practice

* Munoo, Ch. ix. v. 112, v. 116 and 117.
† Yagnuvulkyu.
‡ Yagnuvulkyu.
§ A passage of Yagnuvulkyu, according to the quotation "of Mitru Mishru in the Veermitrodayu; but ascribed "to Munoo in Balumbhuttu's commentary. It has not, "however, been found either in Munoo's or Yagnuvul-"kyu's Institutes."—(Mr. Colebrooke.)

"[of offering bulls] is shunned, on account of "popular prejudice, notwithstanding the in- "junction, '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 Mitru and Vuroonu*.'" By adverting to the above exposition of the law, we find that the objection of heterodoxy, if urged against the authority of the Dayubhagu, is equally applicable to that of the Mitakshura in its full extent, and may be thus established. 1st. Certain writings, such as the institutes of Munoo and of others, esteemed sacred by Hindoos, are the foundation of the law of inheritance. 2ndly. Vignaneshwur (author of the Mitakshura) is but a commentator on those writings. 3rdly. Therefore, such part of the commentary of Vignaneshwur as indiscriminately entitles all brothers to an equal share, being obviously at variance with the precepts of Munoo found on the subject, should be rejected, and the best and the largest portion of the heritage be allotted to the eldest brother, by judicial authorities; according to the letter of the sacred text. Again, take the Mitakshura, Ch. I. Sec. I. Art. 30, p. 257—"The "following passage, 'Separated kinsmen, as "those who are unseparated, are equal in "respect of immoveables; for one has not "power over the whole to make a gift, sale, "or mortgage;' must be thus interpreted:

* Passage of the Ved.

" 'Among unseparated kinsmen, the consent " of all is indispensably requisite, because " no one is fully empowered to make an aliena- " tion, since the estate is in common;' but " among separated kindred, the consent of all " tends to the facility of the transaction, by " obviating any future doubt, whether they be " separate or united: it is not required, on ac- " count of any want of sufficient power in the " single owner, and *the transaction is* conse- " quently *valid even without the consent of* " *separated kinsmen.*" Ditto, Ch. I. Sec. XI. Art. 28, page 316. " '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 Munoo must be consider- " ed 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."

19. I now proceed to the consideration of the last point, as the ground on which the change proposed is alleged to be founded. To judge of its validity we should ascertain whether the interpretations given by the author of the Dayu- bhagu, to the sacred texts, touching the subject of free disposal by a father of his ancestrel pro- perty, are obviously at variance with those very texts, or if they are conformable to sound rea- son and the general purport of the passages cited collectively on the same subject. With this view I shall here repeat, methodically, the se- ries of passages quoted by the author of the

Dayubhagu, relating to the above point, as well as *his interpretation and elucidation of the* same.

20. To shew the independent and exclusive right of a father in the property he possesses, (of course with the exception of estates entailed) the author first quotes the following text of Munoo: "After the (death of the) father and the "mother, the brethren, being assembled, must "divide equally the paternal estate: For *they* "*have not power over* it, *while their parents* "*live.*' "—Ch. 1. Sec. 14, (p. 8). He next quotes Devulu: "When the father is deceased, let the "sons divide the father's wealth; for *sons have* "*not ownership while the father is alive* and free "from defect."—Ch. 1. Sec. 18, (p. 9.) After a long train of discussion, the author appeals to the above texts as the foundation of the law he has expounded, by saying, "Hence the text of "Munoo, and the rest (as Devulu) must be taken "as shewing, that sons have not a right of own-"ership in the wealth of the living parents, but "in the estates of both when deceased."—Ch. 1. Sec. 30, (p. 13 and 14.)

21. To illustrate the position that the father is the sole and independent owner of the property in his possession, whether self-acquired or ancestrel, the author thus proceeds: "A di-"vision of it does not take place without the fa-"ther's choice; since Munoo, Narudu, Gotumu, "Bodhayunu, Sunkhu, and Likhitu, and others "(in the following passages, 'they have not pow-"er over it;'—'they have not ownership while

"their father is alive and free from defect;'—
"'while he lives if he desire partition;'—'par-
"tition of heritage by consent of the father;'—
"'partition of the estate being authorized while
"the father is living,' &c.) declare without re-
"striction, that sons *have not a right* to *any part*
"of the estate, while the father is living, and
"that *partition awaits his choice*: for these texts,
"declaratory of *a want of power* and *requiring*
"*the father's consent*, must relate also to proper-
"ty *ancestnel*; since the same authors *have not*
"*separately propounded a distinct period for the*
"*division of an estate inherited from an ances-*
"*tor*." Ch. II. Sec. 8, (p. 25.) The circumstance of the partition of estates being entirely dependent on the will of the father, and the son's being precluded from demanding partition while the father is alive, sufficiently prove that they have not any right in the estate during his life time; or else the sons, as having property in the estate jointly with the father, would have been permitted to demand partition. Does not common sense abhor the system of a son's being empowered to demand a division between himself and his father of the hereditary estate? Would not the birth of a son with this power, be considered in the light of a curse rather than a blessing, as subjecting a father to the danger of having his peaceable possession of the property inherited from his own father or other ancestor disturbed?

22. The author afterwards reasons on those passages that are of seemingly contrary autho-

rity ; first quoting the text of Yagnuvulkyu, as follows. "The ownership of father and son is "the same in land which was acquired by his "father, or in a corrody, or in chattels." He adopts the explanation given to this text by the most learned, the ancient Oodyot, affirming that it "properly signifies, as rightly explained by "the learned Oodyot, that, when one of two "brothers, whose father is living, and who have "not received allotments, dies leaving a son ; and "the other survives ; and the father afterwards "deceases ; the text, declaratory of similar "ownership, is intended to obviate the conclu- "sion, that the surviving son alone obtains his "estate, because he is next of kin. As the fa- "ther has ownership in the grandfather's estate ; "so have his sons, if he be dead." Ch. II. Sec. 9, (p. 25.) The author then points out, that such interpretation given to the text, as declares the claims of a grandson upon the estate of his grandfather equal to those of his father, while the father is living, is palpably objectionable; for, "if sons had ownership during the life of "their father, in their grandfather's estate, then "should a division be made between two bro- "thers, one of whom has male issue, and the "other has none, the children of that one would "participate, since (according to the opposite "opinion) they have equally ownership." Ch. II. Sec. 11, (p. 26.) He next quotes Vishnoo: "When "a father separates his sons from himself, his "will regulates the division of his own acquir- "ed wealth. But in the estate inherited from

"the grandfather, the ownership of father and "son is equal." Upon this text the author of the Dayubhagu justly remarks in the following terms. "This is very clear, *when* the father "separates his sons from himself, he may, by "his own choice, give them greater or less "allotments, if the wealth were acquired by "himself; but not so, if it were property "inherited from the grandfather; because they "have an equal right to it. The father has "not in such case an unlimited discretion." Ch. II. Sec. 17, (p. 27.) That is, *a father dividing his property among his sons, to separate them from himself during life time,* is not authorized to give them of his own caprice, greater or less allotments of his ancestrel estate, as the phrase in the above text of Vishnoo, "*when* a father separates his sons from himself," prohibits the free disposal by a father of his ancestrel property *only* on the occasion of allotments among his sons to allow them separate establishments. The author now conclusively states, that "Hence (since the text becomes pertinent, "by taking it in the sense above stated, or be-"cause there is ownership restricted by law "in respect of shares, and not an unlimited "discretion) both opinions, that the mention "of like ownership provides for an equal di-"vision between father and son in the case of "property ancestrel, and that it establishes "the son's right to require partition, ought to "be rejected."—Ch. II. Sec. 18, (p. 27.)

23. The author thirdly quotes Yagnuvulkyu. "The father is master of the gems, "pearls and corals, and of all (other moveable "property,) but neither the father, nor the "grandfather, is so of the *whole* immoveable "estate;" and points out the sense conveyed by the term "the whole" found in the above passage, saying, "Since here also it is said the "'whole,' this prohibition forbids the gift or "other alienation of the *whole*, because (im-"movables and similar possessions are) means "of supporting the family." (Ch. II. Sec. 23.) That is, the father is likewise master of the ancestrel estate, though not of the whole of it, implies that a father may freely dispose of a part of his ancestrel estate even without committing a moral offence. This passage of Yagnuvulkyu, cited by the opposite party, who deny to the father the power of free disposal of ancestrel estates, runs, in a great measure, against them, since it disapproves a sale or gift by a father only of the whole of his ancestrel landed property, while his sons are living, withholding their consent.

24. To justify the disposal by a father, under *particular circumstances*, even of the whole ancestrel estate, without incurring a moral offence, the author adds, (Ch. II. Sec. 26.) "But if the family cannot be supported with-"out selling the whole immoveable and other "property, even the *whole* may be sold or "otherwise disposed of; as appears from the "obvious sense of the passage; and because it

"is directed, that 'a man should *by all means* "preserve himself;'" and because a sacred writer positively enjoins the maintenance of one's family by all means possible, and prefers it to every other duty. "His aged mother and father, "dutiful wife and son under age, should be "maintained even by committing a hundred "unworthy acts*. Thus directed Munoo." Vide Mitakshura, Ch. II. Munoo positively says: "A mother, a father, a wife, and a son, "shall not be forsaken; he, who forsakes either of "them, unless guilty of a deadly sin, shall "pay six hundred panas as a fine to the King." (Ch. VIII. *v.* 389).

25. He fourthly quotes two extraordinary texts of Vyasu, as prohibiting the disposal, by a single parcener, of his share in the immoveables, under the notion that each parcener has his property in the whole estate jointly possessed. These texts are as follows: "A single parcener "may not, without consent of the rest, make "a sale or gift of the whole immoveable estate, "nor of what is common to the family."—"Se- "parated kinsmen, as those who are unseparat- "ed, are equal in respect of immoveables; for "one has not power over the whole, to give, "mortgage or sell it." Upon which the author of the Dayubhagu remarks, (Ch. II. Sec. 27.) "It "should not be alleged that by the texts of Vyasu "one person has not power to make a sale, or

* द्वौ च माता पितरौ साध्वी भार्या सुतः शिशुः। अप्य कार्य्य शतं कृत्वा भर्त्तव्या मनुरब्रवीत्॥

"other transfer of such property. For here also "(in the very instance of land held in common) "as in the case of other goods, there equally "exists a property consisting in the power of "disposal at pleasure." That is, a partner has, in common with the rest, an undisputed property existing either in the whole of the moveables and immoveables, or in an undivided portion of them; he, therefore, should not be, or cannot be prevented from executing, at his pleasure, a transfer of his right to another by a sale, gift, or mortgage of it.

26. In reply to the question, what might be the consequence of disregard to the prohibition conveyed by the above texts of Vyasu? the author says: "But the texts "of Vyasu exhibiting a prohibition, are intend-"ed to shew a moral offence; since the family "is distressed by a sale, gift or other transfer, "which argues a disposition in the person to "make an ill use of his power as owner. They "are not meant to invalidate the sale or other "transfer." Ch. II. Sec. 28. A partner is as completely a legal owner of his own share, (either divided or undivided) as a proprietor of an entire estate; and consequently, a sale or gift executed by the former, of his own share, should, with reason, be considered equally valid, as a contract by the latter for his sole estate. Hence prohibition of such transfer being clearly opposed to common sense and ordinary usage, should be understood as only forbidding a dereliction of moral duty, committed by those who infringe it, and not as invalidating the transfer.

27. In adopting this mode of exposition of the law, the author of the Dayubhagu has pursued the course frequently inculcated by Munoo and others; a few instances of which I beg to bring briefly to the consideration of the reader, for the full justification of this author. Munoo, the first of all Hindoo legislators, prohibits donation to an unworthy Brahmun in the following terms—"Let no man, apprized of this law, present even "water to a Priest, who acts like a cat, nor to "him, who acts like a bittern, nor to him who "is unlearned in the Ved." (Ch. IV. *v.* 192.) Let us suppose that in disregard to this prohibition a gift has been actually made to one of those priests; a question then naturally arises, whether this injunction of Munoo's invalidates the gift, or whether such infringement of the law only renders the donor guilty of a moral offence. The same legislator, in continuation, thus answers: "Since property, though legally gained, if it be "given to either of those three, becomes pre-"judicial in the next world both to the giver and "receiver." (*v.* 193.) The same authority forbids marrying girls of certain descriptions, saying, "Let him not marry a girl with reddish hair, nor "with any deformed limb, nor one troubled with "habitual sickness, nor one either with no hair "or with too much, nor one immoderately talka-"tive; nor one with inflamed eyes." Ch. III. *v.* 8. Although this law has been very frequently disregarded, yet no voidance of such a marriage, where the ceremony has been actually and regularly performed, has ever taken place; it being understood that the above prohibition,

not being supported by sound reason, only involves the bridegroom in the religious offence of disregard to a sacred precept. He again prohibits the acceptance of a gratuity, on giving a daughter in marriage, naming every marriage of this description "Assooru," as well as declaring an Assooru marriage to be illegal; but daughters given in marriage on receiving a gratuity have been always considered as legal wives, though their fathers are regarded with contempt, as guilty of a deadly sin. The passages above alluded to are as follow. (Munoo.) "But even a man of the servile "class *ought not to receive a gratuity* when "he gives his daughter in marriage; since "a father, who takes a fee *on that occasi-* "*on*, tacitly *sells* his daughter." (Ch. IX. *v.* 98.) "When the bridegroom, having given as much "wealth as he can afford to the father and pater- "nal kinsmen, and to the damsel herself, takes "her voluntarily as his bride; that marriage is "named Assooru." (Ch. III. *v.* 31.) "But in "this code, three of the five last are held legal, "and two illegal: the ceremonies of *Pisaches* "and *Assoorus* must never be performed!" (Ch. III. *v.* 25.)

28. The author finally quotes the following text: "Though immoveables or bipeds have "been acquired by a man himself, a gift or "sale of them *(should)* not *(be made)* by him "unless convening all the sons;" and he proceeds affirming, "So likewise other texts as "this, must be interpreted in the same man- "ner (as before). For the words 'should' and

" 'be made' must necessarily be understood." (Ch. II. Sec. 29.) That is, there is a verb wanting in the above phrase (" a gift or sale not by him,") consequently " should" or " ought" and " be made" are necessarily to be inserted, and the phrase is thus read: " A gift or sale " *should* not *be* or ought not to be made by him," expressing a prohibition of the free disposal by a father even of his self-acquired immoveables. This text also, says the author, cannot be intended to imply the invalidity of a gift or sale by a lawful owner; but it shews a moral offence by breach of such a prohibition: " Since the family is distressed by a sale, gift, " or other transfer, which argues a disposition " in the person to make an ill use of his power " as owner." Moreover, as Munoo, Devulu, Gotumu, Badhayunu, Sunkhu, and Likhitu, and others represent a son as having no right to the property in possession of the father; in the plainest terms, (as already quoted in par. 21st) no son should be permitted to interfere with the free disposal by the father of the property he actually possesses. The author now concludes the subject with this positive decision: " Therefore, " since it is denied that a gift or sale should " be made, the precept is infringed by making " one. But the gift or transfer is not null: " for a fact cannot be altered by a hundred " texts." (Ch. II. Sec. 30.)

29. In illustration of this principle it may be observed that a man legally possessed of immoveable property (whether ancestral or

self-acquired), has always been held responsible and punishable as owner, for debts occurring on his estate, of a tendency hurtful to the peace of his neighbours or injurious to the community at large. He even forfeits his estate, if found guilty of treason or similar crimes, though his sons and grandsons are living who have not connived at his guilt. In case of default on his part in the discharge of revenue payable to Government from the estate, he is subjected to the privation of that property by public sale under the authority of Government. He is, in fact, under these and many other circumstances, actually and virtually *acknowledged to be the lawful and perfect* owner of his estate; a sale or gift by him of his property must therefore stand valid and unquestionable. Sacred writings, although they prohibit such a sale or gift as may distress the family, by limiting their means of subsistence, cannot alter the fact, nor do they nullify what has been effectually done. I have already pointed out in the 27th paragraph the sense in which prohibitions of a similar nature should be taken, according to the authority of Munoo, which the reader is requested not to lose sight of. Mr. Colebrooke judiciously quotes (page 82) the observation made by Rughoonundun (the celebrated modern expounder of law in Bengal) on the above passage of the Dayubhagu, ("A fact cannot be altered by a hundred texts,") which is as follows: "If a Brah-"mun be slain, the precept 'Slay not a Brahmun'

"does not annul the murder; nor does it render "the killing of a Brahmun impossible. What "then? It declares the sin." Admitting for a moment that this sacred text (quoted in the Mitakshura also) be interpreted conformably to its apparent language and spirit, it would be equally opposed to the argument of our adversaries, who allow a father to be possessed of power over his self-acquired property; since the text absolutely denies to the father an independent power even over his self-acquired immoveables, declaring; "Though *immoveables* and "bipeds have been *acquired by a man himself*," &c. &c. In what a strange situation is the father placed, if such be really the law! How thoroughly all power over his own possessions is taken away, and his credit reduced!

30. The author quotes also two passages from Narudu, as confirming the course of reasoning, which he has pursued, with regard to the independence claimable by each of all the coheirs in a joint property. The passages above alluded to are thus read. "When there "are many persons sprung from one man, who "have duties apart, and transactions apart, and "are separate in business and character, if "they be not accordant in affairs, should they "give or sell their own shares, they do all that "as they please; *for they are masters of their* "*own wealth.*" (Ch. II. Sec. 31.)

31. After I had sent my manuscript to the Press, my attention was directed to an article in the "*Calcutta Quarterly Magazine*, No. VI. April—June, 1825," being a Review of

Sir F. W. McNaghten's considerations on Hindoo Law. In this essay I find an opinion offered by the writer, tending to recommend that any disposal, by a father of his ancestrel immoveables should be nullified, on the principle that we ought "to *make that invalid which was considered immoral.*" (p. 225.) I am surprized that this unqualified maxim should drop from the pen of the presumed reviewer, who, as a scholar, stands very high in my estimation, and from whose extensive knowledge more correct judgment might be expected. Let us, however, apply this principle to practice, to see how far, as a general rule, it may be safely adopted.

32. To marry an abandoned female is an act of evil moral example: Are such unions to be therefore declared invalid, and the offspring of them rendered illegitimate?

To permit the sale of intoxicating drugs and spirits so injurious to health, and even sometimes destructive of life, on the payment of duties publicly levied, is an act highly irreligious and immoral: Is the taxation to be, therefore, rendered invalid and payments stopped?

To divide spoils gained in a war commenced in ambition and carried on with cruelty, is an act immoral and irreligious: Is the partition therefore to be considered invalid, and the property to be replaced?

To give a daughter in marriage to an unworthy man, on account of his rank or fortune, or other such consideration, is a deed of mean and immoral example: Is the union to be

therefore considered invalid; and their children illegitimate?

To destroy the life of a fellow being in a duel, is not only immoral, but is reckoned by many as murder: Is not the practice tacitly admitted to be legal, by the manner in which it is overlooked in courts of justice?

33. There are of course acts lying on the border of immorality, or both immoral and irreligious; and these are consequently to be considered invalid: such as the contracting of debts by way of gambling, and the execution of a deed on the Sabbath day. The question then arises, how shall we draw a line of distinction between those immoral acts that should not be considered invalid, and those that should be regarded as null in the eye of the law? In answer to this, we must refer to the common law and the established usages of every country, as furnishing the distinctions admitted between the one class and the other. The reference suggested is, I think, the sole guide upon such questions; and pursuant to this maxim, I may be permitted to repeat, that according to the law and usages of Bengal, though a father may be charged with breach of religious duty, by a sale or gift of ancestrel property at his own discretion, he should not be subjected to the pain of finding his act nullified; nor the purchaser punished with forfeiture of his acquisition. However, when the author of the Review shall have succeeded in inducing British legislators to adopt his maxim, and declare that the validity of every act shall be determin-

ed by its consistence with morality, we may then listen to his suggestion, for applying the same rule to the Bengal Law of Inheritance.

34. The writer of this Review quotes (in p. 221) a passage from the Dayubhagu, (Ch. II. Sec. 76,) "Since the circumstance of the "father being lord of all the wealth; is stated "as a reason, and that cannot be in regard to "the grandfather's estate, an unequal distribu- "tion, made by the father, is lawful only in "the instance of his own acquired wealth." He then comments, saying, "Nothing can be "more clear than Jeemootvahun's assertion of "this doctrine." But it would have been still more clear, if the writer had cited the latter part of the sentence obviously connected with the former; which is that, "Accordingly "Vishnoo says, 'When a father separates his "sons from himself, his own will regulates the "division of his own acquired wealth. But in "the estate inherited from the grandfather, "the ownership of father and son is equal.'" That is, a father is not absolute lord of his ancestrel property, (as he is of his own acquired wealth,) *when occupied* in *separating his sons from himself* during his life. This is evident from the explanation given by the author of the Dayubhagha himself, of the above text of Vishnoo, in Sec. 56, (Ch. II.) "The meaning of "this passage is, 'In the case of his own ac- "quired property, whatever he may choose to "reserve, whether half or two shares, or three, "all that is permitted to him by the law; but

"not so in the case of property ancestrel;" as well as from the exposition by the same author of this very text of Vishnoo, in Sec. 17, (Ch. II.) already fully illustrated as applicable solely to the occasion of partition, (vide para. 22, p. 30.)

35. It would have been equally clear as desirable, because *conclusive*, if the writer of the article had also quoted the following passage of the Dayubhagu touching the same subject, (Ch. II. Sec. 46.) "By the reasoning thus "set forth, if the elder brother have two shares "of the father's estate, how should the highly "venerable father, being the natural parent of "the brothers, and COMPETENT TO SELL, GIVE, "OR ABANDON THE PROPERTY; and being the "root of all connection with the *grandfather's* "*estate*, be not entitled, in like circumstances, "to a double portion of his own father's "wealth?"

36. In expounding the following text of Yagnuvulkyu, "The father is master of the "gems, pearls, and corals, and of all (other "moveable property); but neither the father, "nor the grandfather, is so of the whole im-"moveable estate;" the author of the Dayubhagu first observes, (Ch. II. Sec. 23,) "Since "the grandfather is here mentioned, the text "must relate to his effects." He then proceeds saying, "Since here also it is said 'the whole,' "the prohibition forbids the gift or other "alienation of the 'whole,'" &c.; and thus concludes the section (24:) "For, the insertion

"of the word 'whole' would be unmeaning "(if the gift of even a small part were "forbidden)." The author of the Dayu-bhagu does not stop here; but he lays down the following rule in the succeeding section already quoted, (26.) "But, if the family can-"not be supported without selling the *whole* "*immoveable*, and other property, even the "*whole* may be sold or otherwise disposed of: "as appears from the obvious sense of the pas-"sage, and because it is directed, that 'a man "should by all means preserve himself.'" Here Jeemootvahun justifies, in the plainest terms, the sale and other disposal by a father of the *whole* of the estate *inherited from his own father* for the maintenance of his family or for self-preservation, without committing even a moral offence: but I regret that this simple position by Jeemootvahun should not have been adverted to by the writer of the article while reviewing the subject.

37. To his declaration, that "Nothing can "be more clear than Jeemootvahun's assertion "of this doctrine," the reviewer adds the following phrase: "And the doubt cast "upon it by its expounders, Rughoonundun, "Shree Krishnu Turkalunkar, and Jugunnath, "is wholly gratuitous. In fact, the latter is "chiefly to blame for the distinction between "illegal and invalid acts." It is, I think, requisite that I should notice here who these three expounders were, whom the writer charges with the invention of this doctrine; at what periods

they lived; and how they stood and still stand in the estimation of the people of Bengal. To satisfy any one on these points, I have only to refer to the accounts given of them by Mr. Colebrooke, in his preface to the translation of the Dayubhagu. In speaking of Rughoonundun, he says, "It bears the name of Rughoo-" nundun, the author of the Smriti-tutwu, and " the greatest authority of Hindoo Law in the " province of Bengal."—" The Daya-tutwu, or " so much of the Smriti-tutwu as relates to in-" heritance, is the undoubted composition of " Rughoonundun; and in deference to the great-" ness of the author's name, and the estimation " in which his works are held among the learn-" ed Hindoos of Bengal, has been throughout " diligently consulted and carefully compared " with Jeemootvahun's treatise, on which it is " almost exclusively founded." (p. vii.) " Now " Rughoonundun's date is ascertained at about " three hundred years from this time," &c. (p. xii.) Mr. Colebroke thus introduces Shree Krishnu Turkalunkar: "The commentary of " Shree Krishnu Turkalunkar on the Dayu-" bhagu of Jeemootvahun, has been chiefly and " preferably used. This is the most celebrated " of the glosses on the text." " Its authority " has been long gaining ground in the schools " of law throughout Bengal; and it has almost " banished from them the other expositions of " the Dayubhagu; being ranked, in general " estimation, next to the treatises of Jeemoot-" vahun and of Rughoonundun." (p. vi.) " The

"commentary of Muheshwur is posterior to those " of Chooramuni and Uchyoot, both of which " are cited in it; and is probably anterior to " Shree Krishnu's, or at least nearly of the same date." (p. vii.) In the note at foot he observes, " Great grandsons of both these writers were " living in 1806." Hence it may be inferred, that Shree Krishnu Turkalunkar lived above a century from this time. Mr. Colebrooke takes brief notice of Jugunnath Turkupunchanun, saying, " A very ample compilation on this sub- " ject is included in the Digest of Hindoo Law, " prepared by Jugunnath, under directions of " Sir William Jones, &c." (p. ii.) The last mentioned, Jugunnath, was universally acknowledged to be the first literary character of his day, and his authority has nearly as much weight as that of Rughoonundun.

38. Granting for a moment that the doctrine of free disposal by a father of his ancestrel property is opposed to the authority of Jeemootvahun, but that this doctrine has been prevalent in Bengal for upwards of three centuries, in consequence of the erroneous exposition of Rughoonundun, " *the greatest authority of Hindoo law in the province of Bengal,*" by Shree Krishnu Turkalunkar, the author of " *the most celebrated of the glosses of the text;*" and by the most learned Jugunnath; yet it would, I presume, be generally considered as a most rash and injurious, as well as ill-advised, innovation, for any administrator of Hindoo Law of the present day to set himself up as the cor-

rector of successive expositions, admitted to have been received and acted upon as authoritative for a period extending to upwards of three centuries back.

39. In the foregoing pages my endeavour has been to shew that the province of Bengal, having its own peculiar language, manners, and ceremonies, has long enjoyed also, a distinct system of law. That the author of this system has greatly improved on the expositions followed in other provinces of India, and, therefore, well merits the preference accorded to his exposition by the people of Bengal. That the discrepancies existing amongst the several interpretations of legal texts are not confined alone to the law of disposition of property by a father, but extend to other matters. That in following those expositions which best reconcile law with reason, the author of the Bengal system is warranted by the highest sacred authority, as well as by the example of the most revered of his predecessors, the author of the Mitakshura; and that he has been eminently successful in his attempt at so doing; more particularly by unfettering property, and declaring the principle, that the alienator of an hereditary estate is only morally responsible for his acts, so far as they are unnecessary, and tend to deprive his family of the means of support: that he is borne out in the distinction he has drawn between moral precepts, a disregard to which is sinful, leaving the act valid and legal; and absolute injunctions, the acts in violation of which are null and void. If

I have succeeded in this attempt, it follows that any decision founded on a different interpretation of the law, however widely that exposition may have been adopted in other provinces, is not merely retrograding in the social institutions of the Hindoo community of Bengal, mischievous in disturbing the validity of existing titles to property, and of contracts founded on the received interpretation of the law, but a violation of the charter of justice, by which the administration of the existing law of the people in such matters was secured to the inhabitants of this country.

FINIS.


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