Raghunandana Bhattacārya

DAYATATTWA

OF

RAGHUNANDANA.

TRANSLATED

BY

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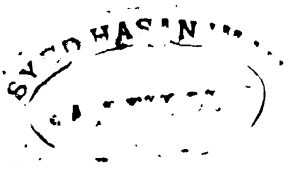

PREFACE TO THE FIRST EDITION.

Most of the principal treatises on Hindu Law, have been rendered into English, and the usefulness of these translations has been universally felt and acknowledged. The Dáyatattwa has always been regarded as an authority of considerable importance. It is a compendium of the Dáyabhága; but there are places in which the author of the Dáyatattwa differs from the doctrines of Jímútaváhana. It is one of the twenty-eight Chapters of the Smrititattwa, the work of Raghunandana Bhattáchárya. The Dáyatattwa forms the Chapter on the Law of Inheritance as prevalent in Bengal, and is the most important portion of the work. The reputation of Raghunandana as an authority is very great in Bengal. He is emphatically called the "Smárta Bhattáchárya" or the Learned Professor of Law. In speaking of him Colebrooke says :—"The Bengal school alone having taken for its guide Jimutavahana's treatise which is, on almost every disputed point, opposite in doctrine to the Mitakshara has no deference for its authority. On this account independently of any other considerations, it would have been necessary to admit into the present volume either his treatise or some one of the abridgements of his doctrine which are in use and of which the best known and the most approved is Raghunandana's Dayatattwa.

"The Dayatattwa or so much of the Smrititattwa as relates to inheritance, is the undoubted composition of Raghunandana ; and, in deference to the greatness

of the author's name and the estimation in which his works are held among the learned Hindus of Bengal has been throughout diligently consulted and carefully compared with Jimutavahana's treatise on which it is almost exclusively founded. It is indeed an excellent compendium of the Law, in which not only Jimutavahana's doctrines are in general strictly followed but are commonly delivered in his own words in brief extracts from his text. On a few points, however, Raghunandana has differred from his master; and in some instances he has supplied deficiencies.

"Now Raghunandana's date is ascertained at about three hundred years from this time; for he was, pupil of Vasudeva Sarvabhauma, and studied at the same time with three other disciples of the same preceptor who likewise have acquired great celebrity; viz. Siromani, Krishnanda and Chaitanya; the latter is the well known founder of the religious order and sect of Vaishnavas so numerous in the vicinity of Calcutta and so notorious for the scandalous dissoluteness of their morals; and the date of his birth being held memorable by his followers, it is ascertained by his horoscope said to be still preserved, as well as by the express mention of the date in his works, to have been 1411 of the Saka era, answering to Y. C. 1489: consequently Raghunandana, being his contemporary, must have flourished at the beginning of the Sixteenth Century." (Colebrooke's preface to the Dáyabhága.)

In some cases, the want of a translation of the Dáyatattwa has necessitated the filing of authenticated translations of excerpts in the records of suits.

These considerations have led to this attempt to present a translation of the complete work. In preparing this translation the language of Colebrooke, in his translation of such texts as are common to both the Dáyabhága and the Dáyatattwa, and in the quotations from the Dáyatattwa incorporated with his annotations on the Dáyabhága, has generelly been, with slight variations adopted. For such defects as may have crept into the translation, the indulgence of the generous reader is solicited.

G. C. S.

High Court, *September*, 1874.

PREFACE TO THE SECOND EDITION.

THIS is the second edition of the English translation of a work on the Hindu Law of Inheritance, which, next to the Dáyabhága, is most respected by the people of Bengal, but which for want of an English version of it, had been inaccessible and unknown to the Judges and lawyers without Sanskrit; and so the light it throws on the Bengal law of Inheritance and Succession had been beyond their reach. There was in consequence considerable speculation about the heritable right, and their position in the order of succession, of cognates other than those whose inheritance and succession are set forth by the founder of the Bengal school, either expressly or by necessary implication, in his Dáyabhága respected as the work of paramount authority in Bengal. Jímútaváhana the author of that treatise, however, left the law in the same state in which it was under the Mitákshará, subject to the innovations and modifications introduced by him. This view is corroborated by the exposition of this branch of the law in the Dáyatattwa by Raghunandana who was a respectful follower of Jímútaváhana, and supplied the deficiencies of the latter's work. The object of the founder of the Bengal school was not to repeat in its entirety the order of succession which had been previously explained in the Mitákshará and other commentaries, and was well-understood by the learned at the time he flourished, but to introduce certain modifications of the same, specially by recognising some dear and near cognates as heirs in preference to remoter

agnates, and to set forth the order of succession, so far only, as was necessary for showing the position of these cognates in the same, and to establish this altered order of succession to be what was really intended by the sages or compilers or propounders of the Smritis or Hindu Codes, by elaborate arguments founded on different principles, of which the capacity to confer spiritual benefit by the performance of the Párvana Sráddha is most prominent and conspicuous.

For a proper and correct understanding of a commentary like the Dáyaghága it is absolutely necessary to take into consideration the law as it was understood by the previous as well as by the subsequent commentators of both the schools.

Theoretically, Hindu law is contained in the Smritis or the Codes of Manu and other sages; the commentators profess merely to explain the same. The earlier commentators composed systematic treatises on all branches of law, compiling and reconciling the texts of the various Codes which do not appear to lay down the same law in all matters. But it must not be supposed that all the commentators endeavoured to set forth the rules of law that may fairly and reasonably be deduced from a comparison of the texts of the different Smritis or Codes on the same subject, by the application of the authoritative rules of interpretation and construction; for, what the successive commentators who founded the different schools, really did, was, that they altered the law as laid down by their predecessors under the pretext of interpreting the Smritis; and what the followers of the founders of the schools did, was, to explain the law laid

down by their masters, more fully when left dubious or obscure by them, and also supplied their deficiencies, and sometimes refuted adverse arguments advanced by writers of other schools who were opponents of their doctrines, and they did also, though rarely, express with respect their dissent from the view of their masters, where the same appeared to them to be open to just and legitimate criticism.

Hence one must know what had been the law before, and how has the law been understood after, a particular commentary was written, in order to understand fully, properly and correctly the law intended to be enunciated by its author. Every commentator appears to address his work to those that were familiar with the law explained in the then existing commentaries ; and with regard to the innovations and alterations introduced by him, the prevalent doctrines opposed to his views are noticed, controverted and refuted by him with elaborate ratiocination, while those assented to by him are accepted without discussion as forming the common basis of argument, and some again are tacitly accepted though left altogether unnoticed, as matters well-understood and so thought unnecessary to be repeated.

Accordingly, the law of the Bengal school founded by Jímútaváhana whose views are enunciated in his Dáyabhága cannot be fully, clearly and correctly appreciated and understood unless one reads that work together with the Mitákshará the universally respected anterior commentary on all the branches of law, on the one hand, and the posterior works of both the schools, on the other, namely, the glosses on the Dáyabhága,

this Dáyatattwa, and the Dáyakrama-Sangraha, works of the Bengal school, supplementing and explaining the doctrines and the law laid down in that treatise of paramount authority in Bengal, as well as the later works of the Mitákshará school, criticising the peculiar doctrines of the Bengal school, such as the Víramitrodaya of Mitra-Misra.

This historical method of study should be adopted, inasmuch as that alone can enable us to understand not only the gradual growth and development of Hindu law, but also the law of the Bengal school the distinctive features of which are laid down in the Dáyabhága a work which is admitted on all hands to be not exhaustive as regards inheritance and succession the only branch of law it deals with. It has already been remarked that all the schools profess to admit the Smritis to be the fountain-source of law, and all that the commentators profess to do, is to explain the law propounded in these Codes. The successive commentators do, as has already been said, either supplement and elucidate the law as left by their predecessors, or introduce some changes and innovations in the law, under the pretext and disguise of putting correct interpretation on the texts of the Smritis. The successive commentaries are therefore inter-dependent on each other, to a certain extent, so that for the purpose of the correct understanding of any one of them, the others should be taken into consideration. The Dáyabhága bears the distant analogy of being as it were an amending Statute of the Mitákshará so far as Bengal is concerned. This comparison expresses the relation which the two works bear to each other.

Although the Dáyabhága is the fountain-source of the peculiar doctrines constituting the Bengal school, and as such is regarded as the work of paramount authority in Bengal, still, having regard to the nature and character of the treatise, it must not be deemed and read like a modern statute intended to codify any branch of law. The Mitákshará and the Dáyabhága purport to the mere commentaries on the Smritis, and bear no resemblance to Codes of law.

The Dáyabhága is undoubtedly later than the Mitákshará as regards both time and development : and the knowledge of the previous state of the law enunciated in the Mitákshará is, as has already been remarked, absolutely necessary for understanding the peculiar doctrines of the Bengal school, which are in opposition to those of the Mitákshará, as well as for appreciating the arguments advanced in the Dáyabhága to support and maintain its positions, and to controvert and refute the opposite views inculcated in the Mitákshará. It follows therefore that as regards matters on which the Dáyabhága is silent and deficient, the law of the Mitákshará was intended by the founder of the Bengal school to be accepted and followed. And this is precisely the view which the Privy Council have taken, and if I may presume to say so, rightly taken, while giving a lucid exposition of the manner in which the different schools have come into existence. Their Lordships observe,— "Thus the Mitákshará, which is universally accepted by all the schools except that of Bengal, as of the highest authority, and which in Bengal is received also as of high authority, yielding only to the *Dáyabhágá* in those

points where they differ, was a commentary on the Institutes of Yájnavalkya": *Collector of Madura* vs. *Mootoo Ramalinga*, 12 moore's I. A., 397, 435. Their Lordships further observe in the well-known Unchastity case of *Moniram Kalita* vs, *Keri Kalitani* 7 I. A., 115—I. L. R., 5 Cal., 776, that the Víramitrodaya a commentary of the Mitákshará school and a work of later date than the Dáyabhága "may also like the Mitákshára, be referred to in Bengal in cases where the Dáyabhága is silent".

Another important matter to be specially noticed with respect to an argumentative and controversial work like the Dáyabhága which is respected as authoritative, is, that the positions and conclusions maintained and deduced by the author from the passages of the Codes, cited by him are to be accepted as law, although the arguments whereby the same are supported may be deemed faulty, unconvincing, inconsistent or erroneous. It is worthy of special observation that it is only the positions and conclusions maintained and drawn by the author that are to be respected ; we shall not be justified in deducing fresh inferences from those texts and arguments, not drawn by the author himself. The argument whereby a particular position is established may be proved to be inaccurate and untenable ; but that will not affect the position itself which must be accepted and acted upon. The question to be considered by the Court is, what is maintained by the author, and not, how the same is maintained. The reasons may be good, bad or indifferent, but they are not to be regarded at all ; for, if the conclusion which appears to be drawn from them is clearly

expressed, then, although the precess of reasoning whereby the same is deduced may be quite unsound, it must nevertheless be followed. It should be borne in mind that the Dáyabhága is followed by the people of Bengal, not because the arguments in support of its doctrines are strong, reasonable, convincing, persuasive and unanswerable; but because the rules of law therein propounded are suitable to their feelings and sentiments. It should also be remembered that the real object of the commentators was, as has already been said, not to discuss the law such as is propounded in the Smritis, but to establish what they thought should be the law; and this was no doubt the same in many respects, as enunciated in the Smritis which however, in so far as regarded the innovations and changes introduced for the first time by a commentator, were modified and virtually repealed as it were, but under the garb and disguise of their interpretation—a fiction which must be resorted to wherever there is a rigid body of law unalterable in theory, but partly unsuitable to an altered state of society which is not and cannot remain stationary, but is always subject to changes in the course of time, though the same are slow among Hindus, one of the most conservative nations in the world.

This view that the courts are not justified in drawing fresh inferences from texts cited and arguments advanced, by the author in the Dáyabhága, that is, inferences not deduced by the author himself,—is maintained, and if I may presume to say so, rightly maintained by their Lordships of the Judicial Committee in the Unchastity case, who observe—"But even if the

words were more open to such a construction than they appear to be, their Lordships are of opinion that what they have to consider is not so much what inference can be drawn from the words of Catyayana's text by itself, as what are the conclusions which the author of the Dáyabhága has himself drawn from them. It is to that treatise that we must look for the authoritative exposition of the law which governs lower Bengal, whilst on the other hand nothing is more certain than that in dealing with same ancient texts, the Hindu commentators have often drawn opposite conclusions." *Moniram* v. *Keri Kalitani*, I. L. R. 5 Cal. 776, 785.

It is extremely to be regretted that in some cases dealing with the law of succession according to the Dáyabhága the foregoing considerations were entirely lost sight of. In the eleventh chapter of the Dáyabhága the order of succession to a man's property is explained. In order to introduce certain near and dear cognates in the order of succession, in preference to comparatively more distant agnates, the author relies, as one of the arguments supporting his views, on the doctrine of spiritual benefit which the author maintains is enunciated in two slokas of Manu, and a passage of Baudháyana. From the references to this doctrine in the arguments to support the positions of the different relations in the order of succession, no consistent principle can be deduced. In fact the author's object was to lay down an order of succession different in some respects from that in the Mitákshará, and in support of this order the author refers to the capacity for conferring spiritual benefit, as one of the reasons in his argument for the justification of the

changes introduced by him in the order. It is erroneous to say that the author's object was to establish a principle of spiritual benefit, which doctrine itself he gives up in the concluding portion of the chapter, where he maintains that the *order* maintained by him ought to be accepted by the learned, although his exposition of spiritual benefit might be rejected. Besides, there is no data from which a consistent principle could be deduced, such as is fancied to have been in the mind of the author, who no doubt asserts that, of two relations he who confers greater amount of spiritual benefit in a particular manner is to be preferred to the other ; but there is nothing in his work from which a case of contest between two relations for preference, which the author himself has not considered, can be settled, by means of the theory of spriritual benefit ; since it is absolutely impossible to calculate their relative capacity for conferring the same, where the author himself has not done so. I am unable to understand how, in the face of what the author himself expressly says in the eleventh chapter of the Dáyabhága, can it reasonably be maintained that the object of the author was to lay down therein the principle of spiritual benefit, and not an order of succession. The so-called principle deduced from the various references to the capacity for performing the Párvana Sráddha, in the Dáyabhága, has been so explained by the Court as to make it inconsistent with the order of succession, which cannot but be admitted to be laid down by the acute logical author in the Dáyabhága, to a certain extent, though not exhaustively. It may also be remarked here that the Párvana Sráddha, the capacity to perform which

it suited the purpose of the author to refer to, for maintaining the changes in the order of succession, has become obsolete among the Hindus and is not generally celebrated at all at the present day.

It should be observed that the courts have explained the law more correctly in later decisions, as regards the meaning of the term *Bandhu* used in Yajnavalkya's text on the order of succession; in fact, the exposition of the term in the Full Bench case of *Umaid Bahadur* (I.L.R., 6 Cal., 119) is founded on a principle which is contrary to that on which the Full Bench decision in *Amrita Kumari's* case (2 B. L. R., F. B., 28=10 W. R.), rests, which is no other than the so-called principle of spiritual benefit, but which is not only not recognised in the Mitákshará, but is expressly pronounced by its author to be unacceptable. The conclusions are right in both the cases, but the whole of the argument advanced by the court in the earlier case is virtually condemned and rejected as erroneous in the later decisions.

In the Full Bench case of *Guru Govinda Shaha Mandal* (5 B. L. R., 15=13 W. R., F.B., 47) both the Judges and the Lawyers erred in the view of the law, "अन्धेनैव नीयमाना यथान्धाः," *i.e.*, "like the blind led by the blind."

But what is most regrettable is that the error then committed should be perpetuated, and an erroneous admission by the pleader though very eminent who was subsequently elevated to the Bench and became a pre-eminent judge, and who argued the case before the Full Bench on behalf of the unjustly losing party,—should be

accepted as law, when the same leads to most absurd and unnatural results. And it is strange that a point should be deemed to be decided by a Full Bench that expressly omitted to decide it, because of the admission which was made at a time when the text enumerating *Bandhus* was altogether misunderstood. If the correct meaning of that term were known when the said case was decided by the Full Bench, and the order of succession explained in this work were known to the pleader or were accessible to the learned judges, or their Lordships' attention were otherwise drawn to the light it throws on the question for their consideration, then undoubtedly the learned pleader instead of making the admission he did, would have contended on the authority of this Dáyatattwa, that the position of his client's opponent who was the Uncle's Daughter's son, in the order of succession, is the same as in the Mitákshará, and that therefore he could not be preferred to his client who was an agnate, though a Sakulya, and the Court would have arrived at the right decision. I have said that the result is absurd, because if a particular order of succession is repugnant to the feelings of all Hindus without exception, it cannot but be pronounced absurd. Ask any Hindu of Bengal whether the fraternal nephew's son's son or his daughter's son is entitled to preference, and he will unhesitatingly answer the question in a manner contrary to that given by the Full Bench in the case of *Digambari* vs. *Motilal* I. L. R., 9 Cal., 563. Any one impelled by curiousity may make the experiment by putting the question in Bengali whether ভাইপোর পৌত্র বা ভাইপোর দৌহিত্র-is entitled to succeed, to

a Hindu whether he knows English or not, and he will find that one uniform answer will unhesitatingly be given by one and all without a single exception, in favour of the agnate descendant.

It is remarkable that those who imagine the principle of spiritual benefit to be the key to the Hindu law of inheritance lose sight of the fundamental doctrine involved in the very definition of the term Dáya or heritage, which means property left by a deceased person devolving on a living person by reason of the *relationship* of the latter to the former. It is *relationship* not spiritual benefit, that forms the foundation of inheritance in Hindu law, as in every other system of Jurisprudence : nor is it the principle of spiritual benefit, but the capacity to perform a particular obsequial ceremony, that is referred to in the Dáyabhága as one of the arguments in support of the order of succession of a few relations only. To the question,—who are heirs ? The answer is—"Relations are heirs." To the question—"In what order are the relations to take ? The answer given in the Mitákshará, is—"In the order of the proximity of their relationship ;" while the Dáyabhága adds that the capacity to confer spiritual benifit by the performance of the Párvana Sráddha must also be taken into consideration to determine the order in which certain relations are to inherit. It should be noticed that the capacity to confer spiritual benefit by the performance of the Adya and the like Sráddhas, other than the Párvana Sráddha, which are actually performed, is not to be taken into consideration at all, although the same are of far greater benefit to the soul

of the deceased than the latter, which are seldom if ever performed in these days, by even the high castes, while among the lower classes or the Majority of the Hindus the same have become obsolete or things of the past.

The author of the Dáyabhága has dealt with the order of succession of different relations in the successive Sections of the Eleventh Chapter. In Section one, the Widow's Succession is discussed at considerable length; in Section two, that of the daughter and daughter's son; in the third, that of the father; in the fourth, that of the mother; in the fifth, that of the brothers, of half and whole blood, as well of those that are joint or separated, or re-united after separation; and in the sixth, of other relations. In the case of every one of the relations, there is some peculiarity and qualification as regards his or her capacity to confer spiritual benefit; and in some, other grounds are mentioned justifying preference. It is impossible to discover a consistent principle of spiritual benefit, which may be said to be the foundation of the order of succession. The attempt to deduce a general principle as being one that logically follows from the various cases in which reference is made to the capacity to confer spiritual benefit, as well as to some other matter, dealt with in the said Sections,—is analogous to what the Lord Chancellor remarks, ought not to be done, as regards deduction of any principle from the generality of expressions in judgments in particular cases,—in the following passage,—

"Now before discussing the case of *Allen v. Flood*, and what was dicided therein, there are two observations

of a general character which I wish to make, and one is to repeat what I have very often said before, that every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of expressions which may be found there are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical code, whereas every lawyer must acknowledge that the law is not always logical at all".—*Quinn* v. *Latham*, L. R., Appeal Cases 1901, p. 495, 506.

These remarks made by the Earl of Halsbury apply *mutatis mutandis* to the *ratio decidendi* in *Gurugobinda Shaha Mundals* case. The discussions in the Dáyabhága regarding the inheritance of particuiar relations or groups of relations are like so many judgments applicable to those relations only, and all the arguments on the basis of the doctrine of spiritual benefit, found in any part of the chapter XI, are put forward to support the succession of those relations only. "The generality of expressions which may be found there are not intended to be expositions of the whole law". For we find that in almost every instance some other consideration is introduced to qualify the particular capacity for spiritual benefit which again is absolutely wanting in the female heirs,—a fact negativing

the theory of the said capacity being the criterion of inheritance. The endeavour to arrive at a logical generalisation from the references to the spiritual benefit cannot but be regarded as most unreasonable and illogical, when it is inconsistent with the order of succession maintained by the author, who invokes the aid of the spiritual benefit as an argument in support of the said *order*. It proves the Lord Chancellor's remark that there is no logic in law. The argument—that the exposition of the principle of spiritual benefit and the effect given to it by the Full Bench would lead to the above result,—is met thus,—"But this circumstance (that is, the interference of that principle with the order of succession specified in the earlier part of Ch. XI), even if true, cannot be accepted as a sufficient reason to justify the total exclusion of one single individual who is really competent to satisfy all the requirements of that principle. If in any case which may arise hereafter, it should become necessary for us to determine the precise position which the son of a paternal uncle's daughter is entitled to hold in the order of succession, the question would fairly arise, namely, whether the details of a work like the Dayábhága ought to be permitted to over-ride the principle upon which it is admittedly based".—13, W. R.49,63.

The whole argument on both sides,—namely, that the paternal uncle's daughter's son is not an heir at all, because he is not mentioned to be so, on the one side, and that he is an heir because he is capable of conferring spiritual benefit, on the other side,—was equally fallacious. The paternal uncle's daughter's son is an

heir, not because he satisfies all the requirements of the so-called spiritual principle, but because he bears a particular blood relationship to his maternal grand-father's brother's son. For, all heirs do not confer spiritual benefit, nor do all who confer spiritual benefit are entitled to become heirs ; and the doctrine is used by the author, not for the purpose of finding out who are heirs, but for the purpose of supporting the *order* in which certain heirs are to inherit. It has already been said that to the question who are heirs the answer is, Relations are heirs, in fact, the very definition of the term *Dáya = heritage*, proves this. After some explanatory comments on the text of Nárada, defining Partition of Heritage the author concludes as to the import of Heritage by saying,—"Therefore, the word *Dáya* = heritage is, by usage, employed to signify, property in which ownership *caused by relationship* to the previous owner arises on the extinction of his ownership (by death natural or civil.")—See Dáyabhága ch. I., para 5.

A careful perusal of the whole chapter XI will convince the reader that the author laid down a particular *order* of succession, and directed the entire argument to maintain the said *order* which however was intended, not to be exhaustive, but to extend down to the "*maternal uncle and the like*" and so illustrating the order in so far as it was different from that of the Mitákshará ; but he intended to leave the rest with respect to which there was no controversy, in the same state as in the said universally respected treatise, only supplementing it with a few observations in the course of explaining the Smriti-texts on succession, cited by

him, and thus seeming to superficial readers to deal with the law of succession exhaustively. He relied no doubt, on his own peculiar view of spiritual benefit, with which, he knew, the learned could not be satisfied ; but he maintained that even if the same be abandoned, still the *order* of succession specified by him should be accepted as the one intended by the sages.

As regards the doctrine of spiritual benefit, upon which arguments are founded by Jímútaváhana for supporting the order of succession, introduced by him, it should be noticed that it owes its origin to the novel interpretation of the text of Baudháyana cited by him in Chapter XI, Section I, paragraph 37, and explained in the next paragraph 38. It appears to have been unknown to any commentator who wrote before him.

It is no doubt true, that the Hindu Shástras extol the importance of male issue in a spiritual point of view. There are many texts in the Smritis bearing on this subject ; for instance,

Manu (9, 138) and Vishnu (15, 43) declare,—

पुन्नाम्नो नरकाद् यस्मात् पितरं त्रायते सुतः ।
तस्मात् पुत्र इति प्रोक्तः स्वयमेव स्वयम्भुवा ॥ मनविष्णू ।

"Since a son delivers (tráyate) the father from the hell called *Put ;* therefore he is named Put-tra or *Put*-deliverer, by the self-existent himself."

Similarly, Hárita says,—

पुन्नामा निरयः प्रोक्तश्-छिन्नतन्तुश्च नैरयः ।
तत्र वै जायते यस्मात् तस्मात् पुत्र इति स्मृतः ॥ हारीतः ।

"A (certain) hell is called by the name of *Put* ; and one destitute of issue goes to (that) hell : a son is

therefore known as *Put-tra,* because he delivers (his father) from the same."

So Sankha and Likhita declare,—

पितृणाम् अनृणो जीवन् दृष्ट्वा पुत्रमुखं पिता ।
स्वर्गी स तेन जातेन तस्मिन् संन्यस्य तद्ऋणं ।
अग्निहोत्रं त्रयो वेदा यज्ञाश्च शतदक्षिणाः ।
ज्येष्ठपुत्रप्रसूतस्य कलां नार्हन्ति षोड़शीं ॥

"A father becomes while alive exonerated from *the debt to his ancestors,* upon seeing the face of a son (after birth) : by means of that son born (to him), he becomes entitled to heaven, devolving on the son that *debt (to ancestors)* : The maintenance of the holy fire, the three Vedas, and sacrifices with payment of large fees to the officiating priests, are not entitled to have even the sixteenth part of the efficacy of the birth of an eldest son."

Likewise Manu (9, 137), Sankha, Likhita, Vishnu (15, 45), Vasishtha (13, 5), and Hárita ordain,—

पुत्रेण लोकान् जयति पौत्रेणानन्त्यम् अश्नुते ।
अथ पुत्रस्य पौत्रेण ब्रध्नस्याप्नोति विष्टपं ॥

"By a son, (a man) conquers worlds (*i. e.* secures heavenly regions) ; by a son's son, (he) obtains immortality (literally, endlessness) ; and by a son's son's son (he) reaches the sun's region."

So also Yájnavalkya (1, 78) declares,

लोकानन्त्यं दिवः प्राप्तिः पुत्र-पौत्र-प्रपौत्रकैः ।
यस्मात्, तस्मात् स्त्रियः सेव्या, कर्त्तव्याश्च सुरक्षिताः ॥

"Since, immortality in this world (by means of the continuation of lineage), and attainment of heaven, are secured) by son, son's son and son's son's son, therefore wives should be approached, and should be guarded well."

जायमानो ह वै ब्राह्मणस्-त्रिभि-र्ऋणै-र्ऋणवान् जायते। ब्रह्मचर्य्येण ऋषिभ्यः, यज्ञेन देवेभ्यः, प्रजया पितृभ्यः,—एष वा अनृणो-यः पुत्री यज्वा ब्रह्मचारी च ॥ श्रुतिः।

"A Bráhmana on being born becomes a debtor in three obligations: to the Rishis (who are the propounders of the sacred books), for studentship (to peruse the same); to the Gods, for sacrifices; to the ancestors, for progeny: he becomes free from the debts, who has son, who has performed sacrifices, and who has studied the Vedas."

The object which the Hindu sages had in view in propounding the above doctrine, was to place marriage on a spiritual basis, or in other words, to thrust into prominence the spiritual aspect of the fundamental institution, upon which the continuance of the human race rests. The whole Sanskrit literature is embued with this religious spirit that was imparted by the sages to the holy relation upon which the propagation of the human race depends. The connection of the sexes is not to be deemed primarily a source of sensual pleasure, of which the birth of children is an undesirable though inseparable accident; whereas the perpetuation of lineage should be regarded as its primary object, although the Providence has in its infinite wisdom combined with

it an imperious craving, the fulfilment of which is attended with pleasurable sensibility, while securing the attainment of the primary object. The Hindu sages endeavoured to place the responsibilities of marriage and care of children on a spiritual basis, so that persons might not be averse to the same, while engaged in the pursuit of the pleasures attending the commerce of sexes.

It should be remarked that the spiritual benefit derived from male issue, as set forth in the above texts, has nothing whatever to do with the offerings of oblations of food or of libations of water, in any Sráddha and the like ceremony, that may be performed by them, after the death of the father or other ancestor, inasmuch as the benefit arises on the very birth of male issue, and does not depend on anything to be done by them. There are, however, passages in the Sástras, that the souls of deceased ancestors are anxious that their lineage should continue to exist in this world, and are pleased when they celebrate the ancestor-worship, or even offer libations of water to them.

There is, however, no authority in the Sástras to support Jímútaváhaná's theory of spiritual benefit derived by a person from the offering of *Pinda* or oblation made to any of the three paternal ancestors of a deceased person, by a *collateral* relation while performing the Párvana Sráddha ceremony, except his arbitrary interpretation of a text of Baudháyana, which cannot convey the meaning he puts upon it, and which will presently be considered. And as regards the benefit derived by a deceased person from the offering of Pindas, made to his maternal ancestors, by the maternal

uncle and the like, not only there is no authority in support of it, to be found in the Sástras, but it seems to be opposed to a well-known principle laid down by them.

The text of Baudháyana upon which the doctrine of spiritual benefit is founded is as follows,—

प्रपितामहः पितामहः पिता स्वयं सोदर्या भ्रातरः, सवर्णायाः पुत्र-पौत्र-प्रपौत्राः । एतान् अविभक्त-दायादान् सपिण्डान् आचक्षते । विभक्त-दायादान् सकुल्यान् आचक्षते । सत्स्वङ्गजेषु तद्गामी ह्यर्थो भवति । (तदभावे सपिण्डः) । सपिण्डाभावे सकुल्यः । तदभावे चाचार्योऽन्तेवासी ऋत्विग् वा हरेत् । तदभावे राजा ॥

Dáyabhága Chapter XI, Section I para 37.

The plain meaing of the text is shown by the following translation,—

"The paternal great-grandfather, the paternal grandfather, the father, the man himself, his uterine brothers, his son, son's son, and son's son's son by women of the same caste : all these enjoying the undivided *heritage* (Dáya) are pronounced *Sapindas* (or those living in the same mess) ; those who enjoy divided *heritage* are called Sakulyas (or those having the same land for cultivation, or belonging to the same family.) Male issue of the body being left, the property must go to them ; on failure of *Sapindas*, the *Sakulyas* ; on failure of them, the preceptor or the pupil or the priest shall take (the property) ; in their default the king."

In this translation the word *Dáya* is taken in the sense of *heritage* which is its plain, ordinary and natural meaning, and which alone is compatible with the context, and which every Sanskritist would put on the word, if he has not read the interpretation put on

the above text by the author of the Dáyabhága. For, Jímútaváhana puts a novel construction of his own, upon that part of the above passage, which has been rendered above into—"all these enjoying the undivided *heritage* are pronounced *Sapindas*; those who enjoy the divided *heritage* are called *Sakulyas*"—by taking the word Dáya meaning heritage in the new sense of *Pinda* or oblation, entirely evolved out of his inner consciousness; since in no other work in the Sanskrit language, is that word used in that sense. There is no Lexicon, Thesaurus, Vocabulary or Dictionary of the Sanskrit language in which the word *Dáya* is found to bear the meaning of *Pinda*. The passage according to him would mean,—"all these enjoying the *undivided oblation* are pronounced *Sapindas*; those who enjoy the *divided oblation* are called *Sakulyas*."

And thereupon he builds a novel theory of the effect of the *Sapindi-karana* ceremony which, as understood by all other Sanskrit writers on the subject, has the only effect of entitling the soul of the deceased, for whom the ceremony is performed, to pass from the *Preta-loka*—or the region of the next world to which the soul of a person goes just after his death—to the *Pitri-loka* or the higher region of the *Pitris* or paternal ancestors, where the spirits of the deceased persons dwell, for whom the sixteen Sráddhas ending with and including the *Sapindi-karana*, have regularly been performed by their surviving descendants or other relations in this world. But it was left to the author of the Dáya-bhága to discover a novel effect of the last ceremony, which had been entirely unknown to all the previous

commentators, namely, that since the performance of of the *Sapindi-karana* ceremony, the soul of a person participates with the souls of his three paternal ancestors in the oblations that may be presented to them by any of their descendants whether agnate or cognate. The doctrine is very peculiar ; none of the ancestors takes any share of any *Pinda* offered to a descendant. He who when alive offered a *Pinda* to a paternal ancestor, does after death partake of a *Pinda* offered to that paternal ancestor by any other of his descendants either in the male or in the female line. And although a person while alive may offer *Pindas* to his maternal ancestors, he does not after death share in their oblations, because there is no *Sapindana* or mixing up of his *Pinda* with those of the maternal ancestors, such mixing up being confined with those of the paternal ancestors only. If the *Sapindana* or the mixing of the four *Pindas*—one being intended for the soul of the deceased for whom the *Sapindi-karana* ceremony is celebrated, and the three others for his three paternal ancestors one for each,—had the effect of entitling it to enjoy the oblations offered to the paternal ancestors, why should not the latter *vice versa* enjoy the oblations offered to the former and also to each other. There is neither reason nor rhyme in the arbitrary and dogmatic view which has emanated from the imagination of Jímútaváhana.

The foregoing texts show that the Shástras impose a religious duty on every man to have a son. There is also authority recommending the possession of more sons than one, whom a person should leave behind him

at his death to perpetuate the lineage and to perform his obituary rites and to conduct the periodical worship of his *paternal* ancestors. It is worthy of special remark that a man's son cannot confer any spiritual benefit on that man's *maternal* ancestors. For, the Ancestor-worship is a ceremony entirely in honour of the *paternal* ancestors, in which originally the maternal ancestors had no place ; though later on, a man was enjoined to worship his own three maternal ancestors also, after the paternal ancestors.

For instance, Manu ordains.—

त्रयाणाम् उदकं कार्य्यं त्रिषु पिण्डः प्रवर्त्तते ।
चतुर्थः सम्प्रदातैषां पञ्चमो नोपपद्यते ॥ ९, १८६ ।

"To three, should the libation of water be offered ; for three, is the funeral oblation of food ordained : the fourth is the giver of them, the fifth has no concern in them."—9, 186.

This text can apply to the three *paternal* ancestors only, the latter sentence shows that it cannot refer to the three maternal ancestors ; because, the words "fourth" and "fifth" are used in the text, relatively to the remotest of the three ancestors to whom the offerings are to be made ; but the remotest of the three maternal ancestors being the maternal great-great-grand-father, the person who is to make the offerings would be the "fifth" relatively to him, according to the Hindu mode of calculating degrees, which is the same as that of the canonists, and according to which those two words have been employed in the text. Hence, it is clear that this text of Manu cannot reasonably be construed

to relate to maternal ancestors who could not be the objects of Ancestor-worship ordained by Manu in this text. The cognates were excluded as well from this ceremony as from inheritance, according to Manu's code.

Later on, men were enjoined to include the maternal ancestors in the Ancestor-worship, thus,—

पितरो यत्र पूज्यन्ते तत्र मातामहा ध्रुवं ।

"Where the paternal ancestors are worshipped, there the maternal grandfathers should certainly be worshipped."

The son whom a man is bound to leave behind him, for discharging his debt to his paternal ancestors, can render no spiritual service to his maternal ancestors, because the son is required to worship his own, and not his father's, maternal ancestors, when celebrating the ancestor-worship. Therefore a man is not required, nor competent, to provide for the performance of any religious ceremony for the benefit of his maternal ancestors ; his duty in that respect dies with him. His religious obligation is not the same as regards the two sides of the ancestors. In fact, a man's *debt to ancestors* which is discharged by the birth of a son, does not at all refer to the maternal ancestors who cannot derive any spiritual benefit from that son.

How then can a man be said to be under a religious obligation to his maternal ancestors to provide for the offering of *pindas* to them after his death, and also to derive spiritual benefit from the offering of obsequial oblations, made to the maternal ancestors, by the maternal uncle and the like, who in doing so, merely discharge their own obligation to the same ancestors as their

male issue. The maternal uncle and the rest whose religious duty it is, to perform the worship of their paternal ancestors, can by no means be supposed to perform the ceremony vicariously for their sister's son and the like. Besides, there is a well-known maxim of Hindu religion, namely,—शुचि-तत्कालजीवी स्यात्, which means, "Religious duty attaches to a person who is alive at the time (of its performance) and is unpolluted". This maxim negatives the idea of the subsistence of a person's religious duty towards his maternal ancestors, *after* his death. There is absolutely no authority or reason, therefore, to support the position that a man is spiritually benefited by the celebration of Ancestor-worship by the maternal uncle and the like maternal relations.

What again is the meaning of the words "*divided*" and "*undivided*" qualifying the term "*oblation*" the novel sense in which Jimútaváhana wants to take the word *dáya* in Baudháyana's text. It is also impossible to understand any reasonable sense of the expression "participating in, or partaking of, *undivided* or *divided oblations*." The oblations that are presented to the three paternal and the three maternal ancestors in the Párvana Sráddha ceremony or the periodic Ancestor-worship in every lunar month,—are always *divided*, in the sense that a separate oblation is presented to each of the three ancestors on either side. It is this Sráddha ceremony on which Jímútaváhana's doctrine of spiritual benefit is founded. Before this ceremony can be performed for benefiting, in the way maintained by the author, a deceased person, the *Sapindíkarana Sráddha* rite must be celebrated for the deceased, on the first

lunar anniversary of his death. The performance of this rite is necessary for enabling the soul of the departed to leave the *Preta-loka* (or Hindu Purgatory) where it goes just after death, and enter the *Pitri-loka* or the region of the *Pitris* or celestial spirits, and thenceforward to become an object of the periodic Ancestor-worship. In this ceremony also, four separate oblations are made at first, and then an union of them is effected, symbolical of the association of the soul of the departed with the *manes* of his paternal ancestors, the oblations being the symbols of their celestial bodies. In this *Sapindí-karana* ceremony alone, the oblations can be said to be *undivided* by reason of the mixing of the four *pindas*. But the same cannot be predicated of the oblations in the Párvana Sráddha the foundation of the theory of spiritual benefit propounded in the Dáyabhága.

As regards the *"partaking of the oblations,"* the author of the Dáyabhága says that the uses of a man's wealth are twofold, namely, *first*, personal enjoyment by himself, and *second*, donation or charity or enjoyment by others according to his pleasure. This proposition in its ordinary sense is unexceptionable. But then he goes on to say that after death also, a person may be said to enjoy his wealth if the same be applied to the performance of the *Párvana-Sráddha*, the oblations offered in which may be enjoyed by him, in the fanciful manner depicted by him ; and if that also is not possible by reason of the default of relations that could and would offer such oblations, then similar enjoyment by his three maternal ancestors, of oblations offered by their male issue at the expense of his wealth inherited

by them would resemble *charity* meritorious in a spiritual point of view, and benificial to his soul.

Thus the author asserts a low selfish principle of inheritance, which is not only unsupported by the Shástras, but is contrary to the fundamental doctrines of Hindu religion. How do the ancestors enjoy the oblation? Certainly not in the physical sense, for the *pinda* does not show its enjoyment by any one, it is not affected in any way, either in size, quantity or quality. What does the ceremonial itself prove: it shows that the Ancestor-worship does not differ in the least from the worship of Gods by the Hindus. As in the worship of Gods, so in that of the ancestors, dishes of choicest food are placed where they are supposed to come on invokation, the preparation of which is intended to afford evidence of their reverence and earnest desire to please them; and it is also prayed that the Gods and the ancestors may be pleased to accept and partake of the same, and be satisfied. But they are believed to be pleased by the mere sight of the things, and not to partake of them, which are ultimately distributed among Bráhmanas. That the ceremony is performed for the purpose of receiving benefits from the ancestors, and not for the purpose of conferring benefits on them, is proved by the prayers that are in the course of the ritual addressed to them when they are dismissed at the conclusion of the ceremony. The prayers are—

"ॐ एत नः पितरः सौम्यासो—गम्भीरेभिः पथिभिः पूर्व्विरेभिः। दत्तास्मभ्यं द्रविणे ह भद्रं रयिञ्च नः सर्व्ववीरं नियच्छत॥"

"Om ! come O our auspicious fathers, by the deep ancient paths, and give us blessings about (our) property and grant us wealth and many heroic sons.

See ritual of Sráddha among followers of the Sama-Veda.

and

दातारो नोऽभिवर्धन्तां, वेदः सन्ततिरेव च ।
श्रद्धा च नो मा व्यगमत्, बहु देयञ्च नोऽस्त्विति ।
अन्नञ्च नो बहु भवेद्, अतिथींश्च लभेमहि ।
याचितारश्च नः सन्तु, मा च याचिष्म कञ्चन ।
अन्नं प्रवर्धतां नित्यं, दाता शतञ्च जीवतु ॥
तेषामस्त्वक्षया तृप्ति-र्येभ्यः सङ्कल्पिता द्विजाः ।
एताः सत्याशिषः सन्तु ॥"

"वाजे वाजेऽवत वाजिनो नो धनेषु विप्रा अमृता ऋतज्ञाः ।
अस्य मध्वः पिवत मादयध्वं तृप्ता यात पथिभिर्देवयानैः ॥"

"May our donors prosper ; may the sacred learning, male issue, and faith in the teachings of the Shástras be never wanting in us ; may our things for making gifts be numerous ; may our food be abundant ; may we get guests (seeking our place for entertainment) ; may many persons beg of us ; may we never (be under the need to) beg ; may our stock of food increase every day ; may the donor live a hundred years ; may those (our forefathers) represented by the Bráhmanas (appointed in that behalf) have unceasing gratification : may these blessings be realized."

"In every battle do (ye) protect us fighting for property (oh !) wise and immortal (fathers), aware of

the reward of pious rites ; drink (ye) this honey and be delighted, and being satisfied depart by paths used by Gods."—Raghunandana's Sráddha-Tattwa.

The fundamental doctrines of Hindu religion are :—the eternity of the soul ; its confinement in a body ethereal or mundane such as that of a God or of a man or of any lower animal, until *Moksha* or liberation ; its metempsychosis or transmigration from one body to another ; and its subjection to its *Karma* or acts and omissions in its past states of existence while living as a human being, which produce the *Adrishta* or Invisible Dual Force of virtues and vices, determining its condition of happiness and misery, and its assumption of different forms of body. According to the theory of Adrishta, which is universally known to all Hindus from the highest to the lowest, every man is the builder of his own condition and fortune. The millions of Hindus meeting with untimely death after suffering indescribeable miseries at a famine, curse only their own selves as the greatest sinners in previous states of existence, and therefore suffering untold woes. They do not blame either the Government or the landlords or any other person for their terrible misfortune, which they ascribe to their own past misdeeds awarding the same as condign punishment for expiating them ; and they die like philosophers, without even thinking of resorting to violence for procuring good for themselves and their dear ones, from their lucky neighbours possessing the same in abundance.

The doctrine of spiritual benefit derived from funeral oblations offered in the Párvana Sráddha that

may be, performed by relations, at their option, is utterly inconsistent with the fundamental doctrine of *Karma* and *Adrishta* set forth above. According to the ritual prescribed in comparatively recent treatises, the sixteen Sráddhas ending with the *Sapindí-Karana* celebrated on the first lunar anniversary of a deceased person, which are performed for a deceased individual alone, appear to stand on a different footing ; and the Hindu law also makes the performance of them obligatory on the heir out of the estate left by the deceased. The soul of a deceased person, for whom these obituary ceremonies have been performed, is popularly believed to pass from the *Preta-loka* or region for the departed or the world of ghosts or Purgatory, to the Pitri-loka or region for the manes of ancestors, or heaven. Had the effect of the Parvána Sráddha been such as is explained in the aforesaid passage of the Dáyabhága, the regular performance of the same should have been made legally obligatory on the heir. But the author of that work was perfectly aware of the weakness of his argument in support of the so called principle of spiritual benefit ; and accordingly, he says that if the learned be unsatisfied with the doctrine, that the capacity for conferring spiritual benefit is the principle or criterion of the order of succession, yet the order of succession set forth by him should be accepted as the one deducible from the texts cited by him : Ch. xi, Sect. vi, para 33.

Hence the *order of succession* laid down in the Dáyabhága should be considered without any reference to the so-called principle of spiritual benefit, as in fact

there is no such consistent principle. The order is very clearly laid down ; and what was intended by the seemingly vague expession " the maternal uncle *and the rest*," is explained by Raghunandana in this treatise, and by Srikrishna in his commentary on the Dáyabhága as well as in his Dáya-krama-sangraha leaving aside the spurious passages or interpolations that were not parts of the original text of this work, and therefore not found in all manuscript copies as is stated by Colebrooke. Looking to the author's argument introducing in the order of succession, "the maternal uncle and the like," just after the paternal great-grand-father's daughter's son, that term must be taken to mean the meternal uncle, his son, and his son's son ; because they that confer the spiritual benifit on the *three* maternal ancestors to whom the deceased proprietor had to offer oblations during his life, are to become his heir's by reason of their performing, as it were, his duties vicariously. As the three male issue of a person confer the highest amount of spiritual benefit and as the maternal grandfather is the ancestor principally considered, those three are the only maternal relations that may come under the principle. But if the maternal-grandfather is alive, then because his male issue are not entitled to perform the Srâddha ceremonies during his life, and becausc secular benefit is perhaps as much important as the spiritual one, also because he is nearer in relationship, therefore he ought to succeed in preference to his descendants. Accordingly he is so placed in the order of succession, both by Raghunandana and Srikrishna. In fact these four maternal relations only were intended to

be introduced reciprocally to the four grandsons by daughter, of the proprietor himself and of his three paternal ancestors, as heirs in preference to the comparatively more distant agnates. And this appears to be the view, taken by Raghunandana, of the Dáyabhága law, of which the substance is given by him in this work, and this is the traditional interpretation of the Dáyabhága law as has all along been understood by the Panditas of the Bengal school. This view is also taken by Srikrishna the well-known commentator of the Dáyabhága, as appears from his Synopsis of the order of succession appended to his commentary on Ch. XI of the Dáyabhága, and also from his Dáya-Krama-Sangraha omitting however the interpolated passages which, Colebrooke says, were not found in all manuscript copies of the same.

Difficulty, however, arose in consequence of the omission in the Dáyabhága of other cognates ; and that gave rise to the Full Bench decision already referred to.

The object with which the translation of this work was published was to remove that difficulty, as well as the doubt created by the Full Bench as regards the whole order of succession. The object has been attained but partially : the order of succession down to the paternal great-grand-father's daughter's son, which is very clearly expressed in this treatise has been permitted to stand notwithstanding the revolutionary opinion expressed by that Full Bench. It is respectfully submitted that it would be highly desirable and satisfactory if the mistake into which the Full Bench was betrayed, be entirely corrected by the High Court.

It may be interesting to trace the cause of the origin of a new school of law in Bengal, different from that of the rest of India. The reason why this change of law was introduced and accepted in Bengal is to be sought in the social history of the two highest castes of the Bengali Hindus. A'disúra one of the Hindu kings of Bengal became sorry to find no Bráhmana within his territory, so well versed in the sacred literature and the ceremonial of sacrifices, as to be able to enlighten him on the subject of the *Puttreshtí* sacrifice, *i. e.*, the sacrifice by the performance of which the birth of son may be secured, or to be able to perform the same in the prescribed mode. Buddhism had prevailed in Bengal for many centuries before the time of A'disúra, and appears to have been adopted by all classes excepting the Bráhmanas who were the greatest opponents of it, which though as a system of religion is really a branch of Hinduism, yet abolished the usage of hereditary caste or Bráhmanism, and preached equality by birth, and personal distinction based on possession of virtues, and thus laid the axe at the root of the Bráhmanical claim for inherited superiority, and necessarily turned them into its bitterest enemies. But the spread of Buddhism among other classes affected the Bráhmanas also, who could not be expected to learn the Shástras relating to the sacrifices, or to acquire the practical training for performing the same, while the people did not want to have them performed by their aid. The king of Bengal therefore had to request the king of Kányakubja or Kanauj to send him five learned Bráhmanas familiar with the sacred literature, and capable of performing as officiating priests all the Vedic

sacrifices. Accordingly five learned Bráhmanas came from Kanauj to Bengal, and with them came also five learned Káyasthas sent probably because they were virtuous members of the same caste with the king of Bengal, who had sent for them also. The Bráhmanas were highly respected by the king who was impressed with the evidence of their learning and occult power. The King was also pleased with the Káyasthas on account of their virtues and high attainments. To the former, the king made grants of many villages ; and on the latter, he conferred high appointments in his state ; and thus they were induced to settle in his territory where they became the leading members of their respective castes.

These five Bráhmanas and five Káyasthas were respectively the ancestors of the present high-caste Bráhmanas and high-caste Káyasthas of Bengal. There was intermarriage between these new comers and the old Bráhmanas and Káyasthas, respectively. The new comers and their descendants held a higher social position than their respective caste people that had been settled here from before. Poligamy prevailed amongst the male descendants of the new comers, to whom members of the original castes eagerly gave their daughters in marriage, for raising the social status of their families. Many of these daughters used to continue to reside in their father's house, where their husbands either resided with them or approached them from time to time. Thus their sons were born and bred-up in their maternal grand-father's house, and were provided for by him. And in this way arose a closer tie of

connection with cognate relations, among the leading members of the two highest castes.

This furnishes us with the reason, why in Bengal the Law of succession was changed in favour of the dear and near cognates.

But though a person may be born and bred up in his mother's father's house, still it is with the maternal grandfather and his male issue only that the person's connection becomes closer, and not with their collateral relations, who have good reasons to be displeased with him and with his mother. A daughter residing in her father's family enjoys liberties that are denied to females coming into the family as daughters-in-law, to whom her conduct is often over-bearing and annoying, which is silently endured at first so long as they are young. But when these daughters-in-law grow up and assume the possition which is naturally theirs in their husband's house, disagreements spring up fomented by this daughter, causing disruption of the family and separation of her father's brothers from him. And although she continues to live joint with her brothers for some longer time, still as she is her brother's wife's ननन्दृ *na-nandri* = relation *impossible to please*, they cannot live together in harmony, and so she is ultimately provided with a different house to live there with her children separately from her brother's family. Nor can her sons though living near her relations, be socially intimate with them; for they bear a different family name, and have not to observe any mourning for their maternal grandfather's collateral relations on death, and they observe mourning for three days only even on the death of their

mother's father. On these and other occasions, the fact that he is a stranger to the family, becomes remarkably conspicuous. But though thus living at a different place separate from their agnate relations, they have to observe the full period of mourning on the death of an agnate relation within seven degrees counted in the Hindu mode of computation. The tie of agnatic connection is very strong among the Hindus, and is not much weakened even under the foregoing adverse circumstances, but completely re-asserts itself among the descendants of the persons born and bred-up in the family of their mothers' father, who become the root of joint families on the agnatic basis, of their male descendants.

We are now in a position to understand why Jímúta introduced the change of law in the way set forth above: it was for the benefit of the members of Jimúta's own class, who were the leaders of Hindu Society; and the same being acceptable to the leading members of the two foremost castes, became the law of Bengal without difficulty. For, "यद्-यद्-आचरति श्रेष्ठस्तत् तद् एवेतरे जनाः"— ordinary people follow the usages of the leading persons.

Jímútaváhana was the 7th descendant of Bhattanáráyana one of the said five Bráhmanas; he was the minister and administrator of Justice during the reign of Vishwaksena, and flourished in the last quarter of the 11th and the beginning of the 12th century of the Christian era. For this account, my thanks are due to Pandita Pramathanáth Tarkabhúshana the very learned professor of Smrití in the Calcutta Sanskrit College, who has found out the age of Jímúta from certain passages in his work called Kála-Viveka, and kindly

informed me of the same, and also to Pandita Lálmohan Vidyánidhi the author of the well-known work called Sambandha-Nirnaya who furnished me with the following passage of the Kula-Káriká of Eru Misra, or the Social History of the Bengali Bráhmanas by Eru Misra, which gives a succinct account of Jímútaváhana :—

आस्खिल्यगोत्रज: श्रेष्ठो भट्टनारायण: कवि:। तस्यात्मजो बटुर्नाम पारिग्रामी बहुश्रुत:॥
बटुकस्य त्रय: पुत्रा: मणिभद्रस्तु शेषक:। मणिभद्र-सुतस्यास्य पारिवंशस्यमुख्यक:॥
पारिग्रामे बटूनां मणिभद्रो जगद्गुरु:। भद्रसुने: सुतो जात: धनञ्जयो महाकवि:॥
तस्यान्वये विधुर्जात: कवीनाञ्च शिरोमणि:। तस्य पुत्रो हलो नाम बङ्गराज्ये प्रतिष्ठित:॥
पारिकुल-मुनिश्रेष्ठ: सर्व्वत्र बुधपूजित:। तस्य पुत्र: सुधी: श्रीमान् चतुर्भुज: सदा शुचि:॥
विल्वमङ्गल-जीमूती चतुर्भुजसुतावुभौ। तस्मिन् काले बङ्गदेशे जीमूतश्चतुरग्रणी:॥
गौड़भूमि-दृ'पामात्य: प्राड्विवाक इतीरित:। तदुद्विर्वेदवेदाङ्गे सूक्ष्मा सूक्ष्मतमाऽभवत्॥
गौड़राज्ये तदा राजा विश्वरूपसेनो महाव्रत:। प्रजानां सुखदाचारे तथा संव्रयनाश्रमे।
निबन्धो दायभाग: स जीमूतेन कृतस्तदा॥
एकुनिश्रस्य कुलकारिका॥

"Bhatta-naráyana (one of the five Bráhmanas) was descended from the *Sándilya Gotra* and was a distinguished poet. His son was Batu by name who was very learned and was settled in the village Pári. Batuka had three sons, of whom Manibhadra was the last; his son Manibhadra was the glory of the Pári family; Manibhadra among the sons of Batu in the village Pári, became the preceptor of the world. The great poet Dhananjaya was born as son to the sage Bhadra, in his lineage was born Bidhu the chief of poets. His son by name Hala was distinguished in the kingdom of Bengal, the best of the sages of the Pári family, and respected everywhere by the learned. His son Chaturbhuja was learned, prosperous and always pure. Chaturbhuja had two sons Bilwamangala and Jímu'ta. At that time in Bengal Jímu'ta who was endowed with the highest intellectual capacity mastering all subjects became the minister of the king of the Gaura country and was celebrated as administrator of justice. His keen intellect became

keenest in the Vedas and the Vedángas; at that time in the kingdom of Gaura, Viswaksena was the king celebrated for austerities. It was at that time that the well-known commentary Dáyabhága was composed by Jímu'ta for (the purpose of introducing) good usage among people and for removal of doubts."

Kula-Káriká of Eru Misra.

Jimútaváhana was an inhabitant of the village Pári-gráma situated on the southern bank of the river Ajay, at a distance of about five miles in the north-easterly direction from the Gooskara station in the Loop Line. It is included within the district of Burdwan.

In Pandita Bharat-chandra Síromani's Edition of the original Dáyabhága with six commentaries there is the following sloka in the Peroration at the end of the work,—

पारिभद्रकुलोद्भूतः श्रीमान् जीमूतवाहनः ।
दायभागं चकारेमं विदुषां संशयच्छिदे ॥

meaning "The fortunate Jímútaváhana sprung from the Pári-Bhadra family, composed this Dáyabhága for removing doubts of the learned."—Colebrooke's translation, however, does not contain this verse.

If this text be genuine, then the author appears to have thought that by describing himself as a member of the Pári-Bhadra family, sufficient account is given, namely, that he was a descendant of the celebrated professor Bhadra of Parí-gram, whose descendants were well-known to the learned Bráhmanas of Bengal.

As regards Jímúta's time allowing 25 years for a generation it would be the last quarter of the 2nd century after the migration of the five Bráhmana's into Bengal. And the time of Eru Misra who was the 18th descendant

of Vedagarbha another of the said five Bráhmanas, would be the 2nd quarter of the 5th century from the said time or two hundred and fifty years later than Jímúta's. The time of the migration as found in the Social Histories is 999th year of the Sambat era which corresponds with the 931st year of Christ.

Jímúta was highly respected, and Raghunandana who differs from him in a few particulars, does most respectfully express his dissent in this work which is but an epitome of Jímúta's work.

The translation has been revised, and a few alterations have been made, but they are not material. In this edition the original text is added and placed before the Translation: its presence is of great advantage for testing the accuracy of the rendering. For the convenience of reference it is, like the Translation, divided into Chapters, and so each Chapter is sub-divided into paragraphs, numbered consecutively. This edition is a fac-simile of the first, so that the same passages are to be found in the same pages of both editions.

In conclusion I have to thank Dr. Sarat-chandra Bandyopádhyáya, M. A., D. L., for carefully revising the Index.

20, Sankharitola East,
Calcutta, 23rd October, 1904.

G. S.

DAYATATTWA

OF

RAGHUNANDANA.

CHAPTER I.

1. *Om!* salutation be to Ganesa. Having prostrated himself before Vásudeva, the Lord of the universe, eternal, whose essence consists of omniscience and beatitude, the fortunate Raghunandana discusses the principles of the Law of Heritage.

2. In this treatise are briefly expounded, the determination (of the meaning) of Partition of Heritage; also the Distribution effected by the father; likewise Partition by brothers; Exclusion from shares; Partibility and Impartibility; the Removal of doubt regarding the fact of partition having been made; the Distribution of what was concealed; Woman's property; and the Right of succession thereto; and the Heirs to the property of a sonless man.

3. First, (the meaning of the term) Partition of Heritage (is discussed).

4. On that subject Nárada says:—"Where the division of the paternal property is instituted by sons, that topic of litigation is, by the wise, called Partition of Heritage." "Property" means wealth; "paternal" signifies acquired through the relation of paternity; "where" relates to "the topic of litigation".

5. This term "Heritage," by derivation, signifies what is given. Here the use of the verb (*dá*) is secondary; since there is a similarity (of the secondary with the primary meaning of the term) in the consequence, namely that of constituting another's right of property after annulling the previous right of a person who is dead or gone to retirement or the like. But there is no abdication on the part of the deceased, and the like, in the form of an intention, such as, "This property is no longer mine", which has the effect of putting an end to one's right of property.

6. Likewise, from the use of the term "Heritage" to signify one's property, is inferred the cessation of the right of the previous owner. And to that property accrues others' right, dependant on relation to the former owner, by reason of the text of Baudháyana, which says "when there are sons, the property goes to them". The meaning is, if there are sons at the time of the cessation of the father's right, the property which was the subject of that right descends to the sons.

7. As for the text of Gautama, however, cited in the Mitákshará, namely,—"Property is taken by reason of ownership through birth alone: this is said by the sages,"—that also is to be construed in the following way:—inasmuch as it is through the relation of mere birth,—which is the cause of sonship, which is stronger than any other relation,—that the son's right to the property of the father accrues at the time of the cessation of the father's right, the son and not any other relative, should take that property:—this is intended by the sages.

8. Nor can it be argued that even while the father's right continues, the son's right accrues, at the time of his

birth, to the property of the father: for, this meaning would be inconsistent with the text of Devala, which says,—"When the father is dead let the sons divide the father's wealth; for, sons have not ownership while the father is alive and free from defect." "Free from defect" signifies, not degraded.

9. Accordingly, Nárada, in the commencement of (the chapter on) partition, says: "If the father be lost, or no longer a householder, or his temporal affections be extinct." "Lost" means degraded; "no longer a householder" signifies, having quitted the order of a householder.

10. Therefore the son's right to the father's estate accrues when the father's right of property is destroyed by death, degradation, or adoption of an order other than that of the householder; and when his temporal affections are extinct, that is, even though the right of property remain, if the father be devoid of wish for the wealth belonging to him.

11. Here destruction of the right of property by reason of degradation is to be understood (to take place) on disinclination to expiation, because the capacity for atonement, which can be performed with one's own wealth only, is predicated in the Srutis, even of the degraded.

12. By the extinction of desires is meant, the cessation of desires which is not identical with that temporary absence of desires, which may co-exist with the right of property.

13. Here it should be remarked that the right of property, being once extinguished by reason of the

cessation of desires, will not again revive with the revival of desires.

14. Hence, because in the text of Devala (§ 8) it is affirmed that the son's right to the father's property does not arise while the father is alive, therefore the text of Gáutama which says that—"Property is taken by reason of ownership through birth alone :—this is said by the sages,"—is to be interpreted thus :—because immediately after the extinction of the father's right, the son's right is generated through birth, consequently by reason of ownership the son takes the property of his father ; not however immediately after birth, while the father's right remains.

15. In the text of Nárada which is first quoted, (§4) the terms "father" and "son" indicate any relatives. Accordingly Yájnavalkya, having premised Partition of Heritage, says :—"The wife and the daughters, also, both parents brothers likewise and their sons, gentiles, cognates, and a pupil and a fellowstudent: on failure of (each) preceding among these, each next in order is heir to the estate of one who departed for heaven leaving no male issue. This rule extends to all classes.—From what follows, it appears that the word "each" is understood before the term "preceding."

16. Consequently the term Heritage is used by usage to signify that wealth in which right of property of the owner's kindred, dependant on relation of sonship &c. to the owner, arises on cessation of his right.

17. The phrase,—"dependant on relation of sonship &c." is inserted (in the above definition) to distinguish that right which is dependant on purchase. The phrase "on cessation of his right" excludes the wife's right to

her husband's property, contemporaneous with the husband's right.

18. Some,*allege that Partition which takes place by reason of the co-existence of other relatives (who have an equal right of succession) is a particular ascertainment of the right of property, or making of it known, which has arisen in lands, gold &c., and which extends to a part only, but which is unfit for special use and appropriation because grounds of discrimination are wanting, by casting of lots or otherwise which determine that a particular chattel belongs to a particular person.

19. But this (definition) is not accurate. For how may it be certainly known, since no text declares it, that the lot for each person falls precisely on that article which was already his.

20. Again if wealth be gained after the father's demise, by a brother riding one of two horses, which belonged to the father, it is universely acknowleged, that two shares of it appertain to the acquirer ; and one to any other coheir. In such a case when the original property is subsequently divided, if that very horse be obtained by the acquirer, then according to the opinion of those who affirm partial rights, the horse was already his ; why then should another brother share the wealth gained by him ? But if the horse be obtained by another, equal participation (by the two co-heirs only) of wealth so acquired would be proper, since it is gained by the personal labor of the one and by the work of a horse belonging to the other.

* The allegation is made by the author of the Dáyabhága.

21. But in fact, Partition is the adjustment by lot or otherwise into right over a specific portion, of that right which did, by reason of the sameness of relation of the co-heirs, accrue to the whole property, upon the extinction of the right of the previous owner.

22. Thus, even the accrual and extinction of rights over the entire estate are to be admitted, in the same manner, as in the case of the re-union of co-heirs, the destruction of rights over portions, and the production of rights over the entire estate, are acknowleged.

23. This too is (in a manner) acknowledged by the author of the Dáyabhága who himself writes:—In the following text of Vrihaspati, namely,—"He who being (once) separated dwells again through affection, with his father, brother, or paternal uncle is termed reunited;"—because the father, the brother, the paternal uncle and the like, are from their birth likely to be united as regards the property acquired by the father or the grandfather; they alone may become re-united, when being once separated they annul, through mutual affection, the previous partition with the agreement to this effect, that the wealth which is thine is mine, and what is mine is thine, and remain like one householder in any transaction. But not an association of merchants who, unlike the coparceners, are by the mere union of stocks formed into a partnership, nor the mere union of estate of separated coparceners without the stipulation based upon affection (are to be looked upon as instances of re-union.)

24. By reason of the right being common, the text of Kátyáyana, which says,—"A coparcener is not liable for the use of any article which belongs to all the undivided

relatives,"—becomes consistent in its literal sense; inasmuch as his own right extends over every article; accordingly, there can be no theft in such a case, as will be shewn hereafter. (chap. viii.)

25. Similarly also, by the text of Nárada, namely,—"Separated, not unseparated, brethren may reciprocally bear testimony, become sureties, bestow gifts and accept presents,"—the prohibition of mutual gift &c. amongst undivided coparceners becomes logically consistent; because, (in such a case) there is an impossibility of gift and acceptance, inasmuch as the acceptor, had a right to the property given, even before a gift of it was made. The text is to be understood in this way, in the cases of bearing testimony and becoming sureties.

26. All the coparceners are entitled to the fruits of all acts, either temporal or spiritual, which are performed with the use of the joint property; since their right is common. This is affirmed by Nárada,—"Among undivided brethren, religious duties continue common; but when partition takes place, their religious duties also become different."

27. Vyása ordains: "Let no one without the consent of the others, make a sale or gift of the whole immoveable estate, nor of what is common to the family. Here, from the use of the adjective "whole," it appears that the right of each parcener accrues to the entire estate.

28. Therefore, when there are two persons equally related to the deceased, each of them considers the property left by the deceased to belong to himself as well as to the other co-heir. Gift and the like by the one for

his own purpose, is prohibited, should the other's consent be wanting.

29. Therefore it is established that the right does not accrue to a fractional portion.

30. Vrihaspati lays down a special rule with regard to the allotment of shares :—"All the sons take equal shares of the property of their father ; but of these he who is learned and virtuous deserves a larger share ; Since a person becomes father by that son who has in the world acquired a fame in literature, science, heroism, acquisition of wealth, knowledge of theology, charity, and commerce."

31. Vrihaspati also speaks of partition by use at successive periods :—"A single female slave should be employed on labor in the house (of the several co-heirs) successively according to the number of shares."

32. Here there is clearly the supposition either of the production and the destruction of different temporary rights of a single person over a single individual ; or of the temporary cessation of different rights of all.

33. A text of Kátyáyana cited in theKalpataru and the Ratnákara declares that (the law of) partition may be different in different places and the like :—"Partition of Heritage is to be regulated by the law which may obtain in a country, among a class, among an association (of persons such as those carrying on a particular trade, or practising a particular mechanical art), and in a village : Bhrigu (has ordained this)." "Has ordained this" is understood.

CHAPTER II.

PARTITION MADE BY THE FATHER.

1. In the next place (is discussed) the distribution made by the father. (On this subject) Hárita (says),—"A father during his life may, after distributing his property, retire to the forest, or enter into the order suitable to an aged man; or he may remain at home, having distributed small allotments and keeping a greater portion: should he become indigent, he may take back from them." "The order suitable to an aged man," intends, retirement or the order of Bhikshus or ascetics.

2. By this text, the father is authorized to distribute a small part, and to reserve the greatest portion of the wealth.

3. Vishnu (ordains),—"When a father separates his sons from himself, his own will regulates the distribution: but in the estate inherited from the grandfather, the ownership of the father and the son is equal."

4. As regards even his self-acquired property, the unequal distribution by his own will should be guided by such reasons as the existence or absence, of filial piety, of large family, of inability, and of the like, (of any son.) This is affirmed by Kátyáyana,—"But let not a father distinguish one son at a partition made in his lifetime, nor capriciously exclude one from participation without sufficient cause."

5. But when there are none of the reasons enumerated above (a father may not make an unequal distribution.) This is declared by Nárada,—"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 Sástras permit, has no power in the distribution of the estate." "Beloved object," intends, the son of a wife on whom he dotes, and the like.

6. But should the sons themselves request partition, in that case, Manu declares the absence of unequal allotment,—"If the undivided brethren do, with one accord, desire partition, then the father shall, on no account, make an unequal distribution."

7. The father, if unwilling, shall not share with his sons his paternal property, which was seized by strangers, but which he recovered. This is ordained by Manu and Vishnu,—"If the father recovers paternal wealth (seized by strangers and) not recovered (by other sharers nor by his own father), he shall not, unless willing, share the same with his sons,—it was acquired by himself." The construction is, that he shall not share it with his sons, because it was, as it were, acquired by himself.

8. But as regards the case of recovery by any other (than the father), the law is propounded by the text of Sankha which is hereafter cited: (§ 11). This follows from the logical interpretation of two provisions, one of which is general and the other special.

9. This however refers to immovable property.

10. But in gems and the like, though not recovered by him, the father alone has ownership, as Yájnavalkya intimates,—"The father is master of all the gems, pearls and corals without exception: but neither the father nor the grandfather is so, of the

whole immovable property," Since "the grandfather" is here mentioned, the text must relate to his wealth.

11. In like manner, the following text of Sankha refers to a case of recovery by brothers and the like,—"When one parcenar alone, by his exertion, recovers land which was lost before, the others take in proportion to their shares, after setting apart a fourth for him."

12. Here the recoverer should, after appropriating a fourth share for himself, take an equal share of the remainder with his brethren, otherwise the shares might become inequitable.

13. When the father effects the distribution, he should allot to his sonless wife a share equal to that of a son, because Vyása declares,—"But the father's wives, who are without male issue, are declared to be entitled to equal shares with his sons; and all the grandmothers are declared to be equal to mothers."

14. This rule applies when Stridhana has not been bestowed. This is affirmed by Yájnavalkya,—"When the father (by his own choice) makes all his sons partakers of equal shares, his wives, to whom Stridhana has not been given by their husband or father-in-law, must be made participants of shares equal to those of sons."

15. In order to the consistency of the texts of Vyása and Yájnavalkya, the phrase "father's wives" in the text of the former (§ 13) is to be construed, "when the father distributes his property, his wives."

16. Nor can it be said that the converse is the case here; because the logical rule of interpretation is, that

"When a provision of law is clear in itself, it should not be controlled by any other."

17. Therefore in a case of partition made by the sons, the step-mothers (without male issue) are not entitled to any shares.

18. When Stridhana has been given, the husband should allot to his wife half the share of a son. This appears to be the law (from the combined effect of the following texts of Yájnavalkya and Baudháyana); for Yájnavalkya observes in a case of marriage,—"To a woman, whose husband marries a second time, let him give her an equal sum, (as compensation) for the supercession, provided no separate property have been bestowed on her: but if any have been assigned, let him allot half (the share of a son)"; and Baudháyana says,—"What is affirmed of even one among many who have a common property, the same is to be extended to every one, since they are considered similar."

19. When partition is made, by the grandsons, of the property of their grandfather, a share ought to be allotted to the grandmother, in the same manner as a share is given to the mother (when paternal property is divided.)

20. Vishnu says,—"But in the property left by the grandfather, the father and the son have equal ownership." Also Yájnavalkya ordains,—"The ownership of the father and the son is the same in land or in a corrody or in chattels which were acquired by the grandfather." The author of the Kalpataru defines 'a corrody' to be, what is granted by the king and the like, receivable periodically from a mine or similar fund:

'chattels' from their association (with land) here means biped (i. e. slave); because another text affirms,—"Although immoveables and bipeds have been acquired by a man himself, a gift or sale of them should not be made by him without the consent of all the sons."

21. According to these texts, in regard to the land or a corrody or slaves acquired by the grandfather, as the father has right over these by reason of his being the person who presents oblations at solemn obsequies, so if his right cease by death or other cause, his sons have a right, notwithstanding their uncle, to so much, as should have been their father's share.

22. For the same reason the text of Kátyáyana quoted in the Ratnákara declares,—"If an unseparated son dies, his son should be made participant of his father's share; he, who has not received maintenance from the grandfather, is entitled to get his father's share from his uncle or uncle's son."

23. During the lifetime of the father, the grandsons are not entitled to any share, inasmuch as they are then incapable of presenting funeral oblations to the grandfather.

24. Similarly on the extinction of the right of the proprietor's grandson, his great-grandsons become participator's of his (the grandson's) share only. But they get no share during the grandson's lifetime.

25. Or the above texts may admit of the following interpretation, namely, that as the father is at full liberty to allot unequal shares, when he is distributing his self-acquired property: the same is not the case here (i. e. when distributing his paternal estate.)

26. But these texts do not intend equal ownership of the father and the son. Because two shares of the father are declared by the following text of Nárada—"Let the father making a partition reserve two shares for himself: when her husband is dead, the mother is entitled to an equal share with her sons."

27. Nor can this refer to the self-acquired property of the father; because as to that the unlimited discretion of the father declared by Vishnu in the text,—"His will regulates the division of his self-acquired property,"—ought not to be restricted to two shares; also because it would be contradictory to the text of Háríta which ordains,—"He may remain at home keeping the greater portion to himself."

28. But the text of Nárada (§ 26) refers to the property of the grandfather and other ancestors.

29. Also the following text, cited in the Mitákshará, refers to the property left by the grandfather,—"By favour of the father apparels and ornaments are used: but immovable property may not be consumed (even) with the father's indulgence"—because the self-acquired immoveable property, granted by the father, may, of course, be consumed (by the sons); otherwise an objection would arise in the shape of an inference of a different radical revelation.*

* The meaning is this. The text viz., "But immovable property may not be consumed even with the fathers's indulgence" refers to the grand-father's property, and not to the self-acquired property of the father. For the father's unlimited authority over his self-acquired property is declared by innumerable texts. Consequently there is no reason, why the son might not consume the father's self-acquired propsrty even with his indulgence. If it be argued that this text itself intends to put a restriction to the unlimited power of the father over his self acquired property in that case an objection would arise, in the shape of an inference of an opposite revelation. This objection cannot be comprehended unless the following doctrine of Hindu revelation be taken into con-

30. Vrihaspati declares that the distribution of an estate left by the grandfather or other ancestor takes place only when the mother is past childbearing,—"On the demise of both parents, participation among brothers is allowed; and even while they are both living, it is right, if the mother be past childbearing." Here the term mother includes also a stepmother; because of the parity of reason, namely, the probability of the birth of other sons.

31. Because it is affirmed that "if the mother be past childbearing," therefore the text refers to the property left by the grandfather, but not to the estate of the father; for as to this, provision is made for the share of one who is born after partition. As Vrihaspati declares,—"The younger brothers of those, who have made a partition with their father, whether children of the same mother or of her rivals, shall take their father's share. A son born-before partition has no claim on the paternal wealth; nor one begotten after it, on that of his brother. As in the property, so in the

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sideration. The Hindus believe that their law is based upon revelations which were not recorded by the sages who were inspired therewith. But they handed down these to their disciples who traditionally remembered the purport, but not the letter of these revelations. The sense of these revelations was, by the remembering sages expressed in their own language which was recorded. Hence Hindu law bears the designation of Smriti which signifies "what is remembered." Therefore the subsequent Hindu writers classify their revelations under two heads namely the direct and the inferential. By the direct are included the four Vedas consisting of the Mantra and the Brahmana, and the Upanishads. Under the inferential are comprised those that are deduced from Smriti or the texts of Hindu law, and from the customs and usages which are observed from time immemorial, by the learned world, but which are not expressly prohibited.

Now, if the argument that a restriction was intended by the above text to be placed upon the unlimited authority of the father over his self-acquired property be correct, then a revelation is to be inferred to the following effect; that a person has not unlimited authority over his self-acquired estate. But from the texts, which lay down that a person has an absolute right of disposal over his self-acquired property, a contradictory revelation necessarily follows. This would be absurd. Therefore the interpretation put by the author upon the above text is perfectly consistent. TRANSLATOR.

debts likewise, and in gifts, pledges, and purchases, they have no claim on each other, except for acts of mourning and libations of water." "Begotten after partition," signifies, one that is conceived after partition.

32. Yájnavalkya says,—"When the father makes a partition, let him separate his sons (from himself) at his pleasure; and either (dismiss) the eldest son with the best share, or (if he chooses) all may be equal sharers." In this text, the phrase "at his pleasure," refers to self-acquired property: "with the best share," means, a share joined to the twentieth part set apart for the eldest; the best and equal shares refer to the grandfather's estate; for, thus it would be consistent with the proposition which is first laid down.

33. Likewise, the following text of Gotama refers to the estate of the grandfather, because it says,—"if the mother be past childbearing,"—"After the demise of the father, let the sons share his estate: or when he is alive, if the mother be past childbearing, and he desire partition."

34. Therefore also, because death of the father is indicated by the phrase 'after the father', and because the desire of the father alone is expressed by the passage,—"while he is alive if he desire partition,"—consequently it is established that the distribution of the grandfather's estate may take place at the desire of the father and not at that of the sons.

35. Likewise, the text of Devala which says,—"They have no ownership while the father is alive and free from defect,"—and the text of Baudháyana which declares,—"Partition takes place by permission of the father,"—are

without distinction applicable as well to the father's property as to the estate left by the grandfather.

36. Should however the estate of the grandfather be accidentally distributed even before the mother is past child-bearing. (To meet that contingency) Vishnu says,—"Those to whom the father has allotted shares, should allow a share to one who is begotten after partition." This text does not refer to the property of the father, because in that case it would be inconsistent with the text of Vrihaspati cited before: (§ 31).

37. Referring to the twelve kinds of sons, Devalà says,—"All these sons of one destitute of true issue are held to be entitled to the inheritance: but should a true legitimate son be afterwards born, they have no right of primogeniture: such among them as are of equal class (with the father) shall have a third share as their allotment; but those of a lower tribe must live dependent on him, supplied with food and raiment." "Entitled to the inheritance," means entitled to a full share. Of these, other than the true sons, those that are of the same class with the father are entitled to a third share when there is a true son.

38. As to this again, Manu lays down, a particular rule,—"The legitimate son and the son of a wife participate in the property of the father (in the way specified above), and the ten remaining sons are successively entitled to a share of the property as well as to the membership of the family." By reason of his being the propagator of the family and the giver of the funeral oblation which is due to the proprietor, the son of an

appointed daughter in the first place, and after him the Dattaka son, becomes entitled to the inheritance and to the membership of the family. "Successively" (or in other words) in succession, that is, in the absence of the first of these, the next in order are entitled to the inheritance and to the membership of the family.

39. Yájnavalkya declares the participation by the son of a female slave of a Súdra,—"Even a son, begotten by a Súdra on a female slave may take a share at the desire of the father; but if the father be dead, the brethren should make him partaker of half a share; one who has no brothers (begotten by the father on a wife) may inherit the whole property in the absence of the daughter's son." "At the desire" means, at the choice of the father; "a share" means, a share equal to that of other sons.

40. When however there is a daughter's son, he gets an equal share with the son of a female slave; and this is reasonable, because the one is begotten by a woman who is not wedded, and the other is a legitimate descendant.

41. Manu states the distribution (of property) between a true son and the issue of the wife begotten without due authority,—"If there be two sons, a legitimate one and the son of the wife, who are claimants through the same (person), each shall take the property which belonged to his father; and not the other." "Claimants through the same," means, claimants begotten on the same mother. The meaning is, let each receive the wealth of him from whose seed he sprung; and let not the other who sprung from the seed of another person take it.

42. As regards also the woman's property, let the son of each father take that which was bestowed on her by his father; and not the other. Accordingly, Nárada says,—"If two sons begotten by two fathers, contend for the wealth of the woman, let each of them take that which was his father's; and not the other."

CHAPTER III.

PARTITION BY BROTHERS.

1. Partition by brothers after the demise of the father is next explained. On this Devala says,—"Let the sons divide the father's estate on the demise of the father." "The father's estate" signifies, the property inherited from the father. Nárada says,—"Whatever remains after the father's gifts are given, and his debts liquidated, should be divided by the sons, so that the father might not remain a debtor." 'The father's gifts' signify what the father promised to give. It appears from the passage 'that the father might not remain a debtor,' that in case of inability (to liquidate the father's debts at the time of partition) it ought to be acknowledged before the creditors that the debts shall be paid off after partition.

2. Here (it should be remarked that) while the mother is alive, partition by uterine brothers is not compatible with moral duty; as is intimated by Sankha and Likhita,—"Since inheritance is the basis of the family, the sons are not independent while their father is alive, also while their mother is in a similar predicament." For

the same reason Vyása says,—"For brothers a common abode is ordained, so long as both parents are alive; but religious merit of them, if separated after their decease, increases." The meaning is, because a separated brother performs the ceremonies enjoined by the Vedas with the wealth appertaining to himself alone, consequently there is an increase of religious merit of that one alone.

3. If however (the paternal property) be distributed (while the mother is alive,) then the mother is entitled to participation. This is declared by Kátyáyana,—"On the demise of the father, the mother too partakes of an equal share with the sons."

4. Participation of an equal share too is only when the mother has not got woman's property (Strídhana) but if she has, a half share is to be allotted to her. This follows from the text cited before (Ch II, § 17).

5. Vrihaspati describes two modes of partition either with or without specific deductions (of a twentieth part for the eldest, and so forth),—"For co-heirs two modes of partition are ordained: one in the order of seniority of age, and the other by allotment of equal shares." The phrase 'in the order of seniority of age' intends, specific deductions.

6. But the absence of specific deductions among the Súdra class, will be hereafter mentioned.

7. Although equal division is in conformity with the Sástras, still the alternative of specific deductions, taking place out of an excess of reverence towards the seniors in age, is not contradictory, in the same manner as partition or non-partition is optional (with the co-heirs).

8. On this Manu says,—"But the eldest alone may take the paternal estate in its entirety : and the rest may remain dependent on him, as they did on the father." Also Nárada says,—"Or the eldest brother may, like the father, support all the others, if they be willing ; or even the youngest brother, if capable (may do so) : for rank in a family is proportional to ability." The middlemost of course may be here inferred from the analogy of the staff and cake.

9. This analogy is as follows : to gnaw the staff was difficult for the rat ; but if that was accomplished, the eating of the cake which was attached to it is inferred, because it is the easier ; so, in other cases, according to their circumstances, if one of associated things be true the other may be rightly inferred.

10. Consequently as there is no distinction, Nárada says,—"He, who being engaged in the management of the family, performs its business, should be honoured by the brothers with (presents such as) food, apparel and conveyances."

11. Vyása praises one who acts in that way,—"During whose life Bráhmanas, friends and relatives gain their maintenance, his life is fruitful : for, who does not live for his own sake ?"

12. In Harivansa, Nárada addressing Indra describes the evils springing from a contrary conduct,—"O, Destroyer of Bala ! mutual disagreement among brothers and friends causes only the delight of enemies : in this no doubt (can exist.)"

13. Here (it is to be remarked that) Nárada declares a common abode by the consent of all (the co-heirs).

14. But partition is not so. This is indicated by Kátyáyana, who, after having commenced, (the subject of) partition, says,—"The wealth of those that have not attained to maturity, as also of those that have gone to a distant place, should without expense be entrusted to the relatives, who are friendly disposed to them." "Those that have not attained to maturity," means, the minors.

15. If one of the co-heirs by reason of his own ability, decline to take his share of the property inherited from the father or other ancestor, something should be given to him, be it only a *Prastha* of rice, on his separation, for the purpose of obviating denial in future, on the part of his son or other heir. This is ordained by Manu,—"If any one of the brethren has a competence from his own occupation, and desires not the property, he may be debarred from his share, by giving him some trifle in lieu of maintenance."

16. Kátyáyana says,—"The visible objects such as a house, a field and a quadruped should be distributed: on suspicion of some hidden property, some test is ordained." "Test" signifies, divine test (such as ordeals by the balance and the like).

17. This text is rendered clear (by the following text),—"Bhrigu declared, that visible objects such as household furniture, conveyances, those (quadrupeds), that are milched, ornaments and workmen should be distributed: on suspicion of some hidden treasure,

resort must be had to *kosha*." "Household furniture," means the pestle and the like; "workmen" indicates, slaves; *kosha* signifies, a particular ordeal, and its meaning is to be found in the Divya-Tattwa (*i. e.* the author's treatise on the ordeals); the rest is well known,*

18. Nárada says,—"For those, whose forms of initiation have not been, in the prescribed order, performed by the father, these ceremonies must he completed with their paternal property. But, if no wealth of the father exists, the ceremonies must, without fail, be performed by the brothers already initiated, contributing funds out of their own portions."

19. To the daughters however property sufficient to defray the expenses of marriage should be given, as is said by Devala,—"Wealth sufficient for marriage should be allotted to the daughters out of the estate of the father. And the legitimate daughter of one without male issue is, like the sons, entitled to the heritage." Vishnu says,—"But of maiden daughters the ceremony of marriage should be performed, according to one's own wealth."

20. Thus, the texts also, which ordain the allotment of a fourth share (to a maiden daughter), are to be construed to signify the allotment of property sufficient for marriage.

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* The divine tests are described also in the Mitákshará, Vyavahára Section, Chapter VIII. The following text of the Mitákshará in which the term *kosha* occurs, enumerates the divine tests: तुलाग्न्यापो विषं कोषो दिव्यानीह विशुद्धये।

Mr. Macnaughten translates this text in the following way: The balance, water, fire, poison and sacred libation are the divine tests for purgation (or the removal of suspicion in a doubtful matter.) Here the term *kosha* is rendered "sacred libation," which signifies the water in which the idol worshipped by the person whose truthfulness is to be tested, is bathed; the person is then ordered to drink a portion of that water.

21. The following text of law cited in the Dwaitanirnaya declares that the ceremonies of marriage may be performed even by relatives other than the father,—"Let the father himself or any other in his absence, according to the (recognized) order, perform the eight initiatory ceremonies such as that relating to conception and the like."

CHAPTER IV.

EXCLUSION FROM INHERITANCE.

1. In the next place, those that are excluded from inheritance (are determined.) A'pastamba says,—"All co-heirs who are indued with virtue are entitled to the property. But he who dissipates his wealth by vices, should be debarred from participation, even though he be the first born." The meaning is, even though he be the first born son.

2. The same opinion is propounded by Vrihaspati who says,—"Though born of a woman of equal class, a son destitute of virtue is unworthy of the peternal wealth : it is declared to belong to such kinsmen as are versed in the Vedas and as offer *pinda* to him (or them). "Offering *pinda* to him" means, offering funeral oblations to the owner; therefore is said "versed in the Vedas;" "destitute of virtue" means having defects inconsistent with virtue. In the Ratnákara the last line of the text of Vrihaspati is explained as follows,—"as offer *pinda* to them," mean, "as accord food and raiment to those destitute of virtue." In this view too, it appears as a matter of course, that the funeral oblations are offered to the owner.

3. "As a man passing over water on a bad raft, sinks, so a person with a bad son becomes immersed in the deepest darkness."

4. Kátyáyana says ;—"Property is created for (the performance of) religious ceremonies ; therefore property should be entrusted to persons who are worthy of property, and not to women, to the ignorant, and to the vicious."

5. The term "women" in the above text signifies female Sapindas other than the owner's wife and the other women, with regard to whose succession, there are special provisions.

6. Also,—"A son who is devoid of science, heroism, and the like, who is destitute of devotion and charity, and who is wanting in (religious) observances, is similar to urine and excrement."

7. Sankha says,—"He who takes the property of the deceased without performing the funeral obsequies, should without fail perform the expiatory rite, which is ordained for the different castes in atonement of murder."

8. Devala declares,—"When the father is dead, an impotent man, a leper, a madman, an idiot, a blind man, an outcast, the offspring of an outcast, and a person wearing the badge (of religious mendicity), are not competent to share the heritage. Food and raiment should be given to them excepting the outcast. But the sons of such persons, being free from similar defects, shall obtain their father's share of the inheritance."

"An idiot" is one incapable of performing religious duty; "a blind" signifies one who is born blind, by reason of the text of Manu which says,—"Likewise those that are deaf and blind from their birth;" "a person wearing the badge" is one who had assumed hypocritical mark of austerity.

9. Nárada ordains,—"An enemy to his father, an outcast, an impotent person, and one who is addicted to vice (or has been expelled from society) take no share of the inheritance, even though they be legitimate; much less, if they be sons of the wife." "An enemy to his father" is one who abuses him by beating and the like while he is alive, and who is unwilling to perform his funeral obsequies when he is dead. The term of which the translation is "one who is addicted to vice" literally signifies, one stained with sins. But the author of the Kalpataru reads it as *apapátrita*, and explains it to mean one who is excommunicated by his relatives, on account of heinous crimes, such as murdering the king and so forth. The author of the Prakása, having read it as *Upapátaki*, expounds it as signifying one who has committed minor sins.

CHAPTER V.

EFFECTS LIABLE OR NOT LIABLE TO PARTITION.

1. In the next place are discussed partibility and impartibility. On this Vyása says,—"What a man acquires by his own ability, without relying on the patrimony, he shall not give up to the coheirs, nor that which is acquired by science."

2. Kátyáyana describes the wealth acquired by science,—"What is gained through learning, by the solution (of a difficulty) after a prize has been offered, must be considered as acquired through science, and is not distributed (among coheirs.) What has been obtained from a pupil, or by officiating as a priest, or for (answering) a question, or for determination of a doubtful point, or through display of knowledge, or by (success in) disputation, or for superior (skill in) reading, the sages have declared to be the gains of science, and not subject to distribution. The same rule likewise prevails in the arts. The excess of price (of the common goods) over the current one, and that which is gained through skill by winning from another a stake at play, must be considered as 'acquired by science,' and not liable to partition. So Vrihaspati has ordained."

3. The author of the Dáyabhága makes the following explanatory comments on this text :—"If you solve this well, I will give you so much money ;" after such an offer, if one solves the difficulty, and obtains the prize, it is not subject to distribution : "From a pupil," from a person instructed by the acquirer : "by officiating as a priest," received as a fee or gratuity from a person employing him

to officiate at a sacrifice ; these are fees not presents, for they are similar to wages : so a question relative to science being resolved, if any one through satisfaction, give anything which had not been previously offered : also what is obtained by clearing the doubts of one by whom an offer has been thus made,—"To him who removes my doubts on the meaning of this passage of the Sástras, I will give this gold" ; or it may signify a fee such as the sixth part or the like, received for a correct decision between two litigant parties, who apply for the determination of a dubious and contested point : likewise, what is received as a present and the like, for displaying his knowledge in the sacred ordinances and so forth : so in a contest between two persons, respecting their knowledge of sacred ordinances, or in any other controversy whatsoever concerning their respective attainments, what is gained by one surpassing the other : likewise where a single article is to be given, and there are many competitors, what is received for reading in a superior manner : also what is gained by painters, goldsmiths and other artists, through their skill in the arts and so forth : in like manner what is gained by beating another at gambling. All this is exempt from being shared by the rest of the coparceners. Therefore whatever is acquired by any (skill or) science, belongs to the acquirer, not to the rest. Only to show this, Kátyáyana has stated at large.

4. Nárada says,—"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." From the singular number in the verb "maintains" it appears that if a person, by his own expense or bodily exertion, maintains

the family of his brother, while he is studying science (or art,) then he has a right to the property acquired through science (or art). "Ignorant" means, illiterate.

5. A text of Kátyáyana cited in the Kalpataru, in the Mitákshará, and in the Dípakaliká, says,—"Wealth gained through science, which was acquired from a stranger, while receiving a foreign maintenance, is termed acquisition through learning." "From a stranger" means, from one different from the families of the father and the mother.

6. On this (point) he again lays down a special rule,—"No part of the wealth which is gained by science, need be given by one versed in learning, to his unlearned coheirs, but such property must be yielded by him to those who are equal or superior in learning." The term "in learning," which occurs only once in the text, is to be construed with both; consequently a share is to be allowed to one equal in learning, and to one superior in learning, not to one inferior in learning, nor to one without learning. 'Versed in learning' means, learned.

7. Another special rule is laid down, (by the same sage),—"The property of brethren who have acquired learning from the family or the father, also that gained through heroism are liable to distribution. So Vrihaspati has ordained." Of this text the following explanation is given in the Kalpataru and the Ratnákara,—"That property, which is gained through knowledge and courage, by brethren who have acquired the learning (or skill) from the family, (that is to say) from his own family (or in other words) from the paternal grandfather, uncle and the like, or from the father, is subject to distribution."

8. Kátyáyana again ordains,—"The father is entitled to a moiety or a double share of a son's acquisition of wealth." "A son's acquisition of wealth" signifies, wealth acquired by a son. This follows from the following rule (of grammar), namely, "An affix to a verb, which transforms the verb into a verbal noun, some times bears the sense of a participle past passive."

9. The father's participation of a double share takes place when the acquisition is not made with the use of the paternal property, or when it is made with the use of a brother's property. The acquirer, however, takes a double share. But when the brothers' wealth is used, then each of them also takes a share, as is intimated by a text of Vyása, which will be hereafter quoted (§ 18). The father's participation of a moiety, however, takes place according to the Dáyabhága, when the father's property is used or when the father is endowed with excellences. When no other's property is used, then the father takes a double share, the acquirer also as such is entitled to two shares, the rest get nothing : but when a brother's wealth is used, he also takes a share. This is the explanation of the distinction between a double share and a moiety.

10. Kátyáyana again declares,—"The commons, the carriage road, clothes, and any thing that is worn on the body, should not be divided ; nor what is requisite for use or intended for arts : Vrihaspati has declared." "Requisite for use" is what is fit for each person's use, as books and the like, which should not be shared by the learned &c., with his ignorant co-heirs. The same explanation is given in the Dáyabhága, Madanapárijáta and others.

11. Yájnavalkya says,—"Whatever is given by the parents (to any child), let that become solely his property." The great Doctor Súlapáni (offers the following explanation),—"Whatever ornaments and the like are given to a son or daughter become exclusively his or hers."

12. Nárada says,—"Both what is gained by valour, and the wealth with a wife, as well as what is acquired by science these three (sorts of property) are exempt from partition; so also any favour conferred by the father.' "The wealth with a wife" signifies, the wealth received at the time of receiving the wife, that is, at the time of marriage: this meaning is indicated by the following text of Bharadwája,—"And what is received with the wife." If "excepting" be read, instead of "both" (in the text of Nárada), then the text "excepting these three *which* are exempt from partition," should be construed with "the rest shall be divided," which passage occurs in a preceding text (of Nárada.) Therefore (the meaning would be unchanged viz.) these three are exempt from partition.

13. When an object, which is bestowed as a favour, forms the subject of gift to two persons in succession, it becomes the property of the first donee. This follows from the following text of Yájnavalkya,—"In all disputes (concerning property) the posterior act prevails. But in cases of pledge, gift, or sale, the prior act predominates." Here the meaning is, that what prevails is valid.

14. In connection with this also, it is to be understood, that an act of pledge prevents the use of the property by the owner according to his own will; but it does

not cause the destruction of the owner's proprietory right. Therefore an act of pledge, whether prior or posterior, is controlled by the predominant acts of gift and sale, which are completed by the extinction of the previous owner's proprietory right.

15. To this effect is the following text of law cited in the Ratnákara and others,—"If after making a bailment or pledge, a pledge or sale be made, then the posterior act prevails." The construction is, that if after making a bailment a pledge be made (of the same thing), or if after making a pledge a sale be made, then the posterior act is valid. The term sale includes gift, by reason of the destruction of the previous owner's proprietory right (being similar in both cases.)

16. Thus also, if the pledge be not redeemed by reason of death or the like, of the seller or donor, it may be redeemed by the buyer or donee, because a right equal to that of the former owner has been generated by the sale or gift. In such a case if a dispute arise as to the title, then the buyer or the donee (who is admitted as such) is required to prove his (vendor's or donor's) possession and not the source of his title.

17. Sankha and Likhita declare,—"No division of a dwelling-house takes place; nor of water-pots, ornaments, and things not of general use; nor of women, clothes and channels for draining water. Prajápati has so ordained." If one of the co-heirs constructs a house or garden within the site of the dwelling place, and

another does the same in a different part, in that case what is constructed by each becomes his property. So in other cases also.

18. With regard to the property acquired (by one of the co-heirs) through the use of joint-stock, a special rule is propounded by Vyása,—"The brethren participate in that wealth which one of them gains by valor or the like, using any common property such as a weapon or vehicle: to him two shares should be given; but the rest should share alike." It should be observed that the term "brethren" in this text, includes also the uncle and the like. The following explanation is given in the Dáyabhága,—"If the joint stock be used by the acquirer, shares should be assigned to each coparcener in proportion to the amount of his share (in the joint stock), be it little or much, which has been used."

19. Nor should it be alleged that by the following text of Vyása one coparcener has no power to give, mortgage or sell any property,—"A single parcener may not, without consent of the rest, make a sale or gift of the whole immovable estate, nor of what is common to the family: separated kinsmen as well as those who are unseparated are equal in respect of immovables; for, one has no power over the whole, to give, mortgage or sell it."

20. Because the right of property over the joint estate is not distinguishable from that over any other thing, and this right is nothing else but the capacity of dealing with the property according to pleasure.

21. The text of Vyása embodying a prohibition, however, is intended to show that a moral offence is committed, if, by an exercise of the right, the property be transferred to a person of bad character; since the relatives would be troubled by such a proceeding :* and not that the sale and the like would be invalid. The above explanations (in §§ 19 to 21) are given in the Dáyabhága.

22. The author of the Vivádachintámani expounds the text of Vyása in the following way,—"When the co-heirs are separated, but the estate, instead of being distributed by metes and bounds, continues joint among them, then because their property is still common, one has not power (of dealing with the same). But when the shares are separated, then, of course, the exercise of the power by one, is valid."

But in fact the taking of permission after partition, is ordained for the purpose of obviating any doubt as to the property being divided or joint, and as to the boundaries and the like, in the same manner as the permission of the head of the village and of the like is taken.

23. Consequently the use of property without the sanction of the separated co-heirs, is valid.

24. The same doctrine is propounded in the Mitákshará by the following text,—"Land passes by six (formalities;) by consent of towns-men, of kinsmen, of neighbours and of relatives, and by gift of gold and water." "Relatives," signify, daughter's son and the like (who are sprung from a different family;) since, kinsmen *(jnatis)* are separately mentioned.

* The author of the Dáyabhága indicates the same principle on which the law of pre-emption is based.

25. "By gift of gold and water." Since the mere sale of immovables is forbidden by the following text of Devala,—"In regard to the immovable estate, sale is not allowed, it may be mortgaged by consent (of parties interested :)" and since donation is praised, in the following text,—"He who gives and he who accepts land, both of them perform a virtuous act and are certainly entitled to go the heaven :" therefore if a sale must be made, it should be conducted for the transfer of immovable property, in the form of a gift, delivering with it gold and water (to ratify the donation). This explanation is given by Vijnáneswara.

26. But in reality, the prohibition of the sale of immovables is in respect of joint estate. As regards even that, if support is impossible without sale, then when a sale must be made, it may, at the desire of the buyer, be conducted in the form of a gift, in order to obviate any dispute with the co-sharers.

27. Therefore the figurative predication of gift by Hárita in the following text,—"And what is given to a benefactor," refers to a (sale in the form of) gift to a benefactor who saves from distress (by paying the consideration).

As to gifts made to any other benefactor, Daksha states the religious merit arising from them,—"What is given to the mother and father, to a friend, to a disciple, to a benefactor, to the poor, to an orphan, and to the learned, becomes fruitful."

28. Therefore Nárada says,—"Should they give or sell their own share ; they may do all that they please ; for, they are masters of their own wealth."

29. Yájnavalkya says,—"He who recovers hereditary property which had been taken away, shall not give it up to the coparceners ; nor what has been gained by science." He who recovers, with the sanction of the other copartners, property inherited from the father or grandfather, which had been forcibly taken away by strangers shall not yield it to the other co-sharers.

20. Sankha lays down a special rule regarding land,—"Land (inherited in regular succession) which had been formerly lost, but which a single (heir) recovers solely by his own labour, the rest may divide according to their due allotment, having first given him a fourth part." In the Ratnákara it is affirmed that this text is not consonant to reason, because it is not cited in the Smriti-mahárnava Kámadhenu, Párijáta, and others. This is not (tenable), because it is quoted in the Dáyabhága, Mitákshará and the like.

31. In the Mitákshará a special rule is laid down regarding ancestral property which had been lost but recovered,—"Though immovables or bipeds (slaves) have been acquired (i. e. recovered,) by a man himself, a gift or sale of them should not be made unless convening all the sons ; they who are born and they who are yet unbegotten, and they who are actually in the womb, all require the means of support : the dissipation of their (heriditary source of) maintenance is censured."

32. To this an exception (is mentioned),—" Even a single (coparcener) may make a gift, bailment or sale of immovable estate at a time of danger, for the sake of the family, and specially for a religious purpose." "Bailment" signifies, mortgage.

33. Manu declares that gift, mortgage, or sale for the purpose of the family is valid even when made by a slave,—"Even the most dependant may make any transaction for the sake of the family; the master (remaining) either in his own country or a different one should not refuse his sanction." Kulluka Bhatta writes the following gloss on this text,—"While the master is in that place or in a different one, even a slave may contract debts and the like for the use of the family; the master should sanction the same."

34. Vrihaspati clearly ordains,—"The master of the house is liable to pay for what is taken for the sake of the family, by an uncle, a brothor, a son, a wife, a disciple, and a dependant."

35. Manu says,—"The coparceners though separated should, from their own (share), pay for what has been taken and expended for the purpose of the family, should the taker abscond." "From their own" signifies from their own property.

36. Kátyáyana declares,—"What is taken for the use of the family in time of need or disease, or by reason of distress, is known as done through danger, as also for the marriage of daughters, and what is done for the benefit of the departed; all this done by a relative is the master's due." The family must, at any rate, be supported. In this text, the genitive in the phrase "the master's due" signifies the agent, therefore the meaning is "should be paid for *by* the master." This explanation is given in the Ratnákara.

37. The following is extracted from the Dáyabhága:—Háríta says,—"While the father lives, sons have no independent power in regard to the receipt, expenditure, and bailment of wealth. But if he be decayed, remotely absent, or afflicted with disease, let the eldest son manage the affairs as he pleases." So Sankha and Likhita explicitly declare,—"If the father be incapable, let the eldest manage the affairs of the family, or with his consent a younger brother conversant with business. Partition of the wealth does not take place if the father be not desirous of it. When he is old, or his mental faculties are impaired, or his body is afflicted with a lasting disease, let the eldest like the father protect the goods of the rest, for (the support of) the family is founded on wealth. They are not independent while they have their father living, nor while the mother survives." These two passages forbidding partition when the father is incapable of business or when he labours under a lasting disorder, direct that the eldest son should superintend the household, or a younger son who is conversant with business.

38. Consent however may be inferred from the absence of prevention. This follows from a text of Kátyáyana cited in the Práyaschittavivek,—"When the master does dot prevent the gift of his own property by a co-sharer or even a stranger, then the gift is in effect, made by himself. This is ordained by Bhrigu."

39. To this effect is the following aphorism of the logicians, namely,—"The opinion of an opponent, if not contradicted, becomes admitted."

40. Thus, such a gift becomes valid, by reason of the absence of dissent.

CHAPTER VI.

ASCERTAINMENT OF A CONTESTED PARTITION.

1. The determination of a doubt regarding the fact of partition having been made, is next explained : Sankha ordains,—"Should a doubt arise on the subject of partition of the wealth of kindred, the family may give evidence, if the matter be not known to the relations sprung from the same race." "A doubt on the subject of partition of the wealth of kindred" intends, a doubt on the subject of partition of what is liable to be distributed among the kindred, i. e. a doubt regarding the fact of a partition having been made, or a doubt regarding the legality of a distribution which has already been made : "the family" *i. e.*, the cognates, and only in their default, a stranger may give evidence.

2. Vrihaspati describes a deed of partition,—"If the brethren who are separated, do, of their own accord, execute an instrument of distribution (at the time of separation) : this (instrument) is called the deed of partition."

3. A text of Vrihaspati cited in the Vyavahára-mátriká declares,—"Should a village, a field and a garden be written in (conveyed by) a single instrument, all these become enjoyed by the possession of a single portion." "Instrument" signifies, a writing and the like.

4. But in the absence of enjoyment of even a single portion, there is a loss of the whole of what forms the subject of sale and the like. This is declared by the same (sage),—"Title to immovable property which is received at partition, or by purchase, or which is ancestral, or granted by the king, becomes completed

by enjoyment, but is lost through neglect (of enjoyment.) He who enjoys unmolested (the property) as soon as it is received, has his title completed, but loses it, if he neglects." What is received at partition, by purchase and the like, passes to the coparcener, to the vendee, and to the like, when followed by possession, but loss arises if enjoyment be neglected.

5. Nárada says,—"Gift and acceptance of gift, cattle, grain, house, field and attendants must be considered as distinct among separated brethren; as also diet, religious duties, income, and expenditure. Separated and not unseparated brethren may reciprocally bear testimony, become sureties, bestow gifts, and accept presents. Those by whom such matters are publicly transacted with their co-heirs may be known to be separate even without a deed of partition."

6. For the same reason Yájnavalkya says,—"Brethren, also husband and wife, likewise father and son, cannot, when not separated, bear testimony, become surety, or contract debt," i. e. reciprocally.

7. Although the absence of partition (between husband and wife) is indicated by A'pastamba,—"There is no partition between husband and wife; (and there is union) likewise in fruits of pure and impure acts"; also in discussing wife's right, her right is declared to extend during his lifetime to every property belonging to her husband; also in the Sráddha-viveka it is declared,—"That property lies between husband and wife," i. e. belongs to two masters, namely, husband and wife: still, husband and wife are enumerated in the above text of Yájnavalkya because it is ordained in the following text of the same sage, that when the father

distributes shares among his sons, he should allot one to a sonless wife,—"Should the father make his sons participators of equal shares, he should allot like shares to his wives."

8. "The wife and the son and the slave, these three are incapable of holding property." From the declaration of incapability of holding wealth as in this text, it is argued that the expression of the absence of partition (between husband and wife,) by A'pastamba, is to indicate the wife's right to every Vedic ceremony, she being an indispensable associate.

9. This argument is not tenable. Because in the latter half of the same text which runs as follows,—"What they acquire becomes his property, whose they are,"—is ordained the absence of independence of the wife and the rest, regarding even their self-acquired property without the permission of the husband and the like; also because there is a separate enumeration (of religious acts) in the latter part of the text of A'pastamba, viz.,—"(and there is union) likewise in the fruits of pure and impure acts."

10. Therefore, as the prohibition, namely,—"There is no partition between husband and wife"—implies that, but for it, partition might have taken place; consequently the common right of both over the same property is indicated.

11. Otherwise, in the absence of the common right of both, partition itself would be impossible; consequently, there would not have been the prohibitory proposition.

12. This is also the meaning of the unity (of husband and wife) declared in the Laghuhárita,—"Because she attains to unity (with her husband) through clarified butter, sacred text, burnt offering, and religious observances."

CHAPTER VII.

THE SHARE OF ONE WHO WAS ABSENT AT THE TIME OF PARTITION.

1. Allotment of a share to a relative returning after a long residence abroad, is now discussed. On this Vrihaspati declares,—"If a man leaving what is common to the family, reside in another country, his share must no doubt be given to his male descendant when he returns. Be the descendant third or fifth or seventh in degree, he shall receive his hereditary allotment on proof of his birth and name. To the lineal descendant, when he appears, of that man whom the neighbours and old inhabitants know by tradition to be the proprietor, the land must be surrendered by his kinsmen. The enjoyment by strangers for three generations no doubt creates a title. The same is not true of descendants of the same family, until the discontinuance of Sapinda relationship. But a house, a field, a shop, and the like, belonging to a friend, a relative or a kindred, enjoyed by one who is not the owner, are not lost through that enjoyment. A thing enjoyed even for a long time by one related through marriage, by one versed in the Vedas, by the king or his minister, does not however become his property."

"Common to the family" signifies property which is common to the family; "strangers" means those that are different from those that are descended from the family.

"One related through marriage" is the son-in-law.

These explanations are found in the Vivádachintámani.

2. Nárada says,—"That cannot be taken away which has been enjoyed though without title, by the three (ancestors) previous to the father, and which has descended in succession through three generations."

In this text "previous to the father" signifies three (ancestors) beginning with the father, by reason of the text which says,—"The fourth shall take."

3. Vyása distinguishes enjoyment,—"When the father, grandfather and great-grandfather are alive, the enjoyment by them during their joint lives is recognized as that of one generation."

Simultaneous enjoyment, though extending to a period of sixty years, is not tantamount to an enjoyment of three generations; since, as in that case only the great-grandfather is independent, the enjoyment is considered to be his. Then if it be asked what denomination does that enjoyment bear? This is answered by the passage "is considered that of one generation."

4. Vyása describes what is to be considered as an enjoyment of three generations,—"When the great-grandfather enjoys, and after him his son, and after them the father, then a person's enjoyment is said to extend to three generations."

5. As to the period to which the enjoyment of each should extend, Vyása declares,—"When the owner enjoys without obstruction for a period of twenty years, that enjoyment is said to extend to one generation; twice that period is called as extending to two generations, thrice that period, extending to three generations. In

such a case the origin of title it is not necessary to enquire."

Here "without obstruction" implies, in the presence of the opposite party.

The enjoyment for sixty years is in unison with what is expressed in this text ; therefore neglect for a longer period determines the right.

6. Vrihaspati too says,—"He who purchases land shall, when his right is contested, prove in a court of justice both his title and possession : but his son shall prove only (perfect) possession, his grandson or any other remoter descendant need prove nothing (but simple possession)."

7. Yájnavalkya ordains,—"He, by whom an acquisition of property is made, must when sued, recover the same (by evidence of title;) but neither his son nor grandson (need do the same;) for, in their case possession is the most essential (evidence.)

8. Kátyáyana describes the possession which is (legally) perfect (for the purpose of dispensing with the evidence of title),—"Possession is held to consist of five elements, namely, the source of right, long period, the absence of interruption, the absence of adverse claim, and the presence of the opposite party."

CHAPTER VIII.

PARTITION OF CONCEALED PROPERTY.

1. The distribution of that, which was concealed at the time of partition, but is afterwards discovered- (is now discussed). On this Kátyáyana says,—"If the father be deceased, let the sons meeting together divide, with their brethren, whatever was concealed by any of the co-heirs. Effects which are witheld by them from each other, and property which has been ill distributed, being subsequently discovered shall be distributed in equal shares. (So) Bhrigu (has ordained)."

Because the phrase "subsequently discovered" is inserted in the text, therefore without the discovery by means of human proof, of anything concealed, neither can a redistribution be made, nor can recourse be had to divine proof (or ordeal). Otherwise, there cannot be a perfect distribution in any case, if divine proof be not resorted to ; since, through the influence of the witch Suspicion, some effects may be deemed to lie somewhere concealed. The phrase "ill distributed" shows redistribu, tion of what has been imperfectly distributed.

2. The following text of Manu, Nárada, Vrihaspati and Kátyáyana, refers to a case of perfect distribution,— "Only once may a distribution of shares take place, only once may a maiden be given (in marriage), only once may the same article be given (by an owner) : these three may occur but once."

3. Likewise the following text of Vrihaspati cited in the Ratnákara, namely,—"Whatever has been enjoyed by a co-heir as his share, shall not be interfered with : should he, who has signified his assent to a distribution, litigate

again, the king shall adjudge his own share to him, and shall punish him, if he persists in litigation" :—refers to an optional inequality in the shares, but not to an imperfect distribution caused by error and the like. This is indicated by the insertion, in the text, of the term "assent."

4. From the phrase "subsequently discovered" (§1) it appears that the distribution takes place of that alone (which is subsequently discovered) : but what has been once divided, need not be distributed again.

5. The phrase "in equal shares" is inserted (§1) with a view to obviate any such argument as that by reason of his concealment, no share or a small share should be allotted to him who withheld.

6. "Bhrigu" (§ 1) i. e. 'has ordained', to which the accusative is the meaning of the whole sentence.

7. Biswarúpa, Haláyudha and others offer the following explanation (of the text of Kátyáyana), namely,—Inasmuch as the distribution of what is subsequently discovered, follows from the very fact of there having been no distribution of it, the text (§ 1) was intended (by the sage) to show that the offence of theft is not committed in such a case.

8. What they intend is, that the import of the verb "to steal" is inapplicable to a case of concealment by a co-heir. Because it is clear from the term "another" in the text of Kátyáyana which says,—"Stealing is defined to be the taking of another's property,"—that the ownership of another must be exclusive of the

ownership of the taker. As for instance, if the Mudga be unavailable, then the Másha would be the substitute for it: consequently, the use of the Másha is prohibited by the text,—"The Másha is not fit for sacrifice." Here the prohibition refers to the thing composed of the constituent parts of the Másha alone, but not to that formed of the constituent parts of both the Másha and the Mudga. Similarly, in this case too, theft is committed by the taking of effects belonging to another exclusively, but not by the enjoyment of joint property which is common to himself and the others. Also because, of what is common and what is exclusive, what is exclusive is the sooner understood.

9. Consequently theft is committed by stealing property, distinctly knowing it to belong to another, and not by using another's property mistaking it for his own. This is the opinion of Jinendra and the authors of the Dáyabhága and the Práyaschitta-viveka.

10. Their assertion, that the appropriation of another's property by mistaking it for his own, is not theft, appears unsatisfactory, for it is at variance with the following story of Nriga in the Bhágabat,—"A cow belonging to a certain eminent priest, strayed into my herd of kine, and being confounded with them was given by me, ignorant of the circumstance, to a man of the sacerdotal order. The owner seeing her led away, claimed her for his own; and the other replied, she was mine by gift, Nriga gave her to me. The priests contending addressed me, setting forth their claims: You are the giver, said the one; the lawless taker, said the other. Hearing this, I was

confounded. For that sin I was transformed into a lizard, since which time I have seen myself, O Lord! in this degraded form."

11. But if many rings belonging to divers persons be mixed together, it is no theft if one sell another's ring by mistake for his own, in consequence of their similarity; for, they were placed together under the conviction, that, in the case of many articles which have no discriminative mark, as cowries and the like, belonging to different persons, being intermixed, no offence is committed if they are reciprocally used by a sort of barter: else a person would not do so under the apprehension of offence. But if through dishonesty anything is so placed for profit, then theft is committed.

12. The following passage of the Matsya-purána relates to a case like this,—"The man who, through ignorance makes a sale of another man's chattels, is faultless; but one that knowingly does so, merits punishment as a thief." This text intends that punishment shall not be inflicted upon one who does so through ignorance.

13. Therefore, theft is the disposal of property which is the subject of the exclusive right of another person, without such person's consent, and with the intention—"this is mine, and shall be disposed of according to my pleasure."

14. Sometimes it is mental, consisting of the intention only. In other instances it is corporeal, as an actual gift or sale or the like.

15. But such a theft is not possible in the case of the property of the undivided brothers and the like : for then it cannot be distinctly ascertained "this is mine and that is another's."

16. To the same effect is the following text of Kátyáyana,—"Effects which have been stolen by a co-heir, he shall not be compelled by violence to restore. A coparcener cannot be made liable for the enjoyment of any article which belongs to all the undivided kinsmen." Here "stolen" is used metaphorically : he should be persuaded to restore by gentle means, but not by violence. Should an unseparated kinsman consume a greater portion, he shall not be required to refund the excess.

17. Thus also, there is no offence in taking a hidden treasure which is found ; for, it is a thing of which the owner is lost. So Manu declares,—"When the king finds a treasure he shall bestow half of it to Bráhmanas. But a learned Bráhmana (finding treasure) shall appropriate the whole of it, because he is the lord of all. If treasure is discovered by any other, the king takes a sixth of it. But a discoverer who gives no information to the king, and is detected, shall be bound to disgorge it to the king, and shall moreover be liable to punishment."

18. Such is not the case with associated traders : for, no text indicates it. On the contrary, it is directed by the following text of Yájnavalkya, that a fraudulent partner shall be dismissed without profit,—"Shall turn out a deceitful (partner) profitless." Traders have not, as in the case of inherited effects, a right vested in several persons with respect to the same chattel. But, by reason of intermixture their right of property in the goods is only uncertain.

CHAPTER IX.

STRIDHANA OR WOMAN'S PROPERTY.

1. Strídhana or woman's property is now described. On this Kátyáyana says,—"The wealth which is earned by mechanical arts, or which is received through affection from a stranger, is subject to her husband's dominion ; the rest is pronounced to be the woman's property." What is received from a stranger, that is from a person not sprung from the family of her father, mother or husband, and what is earned by mechanical arts are subject to the husband's control. Hence though the goods be hers, they do not constitute woman's property, because she has not independent power over them. But a woman's right is complete in other descriptions of property, excepting these two ; for she has the sole power of making gift or other alienation.

2. Manu and Vishnu declare,—"The heirs should not divide an ornament worn during her husband's lifetime : they are degraded if they partake of it.' Medhátithi explains this text in the following way : —An ornament or the like though not given by the husband, but put on with his sanction, becomes the property of the wife by that act alone.

3. Kátyáyana says,—"That which is received by a married woman or a maiden, in the house of her husband or father, from her husband or from her parents, is termed the gift of affectionate kindred. The independence of women who have received such gifts is recognised in regard to that property : for it was given by the kindred for their maintenance and to soothe them. The power of women over the gifts of their affectionate kindred is declared

by all the sages, both in respect of donation and sale according to their pleasure." What is obtained from kind relatives of her father, mother or husband is called the gift of affectionate kindred. "To soothe them" that is, out of kindness towards them.

4. Nárada says,—"What has been given by the affectionate husband to his wife, she may, even while he is dead, consume or give it away according to her pleasure, excepting immovable property." From the adjective "given by the husband," it appears that mmovable property, other than that given by the husband, may of course be given away.

5. Otherwise, it would be contradictory to what Kátyáyana says, namely,—"according to her pleasure, even in immovables."

6. Kátyáyana cited in the Kalpataru and Ratnákara declares,—"She who is malicious, or shameless, or dissipator of wealth or adulterous is not entitled to woman's property."

7. Yájnavalkya says,—"A husband is not, if unwilling, bound to make good the property taken by him at a time of famine, or for the performance of a religious ceremony, or during illness or while under restraint." "Restraint" is, when the creditor and the like (forcibly) obstructs the preparation of food.

8. But (if taken) in any other circumstance, the following rule propounded by Kátyáyana is to be followed,—"Neither the husband, nor the son, nor the father, nor the brother, is entitled to the appropriation or disposal of woman's property."

CHAPTER X.

SUCCESSION TO WOMAN'S PROPERTY.

1. In the next place succession to woman's property is explained. On this Devala says,—"A woman's property is common to her sons and maiden daughters, when she is dead; but if she leave no issue, her husband shall take it, her mother her brother or her father."

2. Here equal right of sons and maiden daughters is indicated by the conjunctive compound (sons and maiden daughters).

3. In default of the one, the property goes to the other.

4. On failure of both of them, the succession devolves, with equal right, on the married daughter who has a son, and on her who is likely to have one, for they are capable of conferring spiritual benefits on their mother through the instrumentality of their sons who can present funeral oblations to the manes of their maternal grandfather, which are shared by the deceased. This is declared by Sátátapa,—"The mother partakes of whatever is, after the ceremony of Sapindíkarana, presented to the manes of the ancestors."

5. So also Nárada says,—"On failure of the son the daughter inherits: for she equally continues the lineage."

6. Consequently, on default of daughters of this description, succession devolves on the son's son.

7. On his default the property goes to the daughter's son, since the daughter's son is, in the following text of Manu, declared to be similar to a son's son,—"Also the

son of a daughter delivers him in the next world like the son of a son :" and since it is logically consistent; for, the married daughter is debarred from inheritance by the son, therefore the son of the debarred daughter, should be excluded by the son of the person who bars her claim.

8. On his default, the son's grandson (succeeds), because he presents oblations which she (the deceased proprietor) partakes of.

9. On failure of these, the barren and the widowed daughters succeed to their mother's property; since they too are her children.

10. On their default the property devolves on the husband.

11. This however does not refer to the property which was given by the parents; for to that the brother succeeds (in preference to the husband.) To this effect is the following text of the senior Kátyáyana,—"Immovable property which has been given by the parents to their daughter, descends always to her brother, if she die without leaving issue."

12. But to the property received by the mother at the time of her marriage, the maiden and the married daughters succeed notwithstanding the sons, by reason of the text of Vasishtha which says,—"Let the females share the nuptial presents of their mother."

13. "A woman's separate property goes to her daughters, maiden and those not actually married." From this text of Gotama, it follows that the nuptial

presents descend first to the maiden, that is, unaffianced daughters ; in their default, to those daughters, that are affianced but not actually married : on failure of these, they appertain to the married daughters implied by the term "and" ; because it is first generally laid down, "A woman's property goes to her daughters," but the concluding portion namely "maiden and those not actually married," is intended to shew the order of succession.

14. Manu clearly says,—"Property given to the mother on her marriage (yautuka) is exclusively the share of her unmarried daughter." Here the word "yautuka" is derived from the verb "yu" signifying "to unite :" and the union of husband and wife arises from marriage, since this is indicated by the following sacred text (recited at the time of marriage),—"What is thy heart, let that become mine, and what is my heart let that become thine." The reading "Yautaka" is equally correct. The latter is adopted by Váchaspati-misra and Ráyamukuta.

15. The time of marriage means, time previous and posterior to the actual time of marriage. This is described in the Treatise on Marriage, to begin from the Sráddha for prosperity, and to end with the ceremony of prostrating before the husband.

16. As for the passage of Manu,—"The wealth of a woman which has been in any manner given to her by her father, let the Bráhmaní daughter take : or let it belong to her offspring :" since the text specifies "given by her father", the meaning must be that property which was given to her by her father, even at any time other

than that of the nuptials shall belong exclusively to her daughter ; and the term Bráhmaní signifies any daughter. Or, the text may signify that the Bráhmaní damsel being daughter of a contemporary wife, shall take the property of the Kshatriya and other wives dying childless, which had been given to them by their fathers. The precept, however, which directs that the property of a childless woman shall go to her surviving husband, does not here take effect.

17. On default of these, the son succeeds : since Manu says,—"On failure of daughters, the inheritance goes to sons."

18. Similarly also other texts declaring the succession of daughters previous to that of sons refer to this description of woman's property.

19. On failure of sons and the others, a woman's nuptial presents go to the husband, if the marriage ceremony was of any of the five forms beginning with the Bráhma : but if it was of any of the three forms beginning with the A'sura, the property appertains to the mother ; and on her default, to the father.

20. As is declared by Manu,—"It is admitted that the property of a woman married by the ceremonies called Bráhma, Daiva, A'rsha, Gándharva and Prájápatya, shall go to her husband, if she die without issue. But her wealth given to her on marriage in the form called A'sura, or in either of the other two (Rákshasa and Paisácha) is ordained, on her death without issue, to become the property of her mother and father."

21. Baudhâyana declares the order of succession to the property of a maiden,—"The wealth of a maiden, let the uterine brothers themselves take: on failure of them, it shall belong to the mother: or if she be dead, to the father."

22. Since, order is expressed in this text, therefore in the previous text (§ 20), "the mother and father" succeed in the order in which they are read, but not jointly, agreeably to the conjunctive compound.

23. Vrihaspati says,—The mother's sister, the wife of the maternal uncle, the wife of the paternal uncle, the father's sister, the mother-in-law, and the wife of an elder brother, are pronounced to be similar to the mother. If they have no issue of their body, nor son (of a rival wife) nor daughter's son, nor son of these persons, the sister's son and the rest shall take their property.

24. Both sons and daughters are included by the term "issue of the body:" by "son" is meant the son of a rival wife; for a passage of law declares,—"If among all the wives of the same husband, one brings forth a male child, Manu has declared them all, by means of that son, to become mothers of male issue." Nor is the term "son" meant to be in apposition with "the issue of the body;" for it would be superfluous, and the sister's son or any other remote heir would have the right of succession, although a son of a contemporary wife be living: "son of these persons" comprises the son's son and the rival wife's son's son, but not the son of a daughter's son; since he does not present oblations to the manes of her husband, which she partakes of.

25. Here agreeably to what has been said before, the rival wife's son and grandson succeed after the heirs down to the daughter's son. But it should not be asserted that they take, also on failure of the heirs beginning with husband and ending in father, mentioned before ; because the husband and the rest have no capacity to present oblations which are enjoyed by the deceased proprietress.

26. Therefore, on failure of the heirs down to the grandson of the rival wife, who are indicated by the term "nor" in the phrase "nor son of these persons," (§ 23) ; and also on failure of the heirs beginning with husband and ending in father, who are mentioned in the following text of Devala, namely,—"A woman's property, when she is dead, becomes the common inheritance of her sons and daughters ; in default of children, let her husband, mother, brother or father, take ;"—the succession to woman's property devolves on her sister's son, her husband's sister's son, her husband's brother's son, her brother's son, her son-in-law and her husband's younger brother, in preference to her father-in-law, her husband's elder brother and the like. Since, there is no other way of reconciling the texts.

27. On this subject, because the following text of Manu, in the Chapter on Inheritance, declares,—"To three ancestors must libation of water be given at their obsequies ; for three, is funeral oblation of food ordained ; the fourth is the giver of these oblations ; but the fifth has no concern in them ;" and Yájnavalkya declares,—"Among these the giver of oblations is the heir ;" and in the text of Vrihaspati (§ 23) the sonship of the sister's son and the rest, is indicated by the passage, "are pronounced similar to the mother :"

28. And because the only reason for setting out in the Chapter on Inheritance, the capacity of presenting oblations, is, to show that the preference as regards succession, depends on the capacity of conferring a greater amount of spiritual benefit, on the deceased proprietor :

29. And because Sátátapa ordains,—"A sister's son (should present oblations) to (the *manes* of) his maternal uncle, and a maternal uncle, to his sister's son ; and Pinda should also be offered to the father-in-law, to the spiritual preceptor, to a friend, to the maternal grand-father, as well as to the wives of these persons, likewise to the mother's and the father's sister : this is a settled rule amongst those who are conversant with the Vedas :"

30. Therefore it must be admitted that the order of succession among these six (sister's son &c.) is regulated by the different degrees of benefit derived from their oblations; since, the order indicated by the sense is of greater weight than the order of reading. Otherwise, succession would devolve, last of all, on the younger brother of the husband, contrary to the opinion and practice of venerable persons.

31. Therefore, first of all, the husband's younger brother succeeds to the property of his elder brother's wife, because he is a Sapinda, also because he presents oblations to her and her husband, as well as to the three ancestors to whom her husband was bound to present oblations.

32. On his default, the sons of the husband's younger and elder brothers succeed ; because they are Sapindas,

and because they present oblations to her and her husband as well as to the two ancestors to whom her husband was bound to offer oblations.

33. On their default, the succession devolves on the sister's son; because though he is not a Sapinda, still he presents oblations to her and three Pindas to her father and his two ancestors, to whom her son would have presented funeral oblations.

34. In his absence, the husband's sister's son succeeds; because he presents oblations to the three ancestors of her husband, which her husband would have offered, and because he presents oblations to her and her husband. He is postponed to the sister's son, because, they respectively occupy the places of the husband and the son, and because the husband is inferior to the son, hence it is reasonable that their superiority and inferiority should be similarly determined.

35. On his default, a woman's property goes to her brother's son, because he presents oblations to her, and to her two paternal ancestors beginning with the father, to whom her son would have presented oblations.

36. On his default, the son-in-law succeeds to the mother-in-law's wealth; because he presents oblations to her and to her husband.

37. The succession devolves in the above order: the passage "sister's son &c." (§ 23) enumerates the heirs but not the order of succession.

38. On failure of these six, the father-in-law or the like succeeds, according to his proximity of Sapinda relationship.

39. It must not be supposed that the text "mother's sister &c." (§ 23) is applicable when there is a failure of the Sapindas: for, in this enumeration of heirs, the husband's younger brother, his son and the son of the husband's elder brother are included, but the husband's father and elder brother who are more proximate are omitted.

CHAPTER XI.

SUCCESSION TO THE ESTATE OF A MALE WHO LEAVES NO MALE ISSUE.

1. In the next place are determined the heirs to the estate of one, who leaves no male issue.

2. Yájnavalkya says,—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 heir to the estate of one who departed for heaven, leaving no male issue. This rule extends to all classes.

3. Likewise Vishnu says,—The wealth of him, who leaves no male issue, goes to his wife; on failure of her, it devolves on the daughters; if there be none, it belongs to the father; if he be dead, it appertains to the mother; on failure of her, it goes to the brothers; after them it descends to the brother's son; if none exist, it passes to the Sakulyas; in their default, it devolves on Bandhus; on failure of them, it goes to the pupil; on his default, it goes to the fellow-student; and for want of all these heirs, the property escheats to the king, excepting the wealth of a Bráhmana.

4. In the above texts, the term "male issue" indicates sons, grandsons and great-grandsons ; because they equally present oblations in the Parva days.

5. Accordingly, in a text Baudháyana, after mentioning sons, grandsons and great-grandsons, says, "male issue of the body being left, the property must go to them."

6. That text runs as follows,—"The paternal great-grandfather the grandfather, and the father, the man himself, his brothers of the whole blood ; his son grandson and great-grandson by a woman of the same tribe : all these partaking of undivided oblations are pronounced Sapindas. Those who share divided oblations are called Sakulyas. Male issue of the body being left, the property must go to them. On failure of Sapindas or near kindred, Sakulyas or remote kinsmen are heirs."

7. The meaning of the passage is this :—Since a person (when deceased) partakes of the funeral oblations presented to the three ancestors beginning with the father, through the union of oblations (effected by the ceremony called Sapindíkarana) ; and since the three descendants present oblations to the deceased ; and since he, who, while living, presents an oblation to an ancestor, partakes, while deceased, of oblations presented to the same person, as participating in the offering at obsequies : therefore the middlemost (of the seven) who while living offered food to the manes of ancestors, and when dead, partook of offerings made to them, becomes the object to which the oblations of his descendants were addressed in their lifetime, and shares with them, when they are deceased, the food which must be offered by the

daughter's son and the like. Hence, those ancestors, to whom he presented oblations, and those descendants who presented oblations to him, partake of an undivided offering in the form of (*pinda*) food at obsequies. Persons, who do partake of such offerings, are Sapindas. But one distant in the fifth degree neither gives an oblation to the fifth in ascent, nor shares the offerings presented to his manes. So, the fifth in descent neither gives an oblation to the middle person who is distant from him in the fifth degree, nor partakes of offerings made to him. Therefore three ancestors from the grandfather's grandfather upwards, and three descendants from the grandson's grandson downwards, are denominated Sakulyas, as partaking of divided oblations, inasmuch as they do not participate in the same offerings.

8. It has been before observed, that this relationship of Sapinda (extending no further than the fourth degree) as well as that of Sakulya, is propounded relatively to Inheritance. But relatively to Mourning, Marriage and the like, those too, that partake of the divided oblations, are denominated Sapindas. This has been explained in the Suddhitattwa.

9. Kátyáyana cited in the Ratnákara, clearly states the order of succession of the son and the like,—"If an undivided son dies, his son should be made a sharer of the inheritance. He, who has not received livelihood from his grandfather, shall take his paternal share from his uncle or his son. But only the same share of property belongs to all the brethren (descended from the son.) Likewise also his (grandson's) son shall take. Succession devolves not on a more remote descendant."

10. "Livelihood" means property sufficient for livelihood. The meaning of the text is as follows,—If any one of the brethren ceases to live, then his share should be allotted to his son; if the deceased leaves more sons than one, then his share should be equally distributed to them: likewise his (grandson's) son shall take; his (great-grandson's) son's share ceases.

11. This however relates to a case in which the sharers dwell together. As Devala declares,—"The rule is, that the redistribution of inheritance among unseparated or separated kinsmen who dwell together takes place down to the fourth descendant." The redistribution, taking place among separated brethern who dwell together or are re-united extends, as in the case of unseparated ones, to the brother or his son or grandson, but excludes his great-grandson who is the fourth in descent.

12. The allotment of shares to those who are even seventh in descent as has been said before, (however,) relates to those that return from a distant place. (Ch. VII.) Consequently no contradiction is incurred.

13. Therefore on failure of descendants down to the great-grandson, the widow succeeds to the estate (left by her husband.)

14. As is declared by Kátyáyana,—"The wife may, after the death of her husband, use the heritage of her husband according to her pleasure: but shall, while he is alive, preserve it or entrust it to his family. The sonless (widow) keeping unsullied the bed of her husband and persevering in religious observances, shall with

moderation, enjoy (the property of her husband.) After her, the heirs shall take." "According to her pleasure," intends, for the purposes of religion.

15. Likewise Vyása ordains,—"O sweetfaced! a woman, who is always assiduous in the performance of religious observances, conveys (to a region of everlasting bliss) both herself and her husband abiding in another world."

16. A text of law cited in the Madanapárijáta is as follows,—"Whatever is most desirable in the world, and whatever was most liked by the husband, should be bestowed on a meritorious man, by a woman desirous of gratifying her (deceased) husband."

17. "Keeping unsullied the bed of her husband" intends, one who knows no other man than the husband. Accordingly, in that part of the Harivansa which treats of religious observances, it is said,—"O auspicious Arundhati! of unchaste women, all good acts consisting of gift, fasting and merits, likewise all religious observances are fruitless."

18. Also Brihan-Manu says,—"Let the sonless wife, keeping unsullied the bed of her husband, and persevering in religious observances, offer his oblations and take (his) entire share." The term 'his' which occurs in the phrase "his oblations" is to be construed also with 'share'; and since the term 'his' denotes the husband, therefore the wife takes the entire share *i. e.*, the whole estate left by the husband, and not so much only as is sufficient for her subsistence.

19. By the term " wife' (*Patní*) is intended, the wife of the same class with the husband ; since it is expressed (in several texts) that " the senior wife takes the wealth.)"

20. Seniority (among wives) is described by Manu, thus—" When regenerate men take wives both of their own class and others, the seniority, honour and apartment of those wives must be settled according to the order of their classes."

21. Nárada ordains mere maintenance of wives others than those of the same class,—"Of brothers if any one departs without issue, or enters into a religious order, let the rest divide his wealth excepting the wives' separate property. Let them allow a maintenance to the wives (*strí*) for life, provided these preserve unsullied the bed of their lord. But if they behave otherwise, the brethren may resume that allowance." 'Departs' means, dies.

22. Thus, as there is a distinction between a wife taken from the same class and one who is not so, texts like the following should be interpreted with reference to this distinction,—" Next let brothers of the whole blood or also equal daughters divide the heritage of him who leaves no male issue ; or let the existing father, or brothers belonging to the same tribe, or the mother, or the wife, inherit in their order ; but on failure of these, let the nearest of the kinsmen succeed." 'Equal' means, appertaining to the same class ; 'existing' signifies, surviving.

23. In fact, however, the order mentioned in this text is not to be accepted in all cases ; since, that would be inconsistent with the text cited below, which bases the order of succession on the degrees of spiritual benefit, conferred upon the deceased proprietor. Hence it is that the terms 'or' and 'or also' are repeated in the text, on purpose to show that no importance is to be attached to the order.

24. On failure of the wife (*Patní*) the daughters (succeed.) Here by the plural number (§ 2) are included the maiden and the married daughters, also the daughter's son.

25. Now the order of succession among the maiden and the married daughters is indicated by the following text of Parásara,—" Let the maiden daughter of one who dies without leaving male issue, take the inheritance ; on failure of her, the married one."

26. In default of these, the daughters' son (inherits). Because in a text of Manu, namely,—" In this world there is no difference in law between a son's son and a daughter's son ; since, their father and mother both sprang from the body of the same man,"—the daughter's son is declared to be equivalent to the son's son, consequently as the son's son succeeds on failure of the sons, so the daughter's son inherits in default of the daughters.

27. Accordingly, Vishnu cited by Govindarája says,—" In a family destitute of sons and grandsons, the daughter's sons inherit the estate ; for the son's son and the daughter's son are alike in the performance of obsequies of the ancestors."

28. If there be no daughter's son, the parents (succeed). Of these, first, the father, and then the mother, succeeds, agreeably to the text of Vishnu, cited before, (§3).

29. In their default, the brothers (succeed.) Here too, the plural number is used (§ 2) for the purpose of showing that the succession is different according as the brothers are uterine (full), or consanguine, or re-united.

30. Hence, of an uterine brother and one born of the step-mother, though they are sprung from the same father, the uterine brother alone succeeds, but not the step-brother; because the former presents oblations to six ancestors which the deceased was bound to offer, but the latter offers oblations to the three paternal ancestors only.

30. According to the opinion of some, however, even a step-brother who is re-united equally succeeds to a brother's property, with an uterine brother. But if an uterine brother be re-united, he alone takes, and not a step-brother though re-united.

32. On this subject Yájnavalkya says,—(1) "A re-united brother shall keep the share of his re-united co-heir who is deceased; or shall deliver it to his issue. But an uterine brother shall thus retain or deliver the allotment of his uterine brother. (2) A half brother, however, being again associated, may take the heritage; not a half brother (who is not re-united): or an (uterine brother) though not associated may obtain the property, and not the son of a different mother, who is re-united.

33. Vrihaspati describes a re-united (kinsman), thus,—"He, who being separated, dwells again through affection, with the father, brother or uncle, is called, Re-united."

34. Therefore, Re-union is the dwelling together through affection, after separation, of the father and the son, or of the brothers, or of the uncle and the brother's son, as the case may be: one forming re-union is called Re-united.

35. When a person, who is thus re-united, dies, his re-united co-heir should allot his share to his issue: on failure of his issue, shall take it himself, (§ 32).

36. The passage,—"But a uterine brother shall thus retain or deliver the allotment of his uterine brother," (§ 32)—is to be explained in the same way.

37. On this, a special rule is propounded by Yama,—"Undivided immovable property goes to all (the brothers.) But never should separated immoveable estate be taken by half-brothers." 'All,' that is, all the whole and half brothers. The inference which is deduced from the sense of this text is, that exclusive of immoveable property, everything (else) whether divided or undivided, appertains to the uterine (full) brother alone.

38. Manu clearly says,—"Of these (re-united brothers) if the eldest or the youngest or any other be deprived (of his share) previous to the allotment of shares, or dies, his share is not cancelled." "Previous to the allotment of shares," means, previous to partition; "be deprived of his share" *i. e.* by entering into a religious order, and the like.

39. As to who are entitled to that share, the same lawgiver says,—" The assembled uterine brothers shall together equally divide the same (share); also brothers who are re-united, and sisters born of the same mother."

40. Vrihaspati says,—" When separated brothers dwell together through affection, then among these there is no specific deduction for seniority when re-distribution takes place; should any co-heir enter into any religious order or die, his share is not cancelled, but is to be allotted to his uterine brother: if there be any sister she is entitled to a share of it. This is the law (regulating the succession to the property) of one without issue and having neither wife nor father (surviving him.) But if any one of the re-united brethren acquires property by means of science, heroism and the like; two shares should be allotted to him, and the rest shall take equal shares,"

41. Here, it is to be understood, that the absence of the specific deduction for the eldest among the re-united brothers, refers to the three higher tribes; because as regards the Sudras, there is *always* this absence of specific deduction for the eldest, (and not only after re-union).

42. This is declared also by Manu,—" All the sons of the twice-born, who sprang from mothers of the same class, shall, after setting apart the specific deduction for the eldest, divide equally. But a woman of the same class only, and not of a different class, may become the wife of a Súdra. Those that are born of her become equal sharers, although there may be hundred sons."

43. Kullúka-Bhatta comments on the term 'equal sharers' in the following way,—become only equal participators *i. e.* shall not allow the specific deduction for seniority to any one.

44. This is also consonant with reason ; since, as in the text,—"To the eldest is to be allotted the twentieth part, and the best of all chattles, half of that to the middlemost, but a fourth to the youngest,"—Manu has generally declared the law of deductions, therefore the second half of the latter of the two couplets (§ 42) is declared in order to remove doubts as to whether the term 'twice-born' indicates all the tribes, (or stands for what it literally signifies.)

45. Nor can it be argued that the specific deductions hold good even in the case of Súdras ; inasmuch as the reason, namely, saving from the infernal region of the name of Put, is the same in all cases ; because that is not the reason, since specific deductions of the half and the fourth (of what is allotted to the eldest) are declared to be given respectively to the middle one and the youngest, though it cannot be held that they save from the same.

46. Nor can it be argued that as there is a distinction between the specific deductions and the shares, all that is prohibited by the declaration of equal participation, is not the specific deduction, but the unequal distribution among the Súdras, which has been mentioned before, as taking place among those born of mothers of different tribes ; because that object would be accomplished by the first half of the last couplet which says,—"But a woman of the same class only &c." (§ 42).

47. Equal participation is ordained by Manu for the purpose of prohibiting specific deductions even amongest the twice-born ; for, he says, after the text,—'All the sons of the twice-born &c.' (§ 42),—" But twofold distribution among co-heirs is pronounced : one is

in the order of seniority, and the other an equal participation." Vrihaspati reads "is shown" in lieu of "is pronounced."

48. Here, (§ 41), (it is to be understood that) the right of the sisters extends to so much property as is sufficient for her marriage, because it is so declared by the sages as well as by the commentators.

49. By reason of the uni-residual (Ekasesha) compound the term father in the passage "having neither wife nor father surviving him," (§ 41), indicates both the father and the mother. Because Vishnu (§ 3) and other sages declare the succession of the brother, only on failure of the mother.

50. Now Jímútaváhana says :—The text "a re-united (brother) shall keep the share of re-united co-heir" (§ 32), is intended to provide a special rule governed by the circumstance of re-union after separation, and applicable to the case where a number of claimants in an equal degree of affinity occurs. Hence, if there be competition between claimants of equal degree whether brothers of the whole blood, or brothers of the half blood, or sons of such brothers, or uncles or the like, the re-united parcenar shall take the heritage : for the text does not specify the particular relation ; and all (these relations) were premised in the preceding text (§ 2,; and a question arises in regard to all of them. Therefore the text must be considered as not relating exclusively to brothers.

51. But when there are a half brother re-united, and a uterine brother not re-united, and when there are a whole brother and a half brother both re-united ; then two questions arise, which of the two is to succeed in each case.

52. As to the first it is said,—" A half brother however &c." (§ 32) which signifies,—let a half brother, if re-united, take, but not a half brother merely as such : but a uterine brother though not re-united may take ; for the term 'uterine brother' which occurs in the preceding text is also to be construed with this latter proposition. Therefore when there are an unassociated uterine brother and a re-united half brother, they both succeed ; because the equality, of the relation of reunion, and of the status of a whole brother, is expressed by the first part of the text, (§ 32).

53. As to the second, it is ordained,—" and not the son of a different mother, who is re-united," (§ 32). The meaning is that when there is a whole brother reunited, the son of a different mother though re-united shall not take, that is, the re-united whole brother alone shall succeed ; since though they are equally re-united, still the whole brother as such is preferred.

54. The author of the Dáyabhága, however, construes the second couplet of Yájnavalkya (§ 42) in the following way,—"The meaning of the first half (of that couplet) is, a half brother being re-united shall take the succession, although a whole brother not re-united exists ; but a half brother who is not re-united shall not inherit. The latter half of the text, is, in answer to the question,—Does not the whole brother inherit in that case ? Though not re-united, the whole brother (the term is understood) shall take the heritage, and not exclusively the son of a different mother who is again associated ; but it shall be taken and shared by both."

55. The same construction is put upon the passage in the Mitákshará.

56. But the great Doctor Súlapáni in his Yájnavalkya-Dípakaliká reads the passage thus,—"But a half brother, being again associated, shall not take the heritage of a half brother;" and offers the following explanatory comments,—A uterine brother though not re-united, shall alone take the heritage, but not a brother born of a rival mother, though re-united. Some explain the term 'associated' (occurring in the last part of Yájnavalkya's text, § 32) to mean one associated through the uterus, that is, a whole brother. If the reading be, "one born of a different mother shall not take the heritage," then the meaning would be, that one being a half brother shall not take the succession. This text shows the succession of a whole brother who is not re-united. Consequently there is no tautology.

57. The authors of the Ratnákara and others say that the reading which is found in the Kalpataru is —"shall not take the heritage of a half brother." But this seems to be an error committed by the copyist; since the reading in the original text of Yájnavalkya, and in such treatises as the Mitákshará, the Párijáta and the Haláyudha, is,—"A half brother shall not take the heritage;" and the commentaries on that text are in accordance with this reading.

58. If there be no brothers, the brother's son succeeds. But first of all, the son of a whole brother takes the succession, because the property being devolved

on him, conduces to greater (spiritual) benefit ; inasmuch as the mother of the (deceased) proprietor partakes of the oblations which the whole brother's son presents to his grand-father, according to the following text of Vrihaspati,—"The mother tastes with her husband the oblation consisting of food, which is reverentially offered (to his manes), and the grandmother with her husband, as also the great-grandmother with her husband."

59. In default of the son of a uterine (full) brother, the son of a half brother succeeds.

60. On failure of him, the 'gentiles' (or agnates) succeed, (§2).

61. Because Manu declares,—"To three must libations of water be made, to three must oblations of food be presented ; the fourth in descent is the giver of these offerings ; but the fifth has no concern in them. The inheritance is his who is unremote of the kinsmen of him." The gloss of Kullúka-Bhatta on the last part is to the following effect,—'The inheritance is his who is unremote', *i. e.*, nearest, 'of the kinsmen' *i. e.*, from among the kinsmen, 'of him' *i. e.*, of the deceased proprietor.

62. Also because Vrihaspati says,—"When there are many agnates, distant kinsmen as well as cognates, he who among these is the nearest, succeeds to the estate of one who leaves no children."

63. Therefore, a successor to the inheritance is to be determined by reference to two considerations, namely, his comparative capacity as regards the offering of oblations, and his proximity of birth.

64. Accordingly, as on failure of the deceased proprietor's own lineage down to the daughter's son, others succeed, similarly in default of the brother's son, the father's lineage ending with his daughter's son takes the heritage.

65. In their default, the grand-father succeeds.

66. On failure of him, the grand-mother inherits. Since Manu ordains,—"The mother receives the inheritance of her son destitute of issue; and when the mother too is dead, the father's mother takes the property." Therefore, as the mother succeeds on failure of the father, similarly the paternal grandmother is the heir, in default of the paternal grandfather.

67. In her default, the descendants of the paternal grandfather, down to his daughter's son, succeed in the same way, as has been seen with regard to the father's issue.

68. On the same principle, the paternal great-grandfather, the paternal great-grandmother, and the descendants of the paternal great-grandfather, down to his daughter's son, (succeed in the same order.)

69. On failure of (these) givers of oblations partaken of by the deceased (proprietor,) the 'cognates' (§ 2) such as the maternal grandfather, the maternal uncle and the like,—(are entitled to the inheritance.)

70. Among these too, if the maternal grandfather survive, he alone succeeds, in the same way as the father and the like.

71. If he be dead, then the maternal uncle and the like become heirs in the same order, since they present oblations to the maternal grandfather and the like, which the deceased (proprietor) was bound to offer.

72. On their default the 'Sakulyas' or the kinsmen of divided oblations become heirs. They consist of the three generations of descendants, beginning with the great-grandson's son, and also of the descendants of the paternal great-grandfather's father and the like.

73. It is in pursuance of the same principle (§ 63) that the author of the Dáyabhága says,—"Since the paternal uncle, like the son of the whole brother, offers oblations, which the owner was bound to present, to two ancestors, should not the succession devolve equally on the paternal uncle and the fraternal nephew of the proprietor? The answer is, the paternal uncle is indeed the giver of oblations to the paternal grandfather and great-grandfather of the proprietor; but the nephew is the giver of oblations to two ancestors including the owner's father who is principally considered; he is therefore a preferable claimant, and inherits before the paternal uncle."

74. Likewise, when there is a paternal uncle, and a son of a deceased paternal uncle, of the deceased; in such a case although there is no distinction as to the presenting of oblations, which the deceased was bound to offer, to the paternal grandfather and great-grandfather, still the paternal uncle inherits by reason of his proximity of birth.

75. Because, the allotment of shares according to the proximity of birth is set forth in the following text,—

"Among the sons of different fathers, the allotment of shares is according to the fathers."

76. Accordingly, it is said in the Mitákshará that the paternal grandfather, the paternal uncle and his son take the succession in their order.

77. Also in the Vivâda-Chintámani it is stated regarding succession to the property of one who leaves no male issue, that on default of the brother, his son (succeeds), on failure of him the nearest kinsman (inherits.)

78. The term 'cognates' in the text of Vrihaspati (§ 62) shows that the cognates of the owner himself, and of his father and of his mother are, in their order, entitled to inheritance. And they are,—"The father's sister's son, the mother's sister's son, and the maternal uncle's son are considered to be the cognates of the owner himself. The father's father's sister's son, the father's mother's sister's son and the father's maternal uncle's son, are known as the cognates of the father. And the mother's cognates are her mother's sister's son, her father's sister's son and her maternal uncle's son."

79. A'pastamba says,—"Either the disciples or the daughter shall use the property for religious acts in his welfare." 'For religious acts in his welfare,' signifies, for religious acts such as the monthly oblations and the like which are enjoyed by him, that is to say, for his spiritual benefit.

80. Thus also when there is a possibility of the destruction of his property, although there may be heirs to

his property in distant places, still any one may apply the property of the deceased to the purpose of his funeral obsequies as well as to the purpose of his religious merit.

81. Because in the following text of Nárada, it is said that even a priest may become a substitute (of the heir),—"Even he who out of affection, acts, of his own accord, as a priest." This is explained at length in the Suddhi-Tattwa.

82. This is admitted by the author of the Dáyabhága when he says,—"The appropriation of the wealth of the deceased to his spiritual benefit, in the mode which has been stated, should, in every case, be contemplated.

83. Thus in The Principles of Law composed by the fortunate Raghunandana Bhattáchárjya the son of the great Doctor the fortunate Harihara Bhattáchárjya, The Principles of Heritage is finished.