# THE DÁYA-BHÁGA,

## OR LAW OF INHERITANCE,

OF THE

# SARASVATÍ-VILÁSA.

[*Introduction.*]

[1.] The Division of Heritage is enacted by King Pratápa Rudra Deva, the son of King Puruṣhottama.

[2.] In the foregoing section, the religious duty designated "The union of woman and man" has been taught: here, the division of woman and man is set forth. Hence the connection between these two is that of cause and consequence.

[3.] It must not be said that there is no division between woman and man, because of the *text*[1] "There is no division between a wife and her husband." The division between woman and man is to be expounded.

[4.] Moreover, there is no obscurity: for, in one place is the division amongst men; in another, the division amongst women; and, in another, between woman and man.

[*The nature of Dáya, or Heritage.*]

[5.] The term Dáya means wealth common to father and son; in accordance with the *text*,[2] "The learned call a father's

[1] *Ápastamba's* Aphorisms, II. vi. 14, § 16: West and Bühler's Digest (2nd edit.), p. 531; Sacred Books of the East, ii. 135.

[2] Of the Nighaṇṭu.

wealth,[1] which is subject to division, Dáya." 'Subject to division'; fit for division.

[6.] *Bṛihaspati* also: "He gives; that property of his own which is given by a father to his sons, is Dáya."

The nominative case of the word 'father' is to be understood,—"That property which a father gives to his sons." Thus the word Dáya has an objective derivation; and by this, its general definition is, that Dáya is that kind of wealth which is common to father and son.

[7.] The author of the *Sangraha* also says:[2] "The division of that wealth which is obtained through the father and obtained through the mother, and is described by the word Dáya, is now explained."

[8.] The definition of *Bhárúchi*, *Aparárka*, and *others*, is, that "Dáya is that wealth of the father which is fit for division." This alone is correct, because of its applicability in the division of religious duties as well as in the division of wealth.

[9.] It must not be said, that since religious duties, such as the fire-oblation and the Vaishvadeva, have not the nature of paternal wealth, the definition, "That wealth of the father which is to be divided," has no applicability there: because the paternal nature of the fire-oblation &c which are to be performed, is affirmed by the text of *Viṣhṇu*: "Paternal property is of two kinds: that which is to be enjoyed, and that which is to be performed." "That which is to be

[1] *Dravya.* All the Sanskṛit words, which designate 'property,' are commonly interchangeable: but, for the sake of definiteness, Dravya is uniformly rendered by 'wealth,' throughout this translation; Dhana, by 'property'; Vittam, by 'riches'; Artha, by 'substance'; Ṛiktha and Riktha, by 'estate'; and Dáya, by 'heritage,' where the original form of the word is not retained. In a very few instances, where these renderings are not observed, the original words are given in the foot-notes.

[2] See the Smṛiti-chandriká, ii. 10, and the Vyavahára-mayúkha, IV. ii. 1.

enjoyed," means, fields, cattle, &c, and "that which is to be performed," means, the fire-oblation, &c.

[10.] For that reason *Yájṇavalkya*[1] says: "Let the householder perform the ceremonies ordained by the law-codes, day by day, in the matrimonial fire, or in that which was brought at the time of Dáya; and those ordained by the Vedas, in the sacrificial fires."

*Karki* says: "After its connection with the marriage, this fire becomes the matrimonial fire."

[11.] By the phrase, "Or in that which was brought at the time of Dáya," the division of the fire-oblation &c is spoken of: and, that the fire-oblation &c have a paternal character, must be admitted; for, otherwise, the phrase, "The ceremonies ordained by the law-codes, in the matrimonial fire," would be seriously obstructed.

[12.] Here *Karki* says: "The appointment is that the matrimonial fire belongs to the brotherless man; and that which was brought at the time of Dáya, to brothers." Therefore the phrase, "At the time of Dáya," means, at the time of the division of the Dáya; and the words, "that which was brought," namely, in order to be Dáya, means, that which was made his own.

[13.] *Bhárúchi* says: "At the division after death, let the brothers divide the fire brought by the eldest of them from the house of a learned Bráhman. Here, the paternal character of the fire is inferior. At the division during life, let them divide the fire brought by their father. That which is brought by a father is paternal; and therefore the paternal character of the fire in this instance is superior, because this kind of fire possesses the character of having been brought by the father to his own brothers and the rest."

[14.] *Some* say here, that in the phrase, "Brought at the

[1] Yájṇavalkya's Code, I. 97.

time of Dáya," a different time is spoken of from that of the appropriation of the fire-oblation. *Bhárúchi* and *others* do not agree with this; since, if it were so, the appropriation of unconsecrated fire would be spoken of. *Others* again say, that a different time from that of the removal of the fire is spoken of, in accordance with the *text*, "Of these, one is the time of the enjoyment of Dáya."

[15.] The truth here is that there are two doctrines, namely, that the matrimonial fire is secular; and, that it is non-secular.

[16.] On the side of its secularity, *they* say: Since the object of the recital of the prayers of the chapter is the completion of the Vedic gift, the consecration is of the performer, and not of the fire. It is improper to speak of the sacred character, either of its mere removal, or of its mere production by friction. Nor is it correct to say, that the production from a flint-stone of the fire produced from a flint, or the nature of the forest-fire inherent in the fire obtained from a forest-fire, has a sacred character; because the equal sacrificial and charitable character, both of that which is procured, and of that which is produced from a flint, or obtained from a forest-fire, is thus taught in the commentary of *Karki*: "Marriage is to be performed with fire produced by friction, or brought from the house of a learned Bráhmaṇ, or obtained from a flint-stone, or from a forest-fire." Therefore the matrimonial fire is secular. Hence it is said by *Ápastamba*: "When the fire is extinguished, let him obtain fire from the house of a learned Bráhmaṇ, or by friction, and make an expiation, saying the words, "Ushoṣhyáyáshcha," and then perform the fire-oblation as aforetime." The author of the *Vṛitti* says: "This is the rule when the fire is extinguished; having obtained it by friction, or having procured it from the house of a learned Bráhmaṇ, he must make the fire-oblation, saying the words, 'Yáshcha,' and perform his sacrfiice."

Wherefore, that class of texts may suffice, which say, that the separate performance of the fire-oblation, and the separate performance of the Vaishvadeva, is prohibited amongst re-united men. The meaning is, that a successive division of the fire which was brought at the time of marriage, belongs to the sons.

[17.] On the side of the non-secularity of the matrimonial fire, *they* say: The non-secularity of the fire is seen by the superaddition of the Vedic *rule*, "Let him consecrate the fire, saying, Bhúrbhuvassuraḥ." Hence, the rules for the separate performance of the fire-oblation, and the separate performance of the Vaishvadeva, are applicable in the divided state, since the word 'or'[1] embraces both sides. Wherefore it is said by *Áshvaláyana:* "When the fire is extinguished, let him perform the series of ceremonies as far as the pair of sheep, and offer his sacrifice as aforetime." The separate expression,[2] "Those ordained by the Vedas, in the sacrificial fires," is for the purpose of showing, that there is no division of the sacrificial fires at any time.

[18.] *Lakshmídhara* and *others* say here: "On the side of the non-secularity of the matrimonial fire, the successive appropriation of the fire is itself a division." This is treated at large in the section on the settlement of doubts respecting division.

[19.] *Asaháya*, *Vijñánayogí*,[3] and *others*, say: "That which becomes the property[4] of another solely[5] by reason of his connexion with its owner,[6] is designated by the term Dáya."

[20.] *Bhárúchi*, *Aparárka*, and *others*, do not allow this, because that description is not amongst the sources of ownership.

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[1] In Yájñavalkya's text, § 10, above.

[2] See § 10, above.
Mitákshará, I. i. 2.

[4] Svam.

[5] The word 'solely' does not occur in MSS. B. C. and D. It has also been cancelled in MS. A. with black pencil. B. and C. have '&c.' in its place.

[6] Svámi.

[21.] It must not be said that purchase &c, are excluded by the word 'solely,'[1] because of the absence in a purchaser of the popular saying "The heir takes the Dáya." Nevertheless, since eligibility for Dáya does not belong to women, in accordance with the Vedic *text*, "Women and memberless persons are not inheritors," a woman's property[2] is not to be designated by the term Dáya. This will be enlarged upon later on in this work.[3]

[*The nature of Division.*]

[22.] *Bhárúchi* says, that by the term 'division,' is meant the separation of either the one or the other of the two things, wealth and religious duty.

[23.] *Vijñánayogî*[4] however says, that by the term 'division,' is meant the separation into parts of the several proprietorships subsisting in an aggregate of wealth.

[24.] *Bhárúchi* does not allow this, because it does not exist in a division of religious duty.

[25.] By the term, "division of religious duty," is meant a division of the religious duty alone; namely, a separate performance of the Vaishvadeva, of the five great sacrifices, and of the ancestral ceremonies.

[26.] A division of religious duty may be made because very indigent persons do not possess wealth; or, a division of the religious duty alone may be made amongst those who desire an increase of religious duty, in virtue of the text of *Gautama*: "In a division, there will be an increase of religious duty."

[27.] Therefore *Vishṇu* says: "Or, let him divide the religious duty only." "Amongst very indigent persons," is to be supplied.

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[1] In Asaháya and Vijñáneshvara's definition in § 19, above.

[2] Stridhana. [3] See § 144, below. [4] Miták. I. i. 4.

[5] Gautama's Institutes, xxviii. 4; W. and B. Digest, 539; Sac. B. of East, ii. 299.

[28.] It is to be understood by this, that there is a completion of division by means of an act of the will alone without any technical form; just as the creation of an appointed daughter is completed by a mere act of the will without any technical form.

[29.] In the case of wealthy people however, the division of religious duty follows only upon the division of the wealth; because *it is said* with reference to the Vaishvadeva &c, which are to be performed by divided persons, "Divided brothers may perform them, but not the undivided in any form."

[30.] Wherefore, amongst the very poor, the separate performance of religious duties, with the mutual consent of each other, or even without it, constitutes a division of religious duty; but amongst the rich, there is a division of property.

[31.] Thus division is of two kinds.

[32.] Therefore it is said by *Vishṇu*: "Division is of two kinds; that which springs from religious duty, and that which springs from Dáya."

Though the word 'Dáya' has a common significance, it is here used to signify wealth, because of its special end.

By the words 'religious duty' here, the fire-oblation &c are spoken of, which are the means of fulfilling it.

[33.] Division of religious duty is sanctioned by *Manu*, *Yájṇavalkya*, and *other authors* of law-codes, by *Asaháya*, *Medhátithi*, *Vijṇáneshvara*, and *Aparárka*, the commentators upon those law-codes, and by the author of the *Chandriká*, and *other authors* of digests.

[34.] For instance, the division of religious duty is *spoken of*[1] thus: "Those brothers who live for ten years with separate religious duties, and separate ceremonies, are to be recognized as divided from the paternal property." Here, the mere practice

[1] By Kátyáyana. See the passage on the effect of an absence of ten years, later on.

of separate religious duties, voluntarily, and apart from the consent of another, constitutes a division.

[35.] Similarly, in this *text*,[1]—"That which has been otherwise acquired without detriment to the father's wealth, the gift of a friend, and a marriage gift, shall not belong to the heirs,"—the mere act of receiving the gift of a friend &c, by one who possesses nothing but the gifts of friends &c, is itself a division for that man.

[36.] It is equally fit to be investigated here.

[37.] Therefore it is said by *Manu*:[2] "The religious duty of wife and husband, entitled, 'The marriage union,' has thus been stated, hear ye Dáya-dharma.[3]"

[38.] *Bhárúchi* says here: "By the word 'Dáya-dharma,' the division of heritage and the division of religious duty are described."

[39.] The meaning of the text is this: Learn ye the division of heritage and the division of religious duty, as taught by me. Although by the word 'Dáya,' which speaks of wealth liable to division, there is an inclusion of religious duty also; nevertheless, the expression 'Dáya-dharma' is used for the sake of perspicuity.

[40.] The expression,[4] "From the paternal property," is the ablative case with the elision of 'lyap.'

[41.] *Some* say that its purpose is to indicate the rule of the alternative; that, even while enjoying the paternal property, the separate performance of religious duties for ten years is a source of division.

[42.] *Others* however say, that the elision of 'lyap,' means, after abandoning the paternal property: otherwise i would

[1] Yájn. II. 118. [2] Manu, ix. 103.

[3] The original words are retained here, because this compound is susceptible of two meanings, viz. (1) "the religious duty of Dáya," and (2) "Dáya and religious duty;" the latter of which is adopted in the succeeding commentary.

[4] In § 34, above.

contradict the text of *Manu* and *others*, "Not injuring the father's wealth &c."

[43.] This alone is correct, as the *author* of the digest says, "This view is the best."

### [*The Time, Manner, &c. of Division.*]

[44.] "At what time, in what portions, by whom, and of what kind of heritage it is made, is set forth in accordance with the authoritative books."[1]

[45.] "Of what kind of heritage;" division may be spoken of, paternal, maternal, &c.; "at what time;" as stated in the *text*,[2] "When their mother's child-bearing power has ceased &c."; "in what portions;" by the method of equal and unequal shares &c.; and "by whom;" by the father, mother, sister, &c.

[46.] Thus the fourfold cord, which has to be made in every topic of discussion, is investigated. This is the topic of discussion called, "The division of heritage."

[47.] Here the author of the *Sangraha*[3] states a special matter: "There may be a division of the father's wealth even while the mother is living; since proprietorship by independence does not belong to the mother apart from her lord. So also there may be a division of the mother's wealth while the father is alive; since her lord is not lord of her woman's property[4] while there are children living." One word, 'lord,' means 'proprietor,' the other means 'husband.'

[48.] Forasmuch as by this text is meant, that a division of a father's wealth is not to be made by the sons during his lifetime, nor a division of a mother's wealth during her lifetime;[5] it shall be explained.

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[1] Smṛi. Ch. i. 13; where this text is attributed to the author of the Sangraha; Miták. I. i. 6.

[2] Nárada, xiii. 3.

[3] See Smṛi. Ch. i. 16.

[4] Strídhana.

[5] Smṛi. Ch. i. 17.

[49.] Therefore *Manu* says:[1] "After the death of both the father and the mother, the brothers shall come together and divide the paternal estate, for while both of them are living, these have no power."

"Have no power:" the meaning is, are not independent.[2]

[50.] Hence also *Hárita* says: "While their father is alive, sons do not possess independence in regard to receipts, expenditure and correction." "Receipts" of substance;[3] its sensible enjoyment. "Expenditure;" its disbursement. "Correction;" disciplinary correction of the offences of slaves and other dependents. "Do not possess independence;" are not accustomed to the receipt of substance &c, according to their own pleasure and without their father's cognizance. So also,[4] they "do not possess independence" in religious duties; they are not accustomed to the separate performance of sacrifices, charitable deeds, &c.

[51.] So also the author of the *Chandriká* says: "It is to be understood, that his own religious ceremonies, such as the fire-oblation, are to be performed by a son who has obtained his father's consent, not by one who has not obtained consent."

[52.] *Aparárka* says: "In the performance of the fire-oblation and other ceremonies, the son has authority, though he has not obtained consent."

The two kinds of good conduct, the obligatory and the optional, are not mentioned, because they were previously stated.

[53.] With regard, however, to that which *Devala* says,—"At the death of a father, the sons shall divide their father's property; but no proprietorship can belong to them while their father is alive and free from defect,"—the meaning of "no proprietorship" here is, absence of independence; be-

[1] Manu, ix. 104.
[2] Smṛi. Ch. i. 12, 18.
[3] Smṛi. Ch. i. 21.
[4] Smṛi. Ch. i. 22.

cause it is the settled rule of the world, that men possess proprietorship by birth.[1]

This shall be treated at length later on in this work. By using the expression, "free from defect," he shows, that though the father is alive, if he has defects, subjection to him does not attach to the sons.[2]

[54.] By this it is to be understood, that though the father is alive, if he is incapable, or has some other defect, the independence in the acquisition and expenditure of the substance belongs to his eldest son; and subjection to the eldest attaches to the younger brothers.

[55.] Wherefore *Shankha and Likhita* say: "During the incapacity of the father, the eldest son shall transact the business of the family; or his nearest relation, who is acquainted with affairs, with his concurrence."

By "his," the eldest son is meant; because at that time, independence belongs to him alone. By "who is acquainted with affairs," the implied preference of a younger brother in the term "nearest relation" is stated.

The author of the *Chandriká*[3] says: "The use of the word 'incapacity' has the implied meaning of melancholy &c."

[56.] By this use of the word "incapacity," it is to be understood, that, when a father is afflicted with great age &c, and is without independence, there may be a division of his property at the desire of the sons alone, even against his will.

[57.] Therefore *Nárada* says:[4] "A father who is diseased, who is habitually angry, one who is mentally absorbed by some special object, and one who acts contrary to the authoritative books, is not supreme in a division."

"But the sons alone are supreme," must be supplied.[5]

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[1] Smṛi. Ch. i. 23, 27, 45. But see Mitákṣ. I. i. 22.
[2] Smṛi. Ch. i. 28.
[3] Smṛi. Ch. i. 29.
[4] Nárada, xiii. 16. See Miták. I. ii. 14.
[5] Smṛi. Ch. i. 34.

[58.] So also *the same author* says:[1] "Or, even the father himself may divide his sons, when he is advanced in age."

"Advanced in age" with unimpaired independence, is implied.[2]

[59.] By the words "or" and "even," in the phrase, "Or even the father," the meaning is, that when he is free from disease and other defects, the right of making a division belongs to the father alone; otherwise, to the sons.[3]

[60.] "Therefore, after the death of their father, the sons shall divide the property equally; or, when their mother's child-bearing powers have ceased, and their sisters have been given in marriage, and their father's pleasures have passed away, and his worldly desires have become extinct."[4]

In the instance of "pleasures," the meaning is, to sport.

[61.] From the phrases, "when his worldly desires have become extinct," and "when their mother's child-bearing powers have ceased," it follows, that there is no division when the father wishes to take another wife.

[62.] Thus, one of the times of division is indicated by the phrase, "After the death of their father;" moreover, that is the 'Division after death;' and, by the phrase, "When their mother's child-bearing powers have ceased," the 'Division during life.' Thus the two times of division are stated.

[63.] *Shankha and Likhita* have spoken of the time of division: "The united is the appointed rule for brothers while their parents are alive; after their death also, their state of unity may remain with a view to their prosperity."

The meaning is, on account of the absence of separate expenditure by each of them.

[64.] In division, however, religious duty receives increase.

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[1] Nárada, xiii. 4.
[2] Smṛi. Ch. i. 38.
[3] See Smṛi. Ch. i. 38.
[4] Nárada, xiii. 2, 3; Miták. I. ii. 7; Smṛi. Ch. i. 35.

Hence *Gautama*[1] says: "In a division there is an increase of religious duty."

[65.] If it be asked how this is, *Nárada* replies:[2] "United religious duties belong to undivided brethren; but when there is a division, the religious duties of each of them shall be separate."

[66.] Religious duties spring from the worship of the ancestors and the gods.[3] Thus *Bṛihaspati* says: "The worship of the ancestors, the gods, and the twice-born, by those who dwell with one kitchen, shall be united; but by those who are divided, it shall be in each separate house."

[67.] Hence it is to be understood, that the religious duties which spring out of the fire-oblation &c[4] which they themselves perform, need to be carried out even by undivided persons: nevertheless, there is an increase of religious duty when there is a division, as is stated by the teaching of *Gautama* and *others*.

[68.] Here, since there is an acceptance by all sides of the doctrine of division into equal shares, *Yájñavalkya*[5] declares, that, in whatever instance, if a father of his own free will shall agree to make a division in equal shares, then the wives, like the sons, must be made partakers of equal shares:[6] "If he make equal shares, his wives must be made partakers of equal shares."

[69.] *Bhárúchi* says, that, in accordance with the doctrine, that if the father in his old age shall of his own free will make a division in equal shares, he himself being included, each of the wives must take an equal share, corresponding with his own;—*Ápastamba's* text, "There is no division between a

[1] See § 26, above.
[2] Nárada, xiii. 37.
[3] Smṛi. Ch. i. 43.
[4] See Smṛi. Ch. i. 46.
[5] Yájñ. II. 115.
[6] Miták. I. ii. 8, 9; Smṛi. Ch. ii. (§ 1), 38, 39.

a wife and her husband,"[1] is to be understood to apply to those cases only where unity is ordained.

[70.] Hence *Yájṇavalkya*[2] says: "But suretyship, debt, and evidence, are not ordained between brothers, a wife and her husband, and a father and his son, when in the undivided state."

[71.] Here *Vijṇánayogí* says: Now there is no prohibition of suretyship and the rest between a wife and her husband before division, because of the uselessness of the distinction when there is no division between them; and the absence of division is shown by *Ápastamba*: "There is no division between a wife and her husband." True; there is no division in the ceremonies performed in the fire ordained by the Veda and the law-codes, nor in their results; and none, moreover, in all their actions and in all their wealth. That is to say; when he says, "There is no division between a wife and her husband," he gives the reason of the connexion, in answer to the question, "Why is there not?"; namely, because by holding hands they have a unity in their ceremonies, and so also in their meritorious results.

[72.] The meaning of this is as follows:—"Because"; that is, forasmuch as unity in their ceremonies, beginning with the taking of hands, is ordained in these words, "Let the wife and her husband receive the fire"; therefore, by their joint authority in its reception, they have joint authority in the ceremonies performed in the fire which they have received. And so, by the *text*,[3] "Let the house-holder perform the ceremonies ordained by the law-codes &c," they have joint authority in the ceremonies performed in the fire established at their marriage. And therefore, the separate authority also of the wife and her husband in the ceremonies

[1] See § 3, above. See Smṛi. Ch. ii. (§ 1), 39.
[2] Yájṇ. II. 52.
[3] See § 10, above.

connected with the two kinds of fire, and in their charities, is brought about. Thus the union of the wife and her husband is ordained in the heaven called Svarga, and other fruits of their merits: "Let them commence their life of glory in the sky, &c."

[73.] It is to be understood, that they have a community in the fruits of those meritorious deeds in which they have joint authority; but not in those charities which are founded with the husband's cognizance.

[74.] Doubtless their community in the proprietorship of wealth has been stated, and also in the acceptance of wealth; for they do not teach that there is a theft in a special gift made when the husband is absent from home.

[75.] True; the ownership of the wealth by the wife is shown by this, but not the absence of a division: for, after saying, "And also in the acceptance of wealth," the reason is there stated; namely, *Manu* and *others* have taught, that there is no robbery in that which has of necessity to be done during the husband's absence from home, such as the feeding of Bráhmans, and giving alms to beggars; and therefore, proprietorship in the wealth belongs also to the wife, otherwise it would be robbery.

[76.] Therefore, there may certainly be a division of wealth with a wife at the desire of her husband; but not at her own desire.

[77.] The doctrine of *Aparárka*, however, is, that a division of heritage does not belong to women; and, therefore, in virtue of the Vedic text,[1] "Women, and memberless persons &c," property is to be given to wives according to the pleasure of their husbands. The term 'equal share,' however, shows that it is not to be made smaller than the husband's share; an

[1] See § 21, above.

equal share, or a larger share, is to be given. The optional gift of a share is to be understood, because of the statement of the rule of pleasure, by the word 'If,' in the phrase,[1] "If he make."

[78.] The truth here is as follows:—In the school of Bhárúchi, where there is a plurality of wives, there is a division amongst them alone. In the school of Vijṇánayogí[2] and others, there is no division with a wife alone; but an equal division with sons belongs to the wives. But, in the school of Aparárka and others, there is neither a division amongst the wives, nor an equal division with the sons; but a gift is to be made at the pleasure of the husband.

[79.] The *Commentators* say here, that in these three views, there is an arrangement according to classes. They say, that the equal division with the sons belongs to Bráhmaṇí wives; that neither the division amongst the wives, nor the equal division with the sons, belongs to Kṣhatriyá wives, but some small gift is to be made at the pleasure of the husband; that the division among wives belongs to Vaishyá and Shúdrá wives; and that the foundation of this arrangement is custom.

### [*The Division during Life.*]

[80.] Here *Shankha* and *Likhita* say:[3] "Division of an estate is admitted during the father's lifetime, either publicly or privately, in accordance with religious duty."

The meaning is,[4] that he who assents to a division during his lifetime, is to make it "publicly," that is, in the presence of relatives and other people; or "privately," that is, secretly, "in accordance with religious duty," that is, in the manner prescribed by the rules of religious duty.

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[1] In Yáj̃n.'s text in § 68, above.
[2] Miták. I. ii. 8, 9.
[3] See Smṛi. Ch. ii. (§ 1), 1.
[4] Smṛi. Ch. ii. (§ 1), 2.

[81.] *Kátyáyana* states the same rule: "That whole sum of wealth which the parents and the brothers take in equal shares, is called a division conformable to the rules of religious duty."

"Conformable to the rules of religious duty;" that is, not departing from the rules of religious duty.

[82.] It is ordained, that they take the common wealth in equal shares [1] in accordance with the Vedic *text*,[2] "Manu distributed his heritage among his sons:" for, though unequal division does appear in the authoritative books,[3] it is not to be practised, because it is opposed to custom, and contrary to other Vedic *texts*.

[83.] Wherefore also,[4] the method of deduction by the eldest son is not mentioned, because it is not to be practised in this present Kăli age.

[84.] That is to say, because of the prohibition,[5] "Let not even a religious duty be performed, which is unconnected with heaven and is opposed to custom;"—just as in the case of the *rule*,[6] "Let a large ox or a great goat be offered to a learned Bráhmaṇ," though it is a sacred precept, it must not be done, because it is opposed to custom; so also in the case of the *rule*, "Let a barren cow be consecrated as a sacrificial victim to Mitra and Varuṇa," though the sacrifice of cows is a sacred precept, it is commanded not to be practised, because it is opposed to custom;—just as the cow must not be slaughtered in sacrifice, though it is an ordained duty; so division after deduction does not prevail in the present day.[7]

"In the present day"; that is, in the Kăli age.

[85.] So also *Ápastamba*:[8] "Let him divide his heritage amongst his sons in equal shares during his lifetime."

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[1] Smṛi. Ch. ii. (§ 1), 6. [2] See Ápastamba, II. (6), xiv. 11.
[3] Miták. I. iii. 7.
[4] See Miták. I. iii. 4; Smṛi. Ch. ii. (§ 1), 7, &c.
[5] Yájṇ. I. 156. [6] Yájṇ. I. 109.
[7] Miták. I. iii. 4; Smṛi. Ch. iii. 16. [8] Ápa. II. (6), xiv. 1.

[86.] "In equal shares;" while he has himself said this, he points out, that according to one school the taking of the whole wealth belongs to the eldest son: "Some say that the eldest son is the heir:"[1] and while he has shown the division by deduction of another school in these words, "In some particular countries, the gold, the black cattle, and the black fruits of the ground, belong to the eldest son, the carriages to the father, the unused household utensils and her ornaments to the wife, and also her kinsmen's property,"[2] he rejects it, saying, "That is prohibited by the authoritative books."[3]

[87.] Therefore, the erroneousness of the explanation by *Aparárka* and *other commentators* of the *text*,[4] "Or, the eldest son with the best share," is left unexposed.[5]

[88.] Here, in the division during life, the division is according to pleasure.

[89.] There *Nárada* says:[6] "Let the father himself, who makes the division, retain two shares." This is the case of one who has an only son.

[90.] So *Shankha* and *Likhita* say: "Let him take two shares himself, if he has but one son." "Him;" the continuative father is meant.[7] "If he has but one son," applies to one decayed by age, when the time for having another son has passed away.

[91.] Moreover, this pertains to the division of property alone; because in a division of religious duties, "two shares" have no meaning.

[92.] Where a son,[8] because of his ability to acquire property, has no desire to take his own share in his father's property,

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[1] Ápa. II. (6), xiv. 6. [2] Ápa. vv. 7, 8, 9.
[3] Ápa. v. 10. See Miták. I. iii. 3. [4] Yájn. I. 114.
[5] See Smṛi. Ch. ii. (§ 1), 25.
[6] Nárada, xiii. 12. See Smṛi, Ch. ii. (§ 1), 27, 28.
[7] Smṛi. Ch. ii. (§ 1), 30.
[8] Smṛi. Ch. ii. (§ 1), 40; Miták. I. ii. 12.

there *Yájṇavalkya*[1] says, the father shall give him as much as he makes his own, and he shall perform separate ceremonies: "Let him give something to him who has ability, and is without desire, and make a separation."

[93.] When, again, a division is made by sons while their father is living, it is to be made by the rule of equal division prescribed in the text of *Kátyáyana*,[2] "That whole sum of wealth &c.:" because there is no other authoritative book which propounds another rule in a division during life made by sons.

[*The Division after Death.*]

[94.] So also in the division after death, by the text of *Paithínasi*:[3] "In the Dáya and other paternal property capable of being divided, the division amongst brothers is in equal shares;" and by the text of *Hárita*:[4] "When he is dead, the division of his estate is in equal shares."

[95.] The meaning is,[5] that when their father is dead, the division of his estate by the brothers must be made in equal shares only. "Amongst brothers;" namely, those alone who possess equal proprietary rights, and are of the same class; because of that which will be stated further on respecting the exclusion from a division of eunuchs &c of the same class, and of the reception of shares, by the rule of unequal division, by those who are of different classes.

[96.] *Yajṇávalkya* says,[6] that, as sons are equal sharers in the estate, so also are they equal sharers in the debts: "After the death of both parents the sons shall divide the estate and the debts equally."

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[1] Yájṇ. II. 116.
[2] § 81, above.
[3] Smṛi. Ch. ii. (§ 2), 3.
[4] Smṛi. Ch. i.
[5] Smṛi, Ch. ii. (§ 2), 2.
[6] Yájṇ. II. 117; Miták. I. iii. 1.

Here, the paternal debts alone are meant;[1] because the joint payment is commanded of those which are not the father's.

[97.] Hence *Kátyáyana* says:[2] "But a debt contracted for the benefit of the family, by a brother, a paternal uncle, or the mother, must be wholly paid by the heirs at the time of division."

[98.] Here *Kátyáyana* states a special matter: "That debt which may have been contracted by himself on account of his religious duties, or as a gift of affection, must be divided when it is discovered: it must not be paid out of the paternal property."

[99.] The meaning is,[3] that, whatever has been intended for a religious duty, whatever has been given by the father from affection, and whatever has been promised by the father himself, should be liquidated by his sons; these three kinds of debt must be divided when discovered, that is, when ascertained.

[*The Shares of the Wives.*]

[100.] Now,[4] since eligibility for heritage does not belong to women, how can the word "share" in the *text*,[5] "If he make equal shares, his wives must be made partakers of equal shares," be explained in a different sense? How, again, is it said by *Yájñavalkya*,[6] "Amongst those who are divided after their father's death let their mother also take an equal share"? How, too, by *Vyása*, "The wives of a sonless father are declared to be partakers of equal shares: all the paternal grandmothers also; they are accounted equal to mothers"? How, also, by *Vishṇu*,[7] "Mothers are partakers of shares conformable with the shares of sons; and unmarried daughters also"?

[1] Smṛi. Ch. ii. (§ 2), 18.
[2] Smṛi. Ch. ii. (§ 2), 19.
[3] Smṛi. Ch. ii. (§ 2), 25.
[4] Smṛi. Ch. iv. 7.
[5] § 68, above.
[6] Yájñ. II. 123; Miták. I. vii. I.
[7] Vishṇu, xviii. 34, 35.

[101.] If fitness for heritage does not belong to women, to speak of the share-taking of mothers, daughters, &c, would then be incorrect.

[102.] Not so.[1] *Some* say, that the word "share," here, does not refer to a division of the heritage, but refers to a portion of the aggregate wealth; and, therefore, there is no fault in the statement.

*Others* say, that because of the emphatic special meaning of the word "women" in the phrase, "Mothers &c," the mother should take a share of the heritage at the division after death.

[103.] The doctrine of *Medhátithi* is, that the above-mentioned distinction of the classes is spoken of; and therefore *Vasishṭha* says,[2] "Moreover, the division of the heritage belongs to the brothers, until such of the women as are childless shall obtain a son."

[104.] The meaning of this is,[3] that the division of the heritage belongs to brothers dwelling together in the same house, after such of their father's women as are childless, but pregnant, shall have had a son, that is, shall have been delivered, and the sex of the child born shall have been ascertained.

[105.] Now the evident meaning here is,[4] that a division of the heritage takes place between the brothers and the childless women. How, then, can it be put aside?

[106.] It is put aside[5] on account of the contradictory meaning of the phrase, "Until such of the women as are childless shall have a son;" as well as on account of the incompetency of women for a division of heritage.

[107.] Hence *another law-code* says,[6] "A mother who has no property of her own shall take an equal share in a division by sons."

[1] Smṛi. Ch. iv. 8.
[2] Smṛi. Ch. iv. 1.
[3] Smṛi. Ch. iv. 2; Miták. I. vi. 12.
[4] Smṛi. Ch. iv. 3.
[5] Smṛi. Ch. iv. 4.
[6] Smṛi. Ch. iv. 12.

[108.] The meaning is,[1] that in the division after death made by sons, the mother who has no property of her own, that is, who is destitute of woman's property of her own, shall take a share equal to a son's.

[109.] The use[2] of the word "mother," here, has a comprehensive meaning, and applies to a fellow-wife &c; thus,[3] "Mothers are partakers of shares conformable with the shares of sons."

[110.] By the use[4] of the attributive term, "Who has no property of her own," it is evident, that where she has property of her own, with which she can provide her maintenance and perform the ceremonies which appertain to her and require property for their performance, she does not take a share. And it follows, that when she is unable to provide her maintenance and perform the ceremonies which require property, though she may have property of her own, she does not take an equal share, but she takes a suitable smaller share.

[111.] Thus the conclusion is,[5] that when the property to be divided is very great, the mother and the rest, though destitute of property, do not take an equal share, but they take only a smaller share, such a share as is equal to their own necessities; because of the meaning indicated in the attributive term, "Who has no property of her own," namely, that the taking of a share by the mother is not, as in the case of the brothers, by the rule of the division of heritage, but by the rule of suitability; and yet, not by the rule of suitability in the attributive term "equal," because of its inapplicability when the taking is of an unequal share.

[112.] It has already been stated, that in the instance of the division during life, it is competent to give the wives even a

[1] Smṛi. Ch. iv. 13; Miták. I. ii. 8, 9; vii. 2.
[2] Smṛi. Ch. iv. 14.
[3] Vishṇu's text, § 100, above.
[4] Smṛi. Ch. iv. 15.
[5] Smṛi. Ch. iv. 16, 17.

larger share at the pleasure of their husband; and, hence, it is to be understood, that in the present instance of division after death, a share is to be given to the mother at the pleasure of her sons, either an equal or a greater one; and so,[1] when they have not the desire, the word "equal" will not be bereft of meaning by her taking the larger share of the property to be divided, when it is small.

[113.] Wherefore, combining all this, after it has been stated by *Yájñavalkya*,[2] that "If he make equal shares, the wives must be made partakers of equal shares," it is added,[3] "To whomsoever woman's property has not been given either by their husband or their husband's father;" that is, if woman's property has been given, competency for shares does not belong to those wives.

[114.] Hence it is said by the author of the *Chandriká*:[4] "It is to be understood, that there is no distinct establishment of a mother's division of heritage here; but only a taking of such substance as she requires."

[115.] As for that which *Vijñánayogí* has said in his commentary on the *text*,[5] "Between brothers, a wife and her husband,"—namely, "Therefore proprietorship in the wealth belongs also to the wife; otherwise it would be robbery;"—it is to be understood, that this is not a description of the taking of heritage, but merely an ownership with respect to entertaining guests, giving alms to beggars, and such like.

[116.] It is, however, said by *Aparárka*, that "The word 'share' in the phrase,[6] "If he make equal shares," has the meaning of 'a portion' of the wealth to be divided; and, therefore, since there is no share-taking for wives, the meaning

[1] Smṛi. Ch. iv. 17. [2] §§ 68, 100, above.
[3] Yájñ. II. 115; Smṛi. Ch. iv. 12, 13.
[4] Smṛi. Ch. iv. 11. [5] Yájñ. II. 52. See § 70, above.
[6] Yájñ. II. 115; § 100, above.

is that something is to be given according to their husband's pleasure."

[117.] Therefore, though in all the three schools women have not the right to divide heritage, they have the right to take a share. Its proportionate limit, when there is woman's property, and when there is none, is to be understood as that which is stated above.

[118.] It must, moreover, be borne in mind, that in the school of the author of the *Bháṣhya*, the division of the wives of Shúdras, is settled according to local usage.

[*The Shares of the Daughters.*]

[119.] As for that[1] which is said by *Viṣhṇu*,[2] that "Unmarried daughters are share-takers conformable with the shares of sons,"—it follows there from the use of the qualifying term "unmarried," that the taking of shares conformable with the shares of sons, is for the purpose of their own marriage according to their means; and not, as amongst the mothers, a taking of shares for the purpose of maintenance.

[120.] Hence[3] it is said by *Devala*: "The father's wealth must be given to the daughters also as marriage property."[4]

The meaning is property[5] for the purpose of their marriage.

[121.] Therefore *Yájṇavalkya*[6] says: "Sisters also, giving them a one-fourth share of their own share."

The meaning[7] is this: that the unmarried sisters are to be settled in marriage by their brothers. By doing what? By giving a one-fourth share of their own share. Whence it follows, that daughters also are partakers of shares after their father's death.

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[1] Smṛi. Ch. iv. 18. See Miták. I. vii. 14.
[2] See § 100, above. [3] Smṛi. Ch. iv. 20.
[4] Vastu. [5] Dhana.
[6] Yájṇ. II. 124; Miták. I. vii. 5; Smṛi. Ch. iv. 21.
[7] Miták. I. vii. 6; Smṛi. Ch. iv. 22.

[122.] The meaning of the expression "of their own share" there, is not that they are to divide each individual settled share and give a one-fourth share; but, that of whatever class the damsel may be, she is to be made the partaker of a one-fourth share of a son of that class.

[123.] This[1] shall be explained. If that damsel is of the Bráhmaṇ class, then, whatever share belongs to the son of a Bráhmaṇí woman, a one-fourth share of it shall belong to her. How is that? If any man[2] has a wife of the Bráhmaṇ class, and he has one only son and one only daughter; in that case, the whole of his paternal property is to be divided into two parts; and of them, one part is to be divided into four; and the son is to give one-fourth part to the damsel, and take the rest. But, when there are two sons and one unmarried daughter; then, the two sons are to divide their father's property into four parts, and give a one-fourth share to their unmarried sister, and divide and take the remainder. When, again, there are an only son and two unmarried daughters; then, the son must divide their father's property into three parts, and give two parts to his two unmarried sisters, and take the whole remaining part.

[124.] As[3] in the case of those of equal classes, so is the arrangement in the case of brothers and sisters of different classes. Where[4] there are an only son of a Bráhmaṇí woman and an only daughter of a Kṣhatriyá woman; there, the son of the Bráhmaṇí woman must divide the paternal property into seven parts, and divide the three parts of a Kṣhatriyá woman's son into four, and give a one-fourth part to the Kṣhatriyá woman's unmarried daughter, and take the whole of the remainder.

Where, again, there are two sons of a Bráhmaṇí woman and

[1] Miták. I. vii. 6.
[2] Miták. I. vii. 7.
[3] Miták. I. vii. 7.
[4] Miták. 8.

one unmarried daughter of a Kṣhatriyá woman; there the Bráhmaṇí woman's two sons must divide the paternal property into eleven parts, and divide the three parts of them which are the share of a Kṣhatriyá woman's son, into four, and give a one-fourth part to the Kṣhatriyá woman's unmarried daughter, and take the whole of the remainder.

[125.] In the[1] same way it must be worked out in every case amongst brothers and sisters of dissimilar classes, when they are of equal number, and when they are unequal.

[126.] The explanation of the phrase,[2] "giving them a one-fourth share," is incorrect, which says that it means, giving property suitable for the mere marriage, regardless of the one-fourth share; because it is contrary to the *text*:[3] "Let the brothers give property[4] to the unmarried girls separately out of their own shares; a one-fourth part of each one's own share. Those who fail shall be outcasts."

[127.] The[5] meaning of this is, that the Bráhmaṇ and other brothers must give to their Bráhmaṇ and other sisters, out of the shares appointed for their own classes, by this,[6]—"The Bráhmaṇ shall take four shares, &c.,"—and other texts, a fourth, that is, a one-fourth portion or share of each one's own share, that is, of each one's individual portion. It is not said, that they must separate each one his own share, and then give the one-fourth part; but, that they must give to each individual unmarried sister severally a one-fourth part of a single share appointed for their own class. The division appointed for those who are of unequal class has been already stated.

[128.] By the denunciation[7] of guilt in case of not giving it,—"Those who fail shall be outcasts," the absolute necessity of giving it is to be understood.

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[1] Mitá́k. I. vii. 8. [2] In Yáj̱n.'s text, § 121, above.
[3] Manu, ix. 118; Smṛi. Ch. iv. 32. [4] Svaṃ.
[5] Mitá́k. I. vii. 10. [6] Yáj̱n. II. 125.
[7] Mitá́k. I. vii. 10; Manu's text, § 126, above.

[129.] If it be said[1] that the one-fourth share is not intended here, but the gift of wealth suitable for the marriage is alone meant;—No: because there is no proof that the gift of the one-fourth share is not intended in the two law-codes; and also, because of the denunciation of guilt when it is withheld.

[130.] As[2] for that which is said by *some*, that in the case of the gift of shares, great riches would fall to the lot of a woman who has many brothers, and destitution to a man who has many sisters; it is obviated by that which has been stated: for, here, the gift of the one-fourth share after separating it from his own share, is not taught. How can that be? By this; namely, that after the father's death, the daughter takes a share; but previously she takes whatever her father gives; because of the absence of a special text.

[131.] The whole of this[3] is the doctrine of *Asaháya*, *Medhátithi*, *Vijñánayogi*, the author of the *Pradípiká*, and *others*.

[132.] *Bhárúchi*, *Aparárka*, and *others*, do not maintain that doctrine.

[133.] The doctrine of *Bhárúchi*, *Aparárka*, *Yajñapati*, and *others*, is, that a daughter does not take a share either after her father's death, or during her father's lifetime:—that while the father is living, some small thing is to be given to the daughters according to the father's own pleasure; and after their father's death, sufficient wealth is likewise to be given by their brothers for the marriage of those who are unmarried, and for the endowment of those who are unendowed; but they do not take a one-fourth share:—that the texts which speak of the one-fourth share, mean the gift of sufficient property for their marriage, and the settlement of sufficient property for their endowment:—that in the text of

[1] Mitá. I. vii. 11. [2] Mitá. I. vii. 12. [3] Mitá. I. vii. 13.

*Vishṇu*,[1] "A share is to be given to the unmarried and the unendowed," the gift of a share to those daughters who are indicated by the words which describe their unmarried state and their unendowed condition, is to be understood; and that, again, is to be understood to be for the purpose of their endowment, and for use at their marriage:—that by the denunciation in the event of its being withheld, "Those who fail shall be outcasts,"[2] it is to be understood that there is sin in not endowing them with property sufficient for their endowment, and in not performing their marriage with property sufficient for their marriage:—and that if the conclusion is made from their evident meaning, that a gift of some small amount is due to daughters in their father's lifetime, it is so also after his death, according to the reasonable grounds of these texts; an inference from their hidden meaning being unreasonable:—whence it is said by *Bṛihad Vishṇu*,[3] "Let him perform the marriage of the unmarried daughters also according to the amount of his own property."

[134.] Here *Shankha*[4] states a special matter: "When a division of the heritage &c takes place, the unmarried daughter takes the girl's ornaments, her marriage portion, and the woman's property."

"The girl's ornaments;" the ornaments worn by the girl herself.[5] "The woman's property;" her mother's property.

[135.] *Baudháyana*[6] says here: "Let the daughters receive their mother's ornaments, inherited or otherwise.

"Inherited;" in the mother's line.[7] "Otherwise;" given by her brothers of their own pleasure. The unmarried daughters are to receive them.

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[1] See Vishṇu, xviii. 35. [2] Manu's text, § 126, above.
[3] See Vishṇu, xv. 31; Smṛi. Ch. iv. 36. [4] Smṛi. Ch. iv. 45.
[5] Smṛi. Ch. iv. 46. [6] Smṛi. Ch. iv. 47.
[7] Smṛi. Ch. iv. 48.

[136.] *Yajñavalkya*[1] sets aside the text,[2] "Let the daughters receive &c," by saying,[3] "The daughters, that which remains of their mother's after her debts: if they are dead, their issue." That is,[4] the daughters shall divide the property of their mother which remains after discharging the debts contracted by her.

[137.] This shall be explained. *Vijñánayogí* says:[5] "The debts contracted by the mother are to be discharged by her sons alone, not by her daughters; and the property which remains after the debts, the daughters are to take."

[138.] Moreover,[6] this is proper; for the woman's property goes to the daughters, because of the preponderance of the woman's members in the daughters; and the father's property goes to the sons, because of the preponderance of the father's members in the sons: "When the man's seed is the more abundant, there will be a male; when the woman's seed is the more abundant, a female."[7]

[139.] A special matter[8] is here pointed out by *Gautama*:[9] "A woman's property belongs to her daughters, not given in marriage and unendowed."

[140.] The meaning[10] of this is, that when there are those who have been given in marriage, and not given in marriage, together, the woman's property belongs to those alone who have not been given in marriage; and when there are together, amongst those who have been given in marriage, those who are endowed and those who are unendowed, to those alone who are unendowed.

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[1] Mitá́k. I. iii. 8; Smṛi. Ch. ix. (§ 3), 18.
[2] Baudhá́yana's, § 135, above. [3] Yájñ. II. 117.
[4] Mitá́k. I. iii. 9; Smṛi. Ch. ix. (§ 3), 19.
[5] Mitá́k. I. iii. 10. [6] Mitá́k. I. iii. 10.
[7] Manu, iii. 49. [8] Mitá́k. I. iii. 11; Smṛi. Ch. ix. (§ 3), 16.
[9] Gautama, xxviii. 24.
[10] Mitá́k. I. iii. 11; Smṛi. Ch. ix. (§ 3), 17.

"Not given in marriage;" unmarried. "Unendowed;" indigent.

[141.] He then[1] states who should take the mother's property remaining after her debts, when there is no daughter: "If they are dead, their issue."[2]

"If they," that is, the daughters. When there are no daughters, or when the daughters are dead, "their issue," that is, their sons and the rest, shall take. This conclusion is made from the words,[3] "After the death of the parents;" and it is stated for the sake of clearness.

[142.] *Bhárúchi* and *others* explain the *text*,[4] "The daughters, that which remains of their mother's &c," in a different way: When there is no son, the daughters shall divide their mother's property; when there are none, their own issue, the paternal uncle, and the rest, shall take, according to the *text*, "Let the heirs take afterwards."

"Afterwards;" the meaning is, when there are no sons &c of the owner of the property. "The heirs;" the daughters, paternal uncles, &c, of the owner of the property.

[143.] Hence also it is said by the author of the *Sangraha*:[5] "The division of that wealth which is obtained through the father and obtained through the mother, and is described by the word Dáya, is now explained."

[144.] They explain, that since the word 'Dáya' is used for property which comes through the mother, sons alone are competent for heritage,[6] and daughters are not; in accordance with the Vedic *text*,[7] "Women and memberless persons are not inheritors;" and also in accordance with the text of *Gautama*: "There is no division of heritage when they are memberless."

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[1] Mitá́k. I. iii. 12.
[2] Yájn̤. II. 117; § 136, above.
[3] Yájn̤. II. 117. See Smṛi. Ch. ix. (§ 3), 22.
[4] Yájn̤. II. 117; § 136, above.
[5] § 7, above.
[6] Dáya.
[7] § 21, above.

[145.] When there are brothers, the mother's ornaments &c, belong to the daughters: and they are to take only that which their brothers may give of their pleasure, and nothing else.

[146.] *Hárita* here states a special matter: "Manu has said,—Deaf and dumb, blind and deformed daughters, are to be given in marriage by their brothers with the paternal estate."

"Deaf and dumb;" those who are unable to speak and hear. "Deformed;" those who have shortened limbs, and those who have limbs in excess. "With the paternal property;" the meaning of the text is, that some portion or the whole of the estate is to be given to the bridegroom by the brothers, and the marriage to be performed.

[147.] *Some* maintain, that there is no giving in marriage of those who are deaf and dumb, or afflicted with other defects, or depraved. It is to be understood that this is rejected.

### [*Exclusion from Division.*]

[148.] *Manu*,[1] also, describes those who are ineligible for heritage: "Impotent persons and outcasts do not take shares; so also those who are born blind, and those who are born deaf, madmen, idiots, and the dumb, and those who are memberless."

[149.] The meaning of this is: "Impotent persons and outcasts do not take shares;" the two thus mentioned[2] are to be nourished and cherished by their brothers who are eligible for the heritage, or by those who take the estate, or by those who take the women.

"Those who are born blind, and those who are born deaf;" the pair thus mentioned, though a share certainly belongs to them, are to be nourished and cherished, notwithstanding their being endowed with a share, because they are marriageable.

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[1] Manu, ix. 201. [2] See Mitâk. II. x. 5; Smṛi. Ch. v. 4.

By the use of the word 'so,' the inner meaning is, that deformed persons, if they are eligible for marriage, are share-takers, and are to be nourished and cherished.

"Madmen, idiots, and the dumb;" by being mentioned in a group, these also are to be nourished and cherished; but they are not share-takers. "Even if they are eligible for marriage," is to be supplied. "Whosoever are memberless;" this is inclusive of women also. Amongst memberless women, a fellow-wife, a daughter, a sister &c, are to be protected; and amongst men, a brother, his son, the paternal uncle, the maternal uncle &c.

[150.] *Some*, however, say,[1] that memberless persons are those who have lost their nose, or some other member, by disease.

[151.] As for that which is said by *Nárada*:[2] "An enemy to his father, an outcast, an impotent man, and he who is degraded, must not receive a share, though he be a bosom son; much less if he is a son born of a widow:"—"He who is degraded," is one[3] who has committed a great crime, and has been expelled by his relatives. "An outcast, an impotent man;" these two are evident. "An enemy to his father;" one of the sort that says, "He is not my father." It is otherwise, when sons have an aversion on account of their father's prejudices; for, in that case, shares are ordained.

[152.] *Vasiṣhṭha* also says: "Moreover, they are not share-takers who have gone into another order."

"Having left the householder's order," is to be supplied.[4]

[153.] Similarly *Devala*: "When their father is dead, the impotent, the leper, the insane, the idiot, the blind, the outcast, the outcast's son, and the ascetic, are not dividers of shares of the heritage."

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[1] Mitá. II. x. 4; Smṛi. Ch. v. 4.
[2] Nárada, xiii. 21; Mitá. II. x. 3.
[3] Smṛi. Ch. v. 6.
[4] Mitá. II. x. 3: Smṛi. Ch. v. 7.

The meaning is,[1] that after their father's death, the impotent and the others, do not become sharers of the heritage.

"The ascetic;" the perpetual religious student, the eremite &c, the Bauddha and Jaina mendicant, the Shaiva ascetic, &c.

"The outcast's son;" a son born in the outcast state, for a son previously born, does not partake of the outcast-blemish incurred by his father. It shall be shown later on, that the relation between a father and his son, being a secular matter, is suspended in the outcast and similar states.

[154.] Hence *Vishṇu* says:[2] "Of these, the bosom sons alone are share-takers, but the son of an outcast, born after the act which caused his outcast condition, and such as are born of women of inverted class, are not sharers: the sons of these are not sharers, even in their paternal grandfather's substance."

In the phrase,[3] "When their father is dead," the word "though" is to be understood. The explanation to be made is, that neither after their father's death, nor before his death, are the impotent and the rest takers of shares.

[155.] Therefore *Ápastamba*[4] says: "Let him divide his heritage amongst his sons, in equal shares, during his lifetime; rejecting the impotent, the insane, and the outcast also." "Rejecting;"[5] excluding. The word "also" includes those who are not eligible for marriage.

[156.] The author of the *Chandriká*,[6] however, says, that the phrase,[7] "When their father is dead," is intended to point out the time of division; and (that by) it is to be understood, that they who are impotent &c at the time of the division

[1] Smṛi. Ch. v. 1.
[2] Vishṇu, xv. 34 to 38. [3] In Devala's text, § 153, above.
[4] Ápa. II. (6), xiv. 1. See § 85, above.
[5] Smṛi. Ch. v. 3. [6] Smṛi. Ch. v. 2.
[7] In Devala's text, § 153, above.

have no participation in the shares; and not they only who are born impotent &c.

[157.] As for that which is said by *Yájṇavalkya*,[1]—"The bosom sons of these, and the sons of their widows take shares, if they are without blemish,"—it is to be understood[2] that this applies to the Dvápara and other ages; because the widow's son is prohibited in the Kăli age.

[158.] Therefore, a reception of their paternal grandfather's property belongs to the sons of the shareless,[3] when they have no disease &c opposed to share-taking, in accordance with the text of *Devala*: "Let the sons receive a share in their father's heritage, if they are free from blemish."

[159.] *Yájṇavalkya*[4] says here: "Let the impotent, the outcast, his son, the lame, the insane, the idiot, the blind, the incurably diseased, and the rest, be maintained: they are not share-takers."

"His son;"[5] born while he is an outcast.

The term, "and the rest,"[6] is intended to include concisely those who are memberless &c.

"Be maintained;" as long as they live,[7] in accordance with the text of *Manu*:[8] "They must be maintained as long as they live."

[*Division amongst sons of different classes.*]

[160.] *Yájṇavalkya*[9] states a special matter in the division of persons of dissimilar classes: "Let the sons of the Bráhman take four shares, or three, or two, or one, in the order of their

[1] Yájṇ. II. 141; Miták. II. x. 9; Smṛi. Ch. v. 39.
[2] Smṛi. Ch. v. 40. See Miták. II. x. 11.
[3] Miták. II. x. 10; Smṛi. Ch. v. 32.
[4] Yájṇ. II. 140.
[5] Miták. II. x. 2; Smṛi. Ch. v. 21.
[6] Miták. II. x. 3.
[7] Miták. II. x. 5; Smṛi. Ch. v. 22.
[8] Manu, ix. 202.
[9] Yájṇ. II. 125.

class; the Kṣhatriya's, three shares, or two, or one; and the Vaishya's take two shares, or one."

[161.] "The Bráhmaṇ[1] has four wives; the Kṣhatriya has three; the Vaishya has two; and the Shúdra has only one wife."

The three classes are indicated according to their relative order.

[162.] Regarding the sons of the Bráhmaṇ there:—By[2] the word "class," the three classes are spoken of, namely, the Bráhmaṇ and the others. The affix[3] 'shaḥ'[4] is used in cases of successive order: wherefore, let the sons of the Bráhmaṇ be, that is, become, takers of four shares, or three, or two, or one, in successive order, class by class.

[163.] This shall be explained:—The sons[5] of a Bráhmaṇ by a Bráhmaṇí woman receive four shares each; his sons by a Kṣhatriyá woman, three each; his sons by a Vaishyá woman, two each; and his sons by a Shúdrá woman, one each.

[164.] "The Kṣhatriya's" sons;[6] those born of a Kṣhatriya. "In the order of their class," must be supplied. "Three shares, or two, or one," according to their order. The sons of a Kṣhatriya by a Kṣhatriyá woman receive three shares each; his sons by a Vaishyá woman, two each; his sons by a Shúdrá woman, one each.

[165.] "The Vaishya's" sons;[7] those born of a Vaishya, "in the order of their class," "take two shares, or one." The sons of a Vaishya by a Vaishyá woman receive two shares each; and by a Shúdrá woman, one each.

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[1] Viṣhṇu, xxiv. 1 to 4. See Manu, iii. 12, 13; Yájṇ. I. 57, with Miták. I. viii. 2, and Colebrooke's note there; Nárada, xii. 4 to 6.

[2] Miták. I. viii. 3.

[3] See Wilson's Sanskṛit Grammar, page 336; with Páṇini, V. iv. 43.

[4] In the word 'varṇashaḥ' ("in the order of their class,") in Yájṇ.'s text, § 160, above,

[5] Miták. I. viii. 4. [6] Miták. I. viii. 5. [7] Miták. I. viii. 6.

[166.] "The Shúdra has only one wife;"[1] and, since he cannot have sons of dissimilar classes, the division in equal shares, above described, alone belongs to his sons.

[167.] Moreover, this is stated by *Yájṇavalkya* in accordance with the *rule* of another law-code;[2] because, according to his doctrine, the marriage of a Bráhmaṇ with a Shúdrá woman is forbidden; as it is said by himself,[3] "That is not my doctrine, forasmuch as he himself is born of her."

"That;" the contraction of a marriage between a Bráhmaṇ and a Shúdrá woman is meant.

[*Property subject and not subject to division.*]

[168.] *Kátyáyana* describes the wealth which is subject to division: "That which belonged to a man's paternal grandfather, and to his father, and whatever besides has been acquired by himself, all this is to be divided in a division amongst the heirs."

"Acquired by himself;"[4] self-acquired with the assistance of the undivided paternal and other wealth: since that which is otherwise self-acquired is not subject to division.

[169.] As *Yájṇavalkya*[5] says: "Whatever else has been self-acquired without detriment to the father's wealth, the gift of a friend, and a marriage present, shall not belong to the heirs. Moreover, he who shall recover wealth which has descended in succession and been forcibly taken away, shall not give it up to the heirs; nor that which he has obtained by his learning."

[170.] That[6] which is "self-acquired" without the expenditure of the mother and father's wealth, "the gift of a

[1] § 161, above. Miták. I. viii. 7.
[2] See Vishṇu, xxiv. 1.
[3] Yájṇ. I. 56.
[4] Smṛi. Ch. vi. 2.
[5] Yájṇ. II. 118, 119; Miták. I. iv. 1; Smṛi. Ch. vii. 25, 27, 32.
[6] Miták. I. iv. 2.

friend," obtained by the assistance of a friend,—"a marriage present" received at a wedding,—"shall not belong to the heirs," that is, the brothers and the rest.

"He who," amongst the sons, recovers any wealth "which has descended in succession," that is, whatever has come down in his father's line, which was "forcibly taken away" by others, and not recovered by his father and the rest, because of their inability &c., "shall not give it up to the heirs," that is, his brothers: he alone who recovers it shall take it.

[171.] There it is said by *Vijńánayogí*, that he who amongst the sons recovers with the consent of the others, shall not give it up to the heirs. *Aparárka* does not agree with this; because the phrase, "with the consent of the others," is meaningless, since they have no right in that portion.

[172.] *Shankha* says,[1] that if it is a field, he takes a fourth part; "But he who shall of himself recover land in regular succession, which was formerly lost, the others shall give him a one-fourth part, according to the share which they take."

In[2] the phrase "in regular succession," supply, "which has descended."

[173.] The meaning[3] of the phrase,[4] "Whatever else has been self-acquired," is made clear by *Manu*;[5] that is to say "That which he may earn by his labour without detriment to his father's wealth."

"By his labour;" that is,[6] by agriculture &c resulting from labour.

"His father's wealth;" here[7] the use of the word "father," has the implied meaning of "undivided." "Without detriment;" that is, without wasting.

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[1] Miták. I. iv. 3: Smṛi. Ch. vii. 33.
[2] Miták. I. iv. 4. [3] Miták. I. iv. 10; Smṛi. Ch. vii. 27.
[4] In Yájn.'s text, § 169, above. [5] Manu, ix. 208.
[6] Miták. I. iv. 11; Smṛi. Ch. vii. 28. [7] Smṛi. Ch. vii. 28.

[174.] *Vyása* also says [1] emphatically: "Whatever property he acquires by his own efforts without using his father's wealth, he shall not give it to the heirs."

[175.] *Prajápati* also says [2]: "That which has been obtained by learning, valour, or labour, his woman's property, guest-presents, gifts from friends, and wedding-presents, are not to be divided with his brothers."

"That which has been obtained by learning," whether by his knowledge of the Veda, or by reciting it, or by explaining its meaning, he shall not give to the heirs: he alone who acquires it shall take it.

[176.] It was formerly laid down by *Bhárúchi*, that wealth in the possession of a single person under these circumstances is subject to division.

[177.] *Kátyáyana* [3] has described the nature of property obtained by learning: "That which has been obtained by learning as a prize in a competition, is property obtained by learning: it is not to be included in a division. That which has been obtained from a pupil, or by acting as a sacrificing priest, or for setting a subject for discussion, or for deciding a doubtful question, or for pronouncing a prudent enconium, or at a controversy, or for a recitation, they emphatically call property obtained by learning: it is not to be included in a division." *Bṛihaspati* says: "That which has been received by learning, as the stake at a game of chance upon the defeat of the adversary, must be recognised as property obtained by learning: it is not to be divided." *Bhṛigu* says: "That which has been obtained as an acknowledgment of learning, that also which has been obtained from a pupil, and that which has been acquired by a sacrificing priest, is property obtained by learning."

[1] Smṛi. Ch. vii. 29.
[2] Smṛi. Ch. vii. 31.
[3] Smṛi. Ch. vii. 4.

"A recitation;" namely,[1] the composition of a poem of a hundred verses, and such like, in a defined space of time; or, a recitation at a feast.

[178.] And here[2] the phrase,[3] "Whatever else has been self-acquired without detriment to the father's wealth," is to be understood throughout. Hence it is to be added in each instance: thus, whatever wedding-present has been received without detriment to the father's wealth; whatever hereditary property has been recovered without injury to the father's wealth; whatever has been obtained by learning without injury to the father's wealth.

[179.] Therefore,[4] the gift of a friend with a requital prejudicial to the father's wealth; that which is received by marriage in the Ásura and other forms with prejudice to the father's wealth; similarly, whatever hereditary property has been recovered with prejudice to the father's wealth;—all this is to be divided by all the brothers.

[180.] Similarly,[5] since the words, "without detriment to the father's wealth," are to be understood throughout, even that which is received as a religious gift with prejudice to the father's wealth, is subject to division.

[181.] If this[6] is not to be supplied throughout, there would be no necessity for the passage[7] beginning with "gifts from friends, and wedding-presents."

[182.] Hence,[8] it is declared, as the purport of the text, "gifts from friends &c," that, whatever is received as a gift from a friend, and the rest, even with prejudice to the father's wealth, is not liable to be divided.

[183.] If it were,[9] there would be a violation of established

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[1] Smṛi. Ch. vii. 5.
[2] Mitâk. I. iv. 6.
[3] In Yâjn.'s text, § 169, above.
[4] Mitâk. I. iv. 6.
[5] Mitâk. I. iv. 7.
[6] Mitâk. I. iv. 7.
[7] In Prajâpati's text, § 175, above.
[8] Mitâk. I. iv. 8.
[9] Mitâk. I. iv. 8.

custom, and also a contradiction of the text of *Nárada*,[1] in the instance of that which is obtained by learning: "He who, though he be an unlearned man, supports the family of his brother while engaged in the pursuit of learning, shall receive from him a share of his property obtained by learning."

[184.] The non-divisibility of that which has been received as a religious gift arises out of the detached rule, "Without detriment to the father's wealth," as being a violation of usage. This is made clear by *Manu*, as stated already,[2] "Without detriment to the father's wealth, &c."

[185.] An indication[3] of the ineligibility for division, of property obtained by learning, is stated by *Kátyáyana*: "Whatever learning is otherwise obtained by the aid of the food of a stranger, the property which is earned by it is called, "property obtained by learning."

In the word[4] 'stranger' here, everybody else is included except an undivided person. The word 'food,' is inclusive of every kind of wealth by implication.

[186.] Therefore[5] it is to be concluded, that it is proper to supply the phrase, "without detriment to the father's wealth," throughout.

[187.] It is[6] not to be said, that the gift of a friend and such other property as is obtained without detriment to the father's wealth, is not subject to division, because it was not obtained at a division: it is very certain that whatever has been earned by anybody is his own property[7] alone; it does not belong to anybody else: how can it be forbidden before it is obtained?

[188.] It is replied,[8] that there is a prohibition against

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[1] Nárada, xiii. 10; Miták. I. iv. 8; Smṛi. Ch. vii. 6.
[2] § 173, above.
[3] Miták. I. iv. 8; Smṛi. Ch. vii. 2.
[4] Smṛi. Ch. vii. 3.
[5] Miták. I. iv. 9.
[6] Miták. I. iv. 12.
[7] Svaṃ.
[8] Miták. I. iv. 15.

obtaining it; "They all are equal sharers in that which is obtained by united persons."[1]

[189.] Here *Hárita* says: "Let them not divide the yogakṣhema, and the pathway."

'Yoga;' that is,[2] the obtaining of that which had not been obtained. 'Kṣhema;' that is, the preservation of that which has been obtained.

[190.] *Laugákṣhi* explains[3] the meaning of the term 'yogakṣhema'; "The learned say, that kṣhema is a deed of charity, and that yoga is a sacrifice: these are expressly declared to be indivisible; and so also a couch and a seat."

[191.] The meaning of it is this; by the word 'yoga,' a sacrificial act performed with the fire appointed by the Veda and the law-codes is described: by the word 'kṣhema,' a work of charity, which is the means of preserving that which has been acquired, is described; such as the construction of a well, or a grove. Both of these, though connected with the father, and though carried out with prejudice to the father's wealth, are indivisible.[4]

[192.] *Some*,[5] however, say, that the king's ministers, domestic priests, and others who perform yoga and kṣhema, are spoken of: and *others*, an umbrella, a fly-whisk, a weapon, a vehicle, &c.

[193.] "The pathway;"[6] that is, the path leading to and from the dwelling-house, the garden, &c. That, too, is indivisible.[7]

[194.] *Nárada*,[8] moreover, has stated a special matter: "This rule is applicable to whom property of her own has been given by his mother from affection: whatever option belongs to

[1] Bṛihaspati; Miták. I. iv. 15, note.
[2] Miták. I. iv. 23.
[3] Miták. I. iv. 23; Smṛi. Ch. vii. 40.
[4] Miták. I. iv. 23.
[5] Miták. I. iv. 24.
[6] Of Háríta's text, § 189, above.
[7] Miták. I. iv. 25.
[8] Nárada, xiii. 7.

the father, belongs to the mother also." "As regards their own property," is to be supplied. "This rule;" that is,[1] the rule of non-divisibility, spoken of in the case of a gift by a father.

[195.] As[2] for that which is said by *Ushanas*, respecting the non-divisibility of a field,—"Property obtained at a sacrifice, fields, vehicles, cooked food, water, and women, are not divisible amongst relations down to the thousandth generation,"—it is the case of the son of a Bráhmaṇ by a Kṣhatriyá woman; according to the *text*,[3] "Land received as a religious donation, must on no account be given up to the son of a Kṣhatriyá woman and others, even though his father may have given it: on his death, the son of the Bráhmaṇí woman shall take it."

This is the explanation of *Vijṇáneshvara*, *Asahája*, and *Medhátithi*.

[196.] But *Bhárúchi*, *Aparárka*, the author of the *Chandriká*,[4] and *others*, have explained it thus:—The gain derived from a sacrifice is to be divided; and a field is divisible with the consent of all the heirs: according to the text of *Prajápati*, "In the case of immovable property, everything, however trifling, which is done without the consent of the heirs, is to be considered as not done, if even one objects." "In[5] the world, even in the division of an estate, no one whatever has any absolute power: it is only to be enjoyed; there is neither gift nor sale."

"In the world;" for successive generations in the case of immovable property &c. "No one whatever;" even[6] the father &c. By the phrase, "Even in the division of property," any lordship in the case of a sale &c., is included. There, his meaning is,[7] that no division, sale, or gift, shall be made otherwise than with the consent of the heirs.

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[1] Smṛi. Ch. vii. 24.
[2] Miták. I. iv. 26; Smṛi. Ch. vii. 44.
[3] Bṛihaspati; Miták. I. iv. 26, note.
[4] Smṛi. Ch. vii. 45.
[5] Vṛiddha Yájṇavalkya; Smṛi. Ch. vii. 49.
[6] Smṛi. Ch. vii. 49.
[7] Smṛi. Ch. vii. 50.

[197.] Likewise it is said by *Manu*:[1] "Raiment, vehicles, ornaments, cooked meats, water, women, the yogakṣhema, and the pathways, are specially declared to be indivisible."

[198.] The indivisibility of raiment is of such only as are worn; not of any others. *Shankha* and *Likhita* say:[2] "But there is no division of the clothes which are worn."

[199.] But those worn by the father, are, after the father's death, to be given by those who divide, to him who consumes the funeral meal, as *Bṛihaspati* says:[3] "Let him give to him who consumes the funeral meal, his father's raiment, ornaments, couch, &c, his vehicles, &c, showing him reverence with perfumes and garlands."

[200.] But[4] in the case of horses and other vehicles being numerous, they are to be divided amongst those who live by the sale of them.

[201.] "The ornaments" also:[5] those which are worn by any one, belong to him alone; those which are not worn, and are common property, must be divided, in accordance with the *text*:[6] "Those ornaments which may be worn by the women during their husband's life, the heirs shall not divide: they who divide them are degraded."

[202.] Here,[7] by the use of the word 'worn,' the divisibility of such as are not worn arises.

[203.] "Cooked meats;" rice-sweetmeats, &c. "Rice-sweetmeats, &c.;" such sweetmeats &c., as are made of rice are "rice-sweetmeats, &c."

[204.] As is said by *Manu*:[8] "Rice, clothes, ornaments, vehicles, water-expanses, and women, all these are not to be divided."

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[1] Manu, ix. 219; Miták. I. iv. 16; Smṛi. Ch. vii. 39.
[2] Miták. I. iv. 17; Smṛi. Ch. vii. 40; Kátyáyana's text.
[3] Miták. I. iv. 17. See Smṛi. Ch. vii. 41, 42.
[4] Miták. I. iv. 18. See Smṛi. Ch. vii. 43. [5] Miták. I. iv. 19.
[6] Manu, ix. 200. [7] Miták. I. iv. 19.
[8] Smṛi. Ch. vii. 39.

"Water;" wells &c[1] which contain it. These are not to be divided by means of their sale-price &c: they are to be enjoyed by arrangement.

"Women;" slaves.[2] They are not to be divided by means of their sale-price: they are to be made to do work according to arrangement.

[*Division by sons of deceased undivided fathers.*]

[205.] A special matter shall now be shown in the division of the property of a paternal grandfather amongst his grandsons.

[206.] There *Yájṇavalkya*[3] says: "Amongst the sons of deceased fathers, the devolution of shares is according to their fathers."

Those[4] who are sons of deceased undivided men, amongst them "the devolution of shares is according to their fathers." This shall be explained:—

[207.] Where[5] undivided brothers, having begotten sons, die, and their sons are in unequal numbers, one having two sons, another three, and another four;—there, the two take their own father's single share; the three sons of the other also take the single share belonging to their father; and the four also take only a single share.

[208.] Hence *Kátyáyana* says:[6] "That same share shall belong of right to all the brothers."

"That same share"; their father's share.

[209.] Although[7] in the taking of the father's share, unequal proprietorship may arise by the distribution of a father's

[1] Miták. I. iv. 21. See Smṛi. Ch. vii. 40.
[2] Miták. I. iv. 22; Smṛi. Ch. vii. 40.
[3] Yájṇ. II. 120.
[4] Smṛi. Ch. viii. 2.
[5] Miták. I. v. 2; Smṛi. Ch. viii. 4.
[6] Smṛi. Ch. viii. 7.
[7] Smṛi. Ch. viii. 5.

share amongst several sons; nevertheless, it is to be adopted, because it has textual authority.

[210.] Similarly,[1] in the case of two undivided brothers having sons, whichever brother dies, his son is to divide in half-shares with his paternal uncle, in accordance with the text of *Kátyáyana*: "In the case of the death of an undivided younger brother, his son shall be made a sharer in the estate."

[211.] So also *Vishṇu*:[2] "Where one is dead or two are dead, or where one is alive or two are alive, and their sons are unequal in number or equal;—there, the devolution of the shares is according to the fathers."

[212.] *Vijñáneshvara*[3] says: "Here also the textual arrangement is, that the sons of those who have died receive their father's share alone."

[213.] But *Aparárka*, *Bhárúchi*, and *others* say: The phrase,[4] "The devolution of the shares is according to the fathers," is an explanation intending a settlement founded on justice; that, since the sons of deceased fathers possess an ownership in the heritage, or wealth obtained through their father, which is disposable according to their pleasure, division belongs to their father's ownership alone; and for that reason *Kátyáyana* says,[5] "That same shall belong of right to all the brothers."

[*The joint ownership of father and son in ancestral property.*]

[214.] Here *Yájñavalkya*[6] states a special matter: "For, as regards land or an allowance or other wealth acquired by a paternal grandfather, there, the proprietorship of a father and his son is similar."

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[1] Smṛi. Ch. viii. 6.
[2] See Vishṇu, xvii. 23.
[3] Miták. I. v. 2.
[4] In Vishṇu's text, § 211, above.
[5] § 208, above.
[6] Yájñ. II. 121.

'Land;'[1] grain-fields, &c.

'An allowance;'[2] that is termed an allowance, which is made by a king, a minister, or other great personage, that a certain portion of each article sold in the shop of a merchant &c., shall be given daily or monthly for the support of a certain person.

'Wealth;'[3] evidently, gold, silver, &c. As[4] for that which was obtained by a paternal grandfather, as a religious gift, by purchase, &c.;—there, "the proprietorship of a father and his son is similar," that is, equal.

'For;' wherefore; the meaning is, according to local usage, &c.

[215.] Wherefore,[5] there is no division at the pleasure of the father alone; nor do two shares belong to the father.

[216.] Therefore[6] also the *text*,[7] "If a division is made by the father, let him divide his sons according to his pleasure," is to be understood to apply to his self-acquisitions.

[217.] Similarly,[8] this *text*,[9] "When the father himself divides, let him take two shares," applies to self-acquisitions.

[218.] This dependence also, "Though they may have arrived at old age, there shall be no independence while they two are alive,"[10] applies to the wealth acquired by the mother and the father.

[219.] Similarly[11] this also:[12] "For these are not lords while they two are alive."

[220.] Therefore,[13] it is to be understood, that there may be a division of the wealth of the paternal grandfather, at the desire of a son alone, even while his mother continues to be

[1] Mitá́k. v. 4.
[2] See Smṛi. Ch. viii. 18.
[3] Mitá́k. I. v. 4.
[4] Mitá́k. I. v. 5.
[5] Mitá́k. I. v. 5.
[6] Mitá́k. I. v. 7; Smṛi. Ch. ii. (§ 1), 15.
[7] Yájn̤. II. 114.
[8] Mitá́k. I. v. 7. See Smṛi. Ch. ii. (§ 1), 27.
[9] Nárada, xiii. 12.
[10] Ascribed doubtfully to Manu; Mitá́k. I. v. 7, note.
[11] Mitá́k. I. v. 7.
[12] Manu, ix. 104.
[13] Mitá́k. I. v. 8.

capable of bearing children, and the father continues to have virile desires, and does not wish for a division.

[221.] So also,[1] in the case of a gift, or a sale, of a paternal grandfather's wealth, by an undivided father, the right of prohibition belongs to his son, grandson, and great-grandson.[2] But in their father's acquisitions, they have not the right of prohibition, because of their dependence on him; but they must add their consent.

[222.] It is[3] to be understood, that, although proprietorship in the property of a father and paternal grandfather is by birth alone; nevertheless, since the son is dependent on his father in the instance of the paternal property, and his father has supreme power by acquisition, consent must be made by the son in the case of a disposition by the father of his self-acquired wealth; in accordance with the *text*, "There shall be neither gift nor sale when all the sons are not together." But,[4] in the case of the property of the paternal grandfather, there exists the difference that he has the right of prohibition, because the proprietorship of both is without distinction.

[223.] Hence[5] it is said by *Manu*:[6] "Whatever paternal wealth he may recover, which was unrecovered by his father, he shall not, if he is unwilling, divide that self-acquisition with his sons."

[224.] Its meaning[7] is this:—It is to be understood, that, by saying that if a father recovers any portion of the acquisitions of the paternal grandfather, which were withheld by somebody or other, and not recovered by the paternal grandfather, he need not of his own accord divide that self-acquisition with his

[1] Miták. I. v. 9.
[2] MS. C. omits the great-grandson; so does Miták. I. vi. 9.
[3] Miták. I. v. 10.
[4] Miták. I. iv. 10. See Smṛi. Ch. viii. 19, 20.
[5] Miták. I. vi. 11. [6] Manu, ix. 209.
[7] Miták. I. vi. 11. See Smṛi. Ch. viii. 21, ff.

sons, "if he is unwilling," that is, if he is disinclined,—he shows, that he must divide the acquisitions of their paternal grandfather with his sons, at the sons' desire, though he may be unwilling.

[225.] So also *Bṛihaspati*:[1] "Because, in wealth acquired by a paternal grandfather, whether moveable or immoveable, it is said that a father and son have equal shares."

[226.] *Vyása* too:[2] "In a hereditary house or field, sons and grandsons are equal sharers."

[*The shares of sons born after a division.*]

[227.] *Yájṇavalkya*[3] states the rule of division for a son born subsequent to the time of division: "A son born amongst divided persons, of a woman of equal class, is a sharer in a division."

[228.] Its[4] meaning is this:—When sons are divided, one born subsequently, of a wife of equal class, is a sharer in a division.

"A division;" that is, that which is to be divided.

"Share;" that is, the share of his parents.

"A sharer in a division;" that is, he divides that; that is, after the death of his parents, he obtains their share.

[229.] But one born of a woman of a different class shall take his share out of his father's share alone.

[230.] *Vijṇáneshvara*,[5] however, says, the whole of his mother's property alone.

[231.] *Aparárka*, and *others*, say, the whole of both; according to the *text*,[6] "Let him who is born after a division take the paternal property alone;" because it is admitted, that

[1] Smṛi. Ch. viii. 17.
[2] Smṛi. Ch. viii. 17.
[3] Yájṇ. II. 122.
[4] Mitá́k. I. vi. 2.
[5] Mitá́k. I. vi. 3.
[6] Manu, ix. 216; Mitá́k. I. vi. 4.

that is 'paternal,' which belongs to both parents equally. Similarly, according to the Vedic *text* :[1] "He has no right in his parents' share, who is born before a division; nor in his brother's, who is born of a divided man." The meaning[2] of the verse is, that he who is born before the division is not a proprietor in the share of his parents, that is, his mother and father's; and, that he who is born of a divided man, is not a proprietor in the share of his brother.

[232.] Thus,[3] the whole of that which is acquired by the father after the time of the division, belongs to him alone who is born when he is divided.

[233.] So *Vishṇu*[4] says: "The whole of that which is self-acquired by a father divided from his sons, belongs to him who is born while he is divided: those who were born previously are pronounced to be non-proprietors."

[234.] And[5] as for those who were divided and are re-united with their father, he who is born while he is divided must divide with them after their father's death; as *Manu*[6] says: "Or, he shall divide with those who may be re-united with him."

[235.] Where the father has two, or three, or more sons, and is divided from a certain number, and undivided from the others, the wealth acquired by their father is to be divided after their father's death amongst those who are undivided.

[236.] If the father be subsequently divided from these, his wealth is to be divided amongst those sons who were previously divided and those who were subsequently divided alone. It does not belong to the wife. It will be shown later on, that the order of succession to proprietorship, "The wife, the

[1] Bṛihaspati; Miták. I. vi. 4, note. [2] Miták. I. vi. 5.
[3] Miták. I. vi. 6. See Smṛi. Ch. xiii. 5.
[4] This text is ascribed to Bṛihaspati in Miták. I. vi. 6, note, and Smṛi. Ch. xiii. 9.
[5] Miták. I. vi. 7; Smṛi. Ch. xiii. 15. [6] Manu, ix. 216.

daughters, &c," does not apply to a father, but to a brother &c.

[237.] *Yajñavalkya*[1] states the rule of the share of one born after a division, when the pregnancy of a brother's wife, or the mother, was not evident at the time of the division: "His division shall be out of that which is visible, freed from the income and expenditure."

[238.] This shall be explained. *Vijñáneshvara* distinctly states,[2] that a share equal to their own is to be made for him who is born after the division, by taking something out of each of the shares which remain, after adding the income which has arisen in their respective shares, and discharging the debts contracted by their father.

"His division;"[3] the division of one who was born after the time of the division of his brothers, his mother's pregnancy being unapparent at the time of the division of his brothers upon the death of his father, is, "his division."

[239.] But[4] when her pregnancy is apparent, *Vasishṭha* says,[5] they must await the delivery, and then make the division: "Moreover, the division of the heritage belongs to the brothers until such of the women as are childless shall obtain a son."

"Must await the delivery of those who are pregnant," is to be added. The rest has already been explained,[6] and need not be repeated here.

[240.] *Bṛihaspati* says,[7] that this same rule also applies to one who has gone to another country: "He who leaves his family connections, and lives in a foreign country, when he returns, without doubt a half-share must be given to him."

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[1] Yájn. II. 122; Smṛi. Ch. xiii. 17. [2] Miták. I. vi. 10.
[3] Miták. I. vi. 9. [4] Miták. I. vi. 12.
[5] See § 103, above. [6] See § 103, ff., above.
[7] Smṛi. Ch. xiii. 21. See Miták. II. ix. 13.

"Leaves his family connections;" the meaning is, leaves the country where the united members dwell.[1]

[241.] *The same author* says,[2] that when a division is made in ignorance of the existence of one who has for a very long time been absent in a distant place, a share belongs even to him: "To whomsoever a debt, a document, a house, or a field, of his paternal grandfather's belongs, upon his return he shall take a share."

"Shall take a share;" the meaning is, shall divide the property.

"On his return;" on his return after a division.

[242.] *The same author* states a special matter in the case of a grandson &c:[3] "Though he be the third, or the fifth, or even the seventh, he shall take a share in the hereditary property when his birth and name are ascertained." The meaning is, he shall take a share in the hereditary wealth alone.

[243.] *Some* say,[4] that the share here is in hereditary land alone, and not in anything else; as *Vishṇu*[5] says: "Land must be given up by the relatives to him who has returned, when the respectable neighbours have ascertained his relationship." *Others* say, that it includes hereditary wealth.

[244.] Here *Bṛihad Vishṇu*[6] states a special matter: "The right to take a share shall belong to him who returns after a division, or who returns before it, and has determined to take his own share, when he has proved his proprietorship in wealth in the possession of another person, by direct or indirect evidence: not otherwise."

The meaning is clear.

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[1] Smṛi. Ch. xiii. 22.
[2] Smṛi. Ch. xiii. 23.
[3] Smṛi. Ch. xiii. 24.
[4] Smṛi. Ch. xiii. 25.
[5] It is elsewhere attributed to Bṛihaspati. See Smṛi. Ch. xiii. 25; Dáyabhága of Jímúta-váhana, viii. 1.
[6] See Smṛi. Ch. xiii. 26, where this text is attributed to Bṛihaspati.

[245.] The son born of a divided man, shall take the whole of the paternal and maternal property.

[246.] There, if a divided father, or the mother, gives an ornament &c to a divided son out of affection, in that case, a prohibition of the gift is not to be made by the son born after the division; nor even is the gift to be resumed.

[247.] As *Vishṇu* says: "That property which has been given by his parents, shall be his alone." The meaning is, that the son born after the division has no control over it; and that it shall not become the property[1] of the son born after the division.

[248.] The conclusion is, that that which was given even before the division, belongs to him alone, by the exposition of the *rule:* "That which was given by his father, belongs to him alone."

### [*Description and division of Stridhana.*]

[249.] Here follows the division of Stridhana.[2]

[250.] There *Vishṇu* says: "A woman may acquire Saudáyikaṃ according to her desire." Saudáyikaṃ includes the husband's gifts.

[251.] So also *Vyása* says:[3] "Such property also as is given by her husband she may acquire according to her pleasure."

[252.] The term 'Saudáyikaṃ':—"That[4] which is received, either by a married woman, or one unmarried, in her husband's or her father's house, or from her husband or her father, is termed Saudáyikaṃ."

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[1] Svaṃ.

[2] I have thought it advisable to retain the original term 'Stridhana,' and some others, throughout this section, instead of translating them.

[3] Smṛi. Ch. ix. (§ 2), 1.

[4] Kátyáyana, Smṛi. Ch. ix. (§ 2), 5.

[253.] So also *Vyása* says:[1] "That property which is received by an unmarried woman at her marriage, or afterwards, from her father's house or her husband's, is termed Saudáyikaṃ."

[254.] Now[2] the word 'Saudáyikaṃ' has the termination of a derivative noun which retains its own meaning. 'Saudáyikaṃ' is simply su-dáya; "the affix 'ṭhak' with vinaya."[3]

[255.] If it be said, that this is inapplicable, because by the termination of the derivative which has the meaning of its primitive, its meaning is simply Dáya; and eligibility for Dáya does not belong to women. It is not so, because eligibility for their husbands' Dáya does belong to women.

[256.] The word 'Saudáyikaṃ' has the constant form of the neuter gender, by the *rule*, "Derivative words having their own meaning are unavoidably gender-exhibiting words by their nature."

[257.] So also *Nárada* says:[4] "That which is given to a woman by her husband from affection, she may enjoy after his death according to her pleasure, or give away; with the exception of the immoveable."

[258.] Hence, her independence is declared by the phrase, "according to her pleasure." So also it is to be acknowledged, that women possess independence in gifts of affection other than immoveable property, which form their Saudáyikaṃ.

[259.] But men[5] do not in any case possess independence in Strídhana. As *Kátyáyana* says: "Neither a husband, nor

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[1] Smṛi. Ch. ix. (§ 2), 6.

[2] Smṛi. Ch. ix. (§ 2), 9.

[3] Páṇini's Sútras, V. ii. 34: "Vinayádibhyaṣh.hak. The gloss of the Siddha-kaumudí on this sútra is, "Vinaya eva vainayikaḥ &c."

[4] Smṛi. Ch. ix. (§ 2), 10.

[5] Smṛi. Ch. ix. (§ 2), 13.

a son, nor a father, nor brothers, have power over Stridhana, either to receive it, or to dispose of it."

The meaning is, because they have no proprietorship.

[260]. Stridhana is that which is given before the matrimonial fire, &c. Thus *Manu*[1] says: "Stridhana is declared to be of six kinds; the gift before the matrimonial fire,[2] the gift in the marriage procession,[3] the gift of affection,[4] and that which is received from her brother, her mother, and her father."

[261]. The 'Adhyagni' is that which is given at the time of the marriage, before the fire, by her maternal uncle &c.

[262.] So also *Kátyáyana* says:[5] "That which is given to women at the time of their marriage in the presence of the fire, is termed by the learned, 'The Stridhana made before the fire.' That, again, which the woman receives when she is conducted from her father's house, is termed, 'The Stridhana of the marriage procession.' Moreover, whatsoever is given from affection, either by her mother-in-law or her father-in-law, when she bows down at their feet, is termed, 'The gift of affection.'[6]"

"When she bows down at their feet;" that which is given on the occasion of doing them reverence.

[263.] "That[7] which is received from her brother, her mother, and her father;" "on any occasion for her maintenance," is to be supplied.[8]

"Of six kinds:" for the purpose of excluding a smaller number, not to exclude a larger number.[9]

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[1] Manu, ix. 194; Miták. II. xi. 4; Smṛi. Ch. ix. (§ 1), 1.
[2] Adhyagni.
[3] Adhyáváhanikaṃ.
[4] Príti-práptaṃ.
[5] Smri. Ch. ix. (§ 1) 2; Miták. II. xi. 5.
[6] Príti-dattaṃ.
[7] From Manu's text, § 260, above.
[8] Smṛi. Ch. ix. (§ 1), 2.
[9] Miták. II. xi. 4; Smri. Ch. ix. (§ 1), 3.

[264.] Therefore *Yájṇavalkya*[1] says: "That which is given by her father, mother, husband, or brother, or received before the fire, her supercession fee,[2] &c, is termed Strídhana."

"Her supercession fee;" on[3] account of her supercession, according to the *text*,[4] "It must be given to the superseded woman."

By the word "&c,"[5] such property as she acquires by inheritance, purchase, partition, seizure, or finding.[6]

[265]. *The same author*[7] speaks of another kind of Strídhana: "Gifts by her relations, her Shulkaṃ, and her Anvádheyakaṃ."

"By her relations;"[8] that which is given to a maiden by her mother's relations, and by her father's relations.

[266]. The term 'Shulkaṃ.' *Vijṇáneshvara*[9] says: "That is Shulkaṃ which is received when a maiden is given in marriage."

[267.] But the author of the *Chandriká*[10] says: "Whatsoever is received as the price of her household utensils, vehicles, cattle, personal ornaments, and her labour, that is termed her Shulkaṃ."

"Received[11] as the price of her household utensils &c;" from the bridegroom &c, for the use of the bride: "at the time when the maiden is given away," is to be supplied.

[268]. The term "Anvádheyakaṃ;"[12] that which is deposited or given at the time of her marriage, or afterwards.

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[1] Yájṇ. II. 143; Miták. II. xi. 1.
[2] Ádhivedanikaṃ.
[3] Smṛi. Ch. ix. (§ 1), 4; Miták. II. xi. 2.
[4] Yájṇ. II. 148.
[5] Miták. II. xi. 2.
[6] These are the words of the text of Gautama, x. 39, defining the sources of the ownership of a man.
[7] Yáj. II. 144.
[8] Miták. II. xi. 6.
[9] Miták. II. xi. 6.
[10] Smṛi. Ch. ix. (§ 1), 5: and the text quoted is Kátyáyana's.
[11] Smṛi. Ch. ix. (§ 1), 5.
[12] Miták. II. xi. 6, 7.

[269.] It is said[1] also by *Kátyáyana:* "That wealth which is received by a woman from her husband's family subsequent to her marriage is Anvádheyaṃ: so is that which is received from her father's family."

"It is called Strídhanaṃ," is the connection.

[270.] Here *Bhárúchi* says: "By the term Shulkaṃ, the price of the bride is spoken of: it exists, however, only in the Ásura and other marriages; but that is prohibited."

[271.] My opinion is this, that it is the bull and the cow received when a maiden is given in the Árṣha marriage, according to the text of *Vishṇu*,[2] "The Árṣhaṃ is with a bull and a cow, or with a pair." That alone is not prohibited, because it is the Strídhanaṃ of the maiden's mother. Or it may be the prohibited gift of wealth in the Ásura and other marriages.

[272.] The consideration of its prohibition or non-prohibition is not here proposed; but the consideration of its divisibility or non-divisibility: so there is no contradiction whatever.

[273.] *The same author*[3] has stated the result of the *text*,[4] "Neither a husband, nor a son, nor a father &c:" "If any one of these shall forcibly consume Strídhanaṃ, he shall repay it with interest; and he shall also receive punishment. If he consume it after obtaining her consent out of affection, he shall repay the principal alone when he shall become possessed of property."

[274.] By the use of the phrase, "When he shall become possessed of property,"[5] the meaning is, that one who is destitute is not liable to repay even the principal; because it

[1] Smṛi. Ch. ix. (§ 1), 5.
[2] Vishṇu, xxiv. 21.
[3] Kátyáyana; Smṛi. Ch. ix. (§ 2), 13.
[4] See § 259, above.
[5] Smṛi. Ch. ix. (§ 2), 14.

speaks of the restoration of the principal in the instance of its consumption "after obtaining her consent."

[275.] This shall be explained. A husband[1] has no independent power over Stridhana; and, further, not even secondary power: but a wife who has been regularly married, has always secondary proprietorship in her husband's property. It is to be understood by this, that the condition of the husband and of the wife is not of the same kind.

[276.] Wherefore[2] *Devala* declares the incompetency of a husband to enjoy Stridhana: "Her endowment, her personal ornaments, her Shulkaṃ, and her earnings, are Stridhana: she herself alone is the enjoyer of it: the husband, when not in distress, is incompetent. If he expends or enjoys it wrongfully, he shall restore it to the woman, with interest."

"Her endowment;" given by her father and others for her maintenance. "Shulkaṃ" has been already mentioned. "Her earnings;" that which she has earned.

[277.] This shall be explained. That which is obtained by a woman for the ceremonies of Gaurí &c, is Stridhana. Or, perhaps, that which is received as interest.

[278.] The previously mentioned Stridhana is lent out, when it has the capability of being the principal of settled interest: and that interest is spoken of by the term "earnings."

[279.] Although the settled interest belongs to the owner of the property lent; nevertheless, since the power of lending property does not belong to women, and that power belongs to their husbands alone, the phrase "she herself alone" is used as a ground for the removal of uncertainty. "Alone:"[3] its purpose is to exclude her issue.

[280.] "Wrongfully;"[4] the meaning is,[5] in the absence of distress. "Expends it;" parts with it.

[1] Smṛi. Ch. ix. (§ 2), 14.
[2] Smṛi. Ch. ix. (§ 2), 15.
[3] Smṛi. Ch. ix. (§ 2), 15.
[4] In Devala's text, § 276, above.
[5] Smṛi. Ch. ix. (§ 2), 15.

[281.] When he says, "In the absence of distress," he shows,[1] that even in distress, the husband alone, and no other person, is competent to use Strídhana.

[282.] The term "distress;" the absence[2] of wealth for the support of the family.

[283.] Wherefore *Yájñavalkya*[3] says: "A husband is not obliged to restore to the woman the Strídhana taken during a famine, or for the performance of a charity, or in sickness, or when under constraint."

"For the performance of a charity;"[4] constant or occasional; expiatory domestic sacrifices &c, though in some measure optional.

[284.] "When under constraint." The author of the *Chandriká* says:[5] "While in confinement by creditors and others, and unable to escape except by giving up the property." *Vijñáneshvara* says:[6] "When he is taken into custody, or captured in war, and has no other wealth."

[285.] Here *Manu*[7] states a special matter: "Even to the daughters whom they may have, according to their competency, must something be given from affection, out of their maternal grandmother's property."

"According to their competency;"[8] the meaning is, with reference to their disposition, good conduct, and poverty.

"To the daughters;"[9] the meaning is, to the daughters' daughters.

[286.] Now,[10] why is something to be given to daughters' daughters, seeing that they have no proprietorship in the pro-

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[1] Smṛi. Ch. ix. (§ 2), 17.
[2] Miták. II. xi. 32.
[3] Yájñ. II. 147.
[4] Smṛi. Ch. ix. (§ 2), 21; Miták. II. xi. 32.
[5] Smṛi. Ch. ix. (§ 2), 21.
[6] Miták. II. xi. 32.
[7] Manu, ix. 193.
[8] Smṛi. Ch. ix. (§ 3), 10.
[9] Miták. II. xi 17.
[10] Smṛi. Ch. ix. (§ 3), 11.

perty of their maternal grandmother while brothers and sisters are alive?

[287.] True: there is nothing wrong, because the words "from affection" are used. The meaning is, that, as in the case of paternal property, though maidens are not eligible for heritage, it must be given by virtue of textual authority; namely, by the inculpatory *text*,[1] "Those who fail shall be outcasts," and by virtue of the *text*, "Wealth must be given for their marriage, and for their endowment;"—so also here.

[288.] *Vishṇu*[2] states a special matter: "The mother's Yautakaṃ is the share of her unmarried daughters alone."

"Not of their uterine brothers," is to be supplied.

[289.] "Yautakaṃ;" that property which is given to a bride and bridegroom when mutually united. That which belongs to a united pair,[3] is etymologically "yautakaṃ."[4]

[290.] *Gautama*[5] states a special matter: "Strídhana belongs to her unmarried and unportioned daughters."

[291.] The meaning is,[6] that the Saudáyika and other Strídhana becomes the property[7] of the unmarried maidens and the unportioned daughters. Therefore, the conclusion is, that those daughters alone shall take that property according to their shares.

[292.] This explanation of Gautama's text is in accordance with the doctrine of *Aparárka*. It has already been explained according to the doctrine of Vijṇáneshvara.[8]

[293.] After the death of a wife, if there is no unmarried daughter, the wife's estate shall belong to her husband.

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[1] Manu, ix. 118: see § 126, above.
[2] See Manu, ix. 131.
[3] Yutayor.
[4] Smṛi. Ch. ix. (§ 3), 13.
[5] Gaut. xxviii. 24.
[6] See Smṛi. Ch. ix. (§ 3), 17.
[7] Svaṃ.
[8] See §§ 137, 138, above.

[294.] Hence *Yájṇavalkya*[1] says: "The property of a childless woman belongs to her husband in the four beginning with the Bráhma; to her daughters, if she has borne children: in the others, it goes to her father."

[295.] The meaning of this[2] is as follows:—The above mentioned Saudáyika "property of a childless woman" who became a wife "in the four" marriages, the Bráhma, Daiva, Árṣha, and Prájápatya, "belongs to her husband:" if he is not alive, it belongs to his nearest Sapiṇḍas. "In the others," the Ásura, Gándharva, Rákṣhasa, and Paisháca marriages, "it," namely "the property of a childless woman," "goes to her father."

[296.] "Goes to her father;" it goes to both, namely, the two parents, her mother and her father.

[297.] The taking of her property belongs in the first place to her mother, because of the precedence indicated in the elliptical compound; because in the elliptical compound[3] "Pitámátrá," the precedence belongs to the mother.[4]

[298.] If they are not alive, the taking of her property belongs to those who are nearest to them.

[299.] In all the marriages, "if she has borne children," her property belongs "to her daughters."

[300.] Here, by the word "daughters," her daughters' daughters are spoken of: because the daughters are directly mentioned in the *text*,[5] "The daughters, their mother's remainder."

[301.] Therefore, on the death of the mother, the daughters first take their mother's property. There, when there are married and unmarried together, the unmarried take; when

[1] Yájṇ. II. 145.
[2] Mitá. II. xi. 10 to 13. See Smṛi. Ch. ix. (§ 3), 27.
[3] Páṇini's Sútras, I. ii. 70.
[4] "Mátácha pitácha pitarau:" Siddhánta-kaumudí.
[5] Yájṇ. II. 117.

there are none, the married. There again, when there are portioned and unportioned together, the unportioned.

[302.] *Bhárúchi, Aparárká*, the author of the *Chandriká*,[1] and *others*, do not agree with this doctrine of *Vijńáneshvara's*, on the ground that it was invented for his own system merely; and because it involves many contradictions; and also[2] because of the equality spoken of in the text of *Gautama*,[3] "Strídhana belongs to her unmarried and unportioned daughters."

[303.] This, moreover, is with the exception of the Shulkam:[4] for, by the text of *Gautama*,[5] "The sister's Shulkam belongs to her uterine brothers after their mother's death."

The construction is, "after their mother's death."[6]

[304.] In the absence of all daughters, daughters' daughters take,[7] by this *text*,[8] "To her daughters, if she has borne children."

[305.] Amongst them, if there be those of different mothers, unequal in number, together, the arrangement of their shares is through their mothers,[9] by the text of *Gautama*,[10] "The proper position of their several mothers."

"The proper position;" the ownership.

"Of their several mothers;" mother by mother.

The meaning is, that their ownership is in conformity with the ownership of their own mothers respectively.

[306.] The Strídhana[11] of a childless low-class woman, however, the daughter of her fellow-wife of superior class takes, though she is the child of a different mother. If she is not alive, her issue.

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[1] Smṛi. Ch. ix. (§ 3), 17.
[2] Smṛi. Ch. ix. (§ 3), 15, 16. [3] § 290, above.
[4] Miták. II. xi. 14; Smṛi. Ch. ix. (§ 3), 32. [5] Gaut. xxviii. 23.
[6] But see Smṛi. Ch. ix. (§ 3), 32, 33.
[7] Miták. II. xi. 15; Smṛi. Ch. ix. (§ 3), 20, 21.
[8] Yájń. II. 145, § 294, above.
[9] Miták. II. xi. 16; Smṛi. Ch. ix. (§ 3), 25.
[10] Gaut. xxviii. 14. [11] Miták. II. xi. 22.

[307.] Hence *Manu*[1] says: "Whatever property may belong to a woman, which was in any way given by her father, the unmarried daughter of the Bráhmaṇí woman shall take; or it shall belong to her offspring."

[308.] *Vijñáneshvara*[2] says, that the use of the term "Bráhmaṇí woman," means a woman of superior class: and, therefore, the unmarried daughter of a Kṣhatriyá woman takes the property of a childless Vaishyá woman; because a connection with their mother's property belongs to daughters, sons, and grandsons.

[309.] Hence *Manu*[3] says: "But on the death of their mother, all the uterine brothers, and also all the uterine sisters, shall divide the maternal estate equally."

[310.] The construction is[4] this:—All the uterine brothers shall divide the maternal estate equally, and all the uterine sisters shall divide equally.[5] The construction is not that the uterine brothers and the uterine sisters together shall divide equally; because of its opposition to the above mentioned *text* which lays down the order; and because of the effect of the separative particle "and also," as in the instance, "Devadatta cooks, and also Yajñadatta."

The use[6] of "equally," is for the purpose of excluding deductions.

The use of "uterine brothers," is for the purpose of excluding those by different mothers.

[311.] Therefore *Vishṇu* says: "The sister's Shulkaṃ belongs to her mother and her uterine brothers alone."

The meaning is this: "The sister's Shulkaṃ," that is, her own Stridhana, "belongs to her mother alone:" if her mother is not alive, it belongs to "her uterine brothers alone."

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[1] Manu, ix. 198.
[2] Mitá. II. xi. 23.
[3] Manu, ix. 192.
[4] Mitá. II. xi. 20.
[5] Mitá. II. xi. 20.
[6] Mitá. II. xi. 21.

The meaning is, that it does not belong to those by different mothers.

[312.] As for *Gautama's* aphorism,[1] "The sister's Shulkaṃ belongs to her uterine brothers after her mother's death,"—the correct order of the words is,[2] "after her mother's death it belongs to her uterine brothers."

[313.] As *Baudháyana* says:[3] "Her Strídhana goes to her mother; if she is not alive, it goes to her uterine brothers."

"Her Strídhana;" the maiden's Shulkaṃ.

[314.] Therefore, in the instance of the maiden's Shulkaṃ, the explanation of *Asaháya*, that in a division between her uterine and non-uterine brothers, something is to be given to the non-uterine brothers, is unsupported;[4] because in this,[5] "The sister's Shulkaṃ belongs to her uterine brothers after her mother's death," and other texts, the devolution of the proprietary right in all kinds of property in the form of Shulkaṃ, belongs to uterine brothers alone.

[315.] If there are no sons, the sons' sons are the heirs of their paternal grandmother's property, because the duty of discharging a paternal grandmother's debts belongs to her sons' sons, according to the text of *Gautama*,[6] "The dischargers of the debts are the enjoyers of the estate; they shall pay the debts;" and,[7] "Debts are to be paid by sons and sons' sons."

[316.] If it be said,—If the right to perform the funeral ceremonies on the death of the paternal grandmother belongs to the son alone,[8] there would be a contradiction of the text of *Vishṇu*, "The funeral ceremonies are to be performed only

[1] Gaut. xxviii. 25.
[2] See Miták. II. xi. 14; and Smṛi. Ch. ix. (§ 3), 32.
[3] See Miták. II. xi. 30; and Smṛi. Ch. ix. (§ 3), 35.
[4] Asaháyaṃ; a play upon the scholiast's name.
[5] See § 312, above. [6] See Gaut. xii. 40.
[7] Yájṇ. II. 51; Smṛi. Ch. ix. (§ 3), 24; Miták. II. xi. 24.
[8] MSS. B. and C. have "the grandson alone."

with the united wealth of the sons and grandsons,"—it is not so; because a separation of the cases has been made by *Bhárúchi:* "In the sixteen Shráddhas, the union of the property of the sons and grandsons is necessary, in order to deliver him from his ghostly state."

[317.] When there are not even sons' sons, *Yájñavalkya*[1] states the order of the division: "If she dies without issue, her relations shall take it."

[318.] The meaning of this is:—When a woman "dies without issue," that is, without offspring, without a daughter, or a son, or a son's son, "her relations," that is, her husband and the rest, "take it," namely, the before-mentioned Strídhana.[2]

[319.] As *Manu*[3] says: "It is ordained, that in the Bráhma, Daiva, Árṣha, Gándharva, and Prájápatya rites, on the death of a woman without issue, the whole of her property belongs to her husband alone."

[320.] As for that which is said by *Kátyáyana*,—"But that which is given by her relations, goes to her husband, if she has no relations,"—it is[4] the case of the property of a woman married by a different rite from the five just mentioned; otherwise, the Shulkaṃ would belong to the giver of the Shulkaṃ, and that would be opposed to the text of *Gautama*:[5] "The sister's Shulkaṃ belongs to her uterine brothers after her mother's death."

[321.] The meaning is[6] this:—The donors of the Strídhana called Shulkaṃ are the bridegroom and the rest: but, though they were the donors, that property will not become theirs; but it will become her uterine brothers', who are the proprietors of her property, if her mother is not alive.

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[1] Yájn. II. 144. [2] Miták. II. xi. 9, 25.
[3] Manu, ix. 196. See Miták. II. xi. 9, 10, 11; Smṛi. Ch. ix. (§ 3), 28.
[4] Smṛi. Ch. ix. (§ 3), 30. See Miták. II. xi. 9.
[5] § 312, above. See Smṛi. Ch. ix. (§ 3), 32.
[6] See Smṛi. Ch. ix. (§ 3), 33.

[322.] Hence, by the term, "The sister's Shulkaṃ," the pair of cattle in the Árṣha marriage[1] alone is meant; but not in the Ásura and other marriages, because of the rule, that in that case, her property goes to its donors alone.

323.] As for the explanation of *Bhárúchi*, it is to be regarded as mere bold assertion.

[324.] As for that which is said by *Shankha*, regarding the matrimonial Shulkaṃ, "The bridegroom, his proper Shulkaṃ also,"—"The bridegroom," namely, the husband elect, shall take "his proper," namely, only his own "Shulkaṃ,"—it is to be understood of the case where the marriage is not completed.[2]

[325.] The completion of the marriage is the completion of the principal fire-oblation at the marriage.

[326.] In accordance with this view is that which is said by *Yájṇavalkya*,[3] "If she dies, he shall take back that which he gave."

"The[4] bridegroom 'shall take back' her Shulkaṃ, or her ornaments &c," is to be supplied.

He[5] says, that this is said of the case of a betrothed woman dying before the marriage ceremony.

[327.] *Bṛihaspati*, having first enumerated the secondary mothers, points out the heirs of their property: "The mother's sister, the mother's brother's wife, the father's brother's wife, the father's sister, the husband's mother, and the elder brother's wife, are accounted equal to the mother: when these have no son of their own, nor a daughter's son, nor his son, their sister's son, and the rest, shall take their property."

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[1] See § 271, above.
[2] Smṛi. Ch. ix. (§ 3), 34. [3] Yájṇ. II. 146.
[4] See Miták. II. xi. 30; Smṛi. Ch. ix. (§ 3), 34.
[5] MSS. B. C. and E. have "Gautama says."

[328.] "Their sister's son;"[1] the son of the sister of the owner of the property; he shall take the property of his own mother's sister. Similarly, by the use of the words "and the rest," they shall, in their order, take the property of her who is their own mother's equal. Similarly[2] also, the issue of a fellow-wife shall take the property of his secondary mother, if she has no issue, nor brother, and the rest.

[329.] *Yájñavalkya*[3] states a special matter in the case of Ádhivedanika Stridhana:[4] "To the woman who has been superseded, he shall give an equal supersession-fee,[5] if Stridhana has not been given to her; but if it has been given, the half is appointed."

[330.] She is a "superseded woman" over whom there is a second marriage.[6]

[331.] The meaning is,[7] that "to the superseded woman to whom Stridhana has not been given" by her husband, or her husband's father, "he shall give" as much property as was employed ('prayojana' with the affix 'ṭhak') at the second marriage, that is, as was expended on account of the second marriage, as her "supersession-fee," that is, because of the second marriage. "But if" Stridhana "has been given," he shall give "the half" of the supersession wealth; that is, so much is to be given as will make that which was given before 'equal' to the supersession-fee.

[332.] Therefore, the connection of daughters and the rest with Stridhana has its origin in the rule of nearer and more remote propinquity: but it is not textual. And it has been already stated,[8] that the nearer and more remote propinquity is that which is laid down by *Vijñáneshvara*:[9] "When[10] the

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[1] Smṛi. Ch. ix. (§ 3), 37.
[2] Smṛi. Ch. ix. (§ 3), 38.
[3] Yájñ. II. 148.
[4] See § 264, above.
[5] Ádhivedanikaṃ.
[6] Miták. II. xi. 35.
[7] Miták. II. xi. 35.
[8] See § 138, above.
[9] Miták. I. iii. 10.
[10] Manu, iii. 49. See § 138, above.

seed of the male is the more abundant, there will be a male; and when the seed of the female, a female."

[*Stridhana is a species of Dáya.*]

[333.] Here the *Ancients* are in controversy whether Stridhana may be spoken of by the term Dáya, or not.

[334.] The contention is, that the division of Stridhana is not a division of the property called Dáya, but a division of that property; forasmuch as by the Vedic *text*,[1] "Women, being seedless, are not heirs,"—eligibility for Dáya does not belong to women.

[335.] As for that which is said by the author of the *Sangraha*,[2] "The division of that wealth which is obtained through the father, and obtained through the mother, and is described by the word Dáya, is now explained,"—*Bháruchi Aparárka, Someshvaráchárya*, and *others*, say: Just as "that wealth which is obtained through the father, and is described by the word Dáya," may be spoken of by the term Dáya, so also that which is "obtained through the mother," may be spoken of by the term Dáya; therefore, in the admission of a twofold meaning of the same word, there would be a redundancy of signification; hence a different meaning must be admitted in the one or the other; therefore, "that wealth which is obtained through the mother," has the meaning of the term Dáya, by its secondary power, through its etymology, namely, 'díyate,' 'dadáti.'

[336.] But *Vijńáneshvara, Asaháya, Medhátithi*, and *others*, say: The expression 'seedless,' of the Vedic *text*,[3] "Therefore women, being seedless," does not apply to those who are

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See § 21, above. There the word 'nirindriya' is translated 'memberless,' in accordance with the precedents; but the present context shows, that it must be rendered here by 'seedless.'

[2] See § 7, above.

[3] See § 334, above.

entirely seedless; but it means those who are defective in seed. In the text,[1] "When the seed of the male is the more abundant, there will be a male; and when the seed of the female, a female,"—there is a distinct conception of excess and deficiency; and, therefore, since women have not an entirely absolute absence of seed, fitness for Dáya belongs even to women. Nevertheless, the Vedic *text* has this meaning: that in a division between a father and his sons, precedence belongs to the sons; and therefore, in that instance alone, eligibility for Dáya does not belong to women; and yet the women are eligible for some gift of affection. In this way, the text of the author of the *Sangraha*[2] receives its meaning in a natural sense, that the wealth which is obtained through the father, and the wealth which is obtained through the mother, may both be spoken of by the term Dáya.

[337.] Though this has been stated already,[3] it is repeated for the sake of perspicuity.

### [*The son of two fathers.*]

[338.] Now a special matter is related in the division of the son of two fathers.[4]

[339.] *Yájṇavalkya*[5] describes his character: "A son begotten by appointment by a sonless man in another's field, is, according to law, the heir and the piṇḍa-giver of both of them."

[340.] Therefore, the Dvyámuṣhyáyaṇa[6] is one who has two fathers: and he is the heir of the estate and the giver of the funeral-ball[7] of both.

[341.] "Another's field;" its meaning: The field of another

[1] See § 332, above.
[2] See § 335, above.
[3] See § 21, above.
[4] Dvyámuṣhyáyaṇa.
[5] Yájṇ. II. 127.
[6] See Miták. I. x. 1, ff; Smṛi. Ch. x. 3, 4, (I), 12.
[7] Piṇḍa.

man is his wife. Her position as the field of another man is by mere verbal gift, but not by marriage; because of the prohibition of the appointment of a married woman to be "another's field."

[342.] Thus *Manu*[1] says: "On failure of issue, the desired offspring may be obtained by a woman regularly authorized, through her husband's brother, or a Sapiṇḍa. But, let him who is authorized, anointed with clarified butter, silently, in the night, beget on the widow one single son; not a second in any manner."

[343.] *He* who thus gave the sanction, *himself*[2] forbids it: "A widow woman must not be authorized by another man by the twice-born: they who authorize by another man violate the eternal law of religious duty. An authorization is not anywhere spoken of in the marriage prayers; nor is the marriage ceremony of a widow mentioned in the rules of marriage. For this practice of the beasts is condemned by learned twice-born men, though it was sanctioned amongst mankind when Vena ruled the kingdom. He, having the whole earth in his possession, and being a pre-eminent royal sage, formed a mixture of the classes in former times, when their understanding was impaired by desire. From that time the pious condemn him who, through confusion of mind, authorizes a woman for the purpose of issue, when her husband is dead."

[344.] A double rule[3] does not arise out of the sanction and the prohibition; because of the express censure of those who authorize, and the numerous ills denounced against unchastity in the laws relating to women, and the commendation of self-restraint.

[345.] Thus *Manu*[4] himself says: "She shall willingly keep

[1] Manu, ix. 59, 60.
[2] Manu, ix. 64 to 68. See Mitâk. I. x. 8.
[3] Mitâk. I. x. 9.
[4] Manu, v. 157, 161.

down her body, feeding on flowers, roots, and fruits: she shall not even utter the name of another man, when her husband is dead."

"But a woman, who, from desire of children, dishonours her husband, earns reproach in this world, and loses the world to come."

[346.] He prohibits[1] her living with another man for the sake of a son: and, therefore it is incorrect to say, that a double rule arises out of the sanction and the prohibition.

[347.] It must not be said, that the phrase, "But a woman, who, from desire of children," means, while her husband is alive; because of the text of *Vishṇu*,[2] "When her husband is dead, let her die; or else, let her guard his bed."

[348.] "When her husband is dead," in this text:—By the rules delivered respecting the duties of women, she is attached to one husband and is dependent on him while he is alive; and when he is dead, in order that she who is thus attached may not violate the rules of the duty of women, it is said, "or else, let her guard his bed." "By the same rules," is to be understood.

[349.] Hence *Vijńáneshvara* says,[3] that this refers to a betrothed woman.

[350.] *Bhárúchi* and *others* do not concur in this.

[351.] The doctrine of *Bhárúchi, Aparárka, Someshvara,* and *others* is this:—The text,[4] "But a woman who from desire of children, dishonours her husband, &c," refers to a woman whose husband is living. The text,[5] "A widow woman must not be authorized by another man," is of similar purport, and refers to the authorization of somebody different from the husband's brother and the rest. The censure upon the

[1] Mitá́k. I. x. 9.
[2] Vishṇu, xxv. 14.
[3] Mitá́k. I. x. 8.
[4] See § 345, above.
[5] See § 343, above.

appointers refers to appointers who are different from the husband's brother and the rest. The denunciation of numerous ills against the unchastity of women, refers to unchastity in such as are not authorized. Hence, the citation of the illustration from the practice of beasts,[1]—"For this practice of the beasts is condemned by learned twice-born men,"—means, that sensual unchastity and the authorization of such as are different from the husband's brother and the rest, is prohibited on account of the resemblance to the practice of beasts in the authorization of any one but the husband's brother and the rest. Therefore, she has the alternative of guarding the bed or begetting a son. But the guarding of the bed belongs to one who is the mother of a son or of a daughter: and when there is none, the begetting of a child by authorization is a matter of necessity, in accordance with the *text*,[2] "On failure of issue, the desired offspring may be obtained:" and the continuation of the family line is a more excellent thing than the guarding of the bed.

[352.] This authorization, though forbidden in the Kăli age,[3] is stated in accordance with the ideas of other ages.

[353.] Here *Yájñavalkya*[4] says: "That maiden whose husband has died after her betrothal, her husband's own brother shall have in this form: wearing a white dress, chaste, and smiling, he shall approach her in conformity with the precepts, and shall cohabit with her in secret, season by season, until she bears a child."

[354.] It follows[5] from this text, that he to whom a maiden is betrothed, becomes her husband by the mere act of mutual consent.

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[1] See § 343, above.

[2] See § 342, above.

[3] See Smṛi, Ch. x. 5.

[4] All the MSS. have Yájṇavalkya here; but the text quoted is from Manu, ix. 69, 70. Yájṇ. has a somewhat parallel passage in I. 68, 69.

[5] Miták. I. v. 11.

[355.] When he is dead, "her husband's own brother," that is, his own elder or younger uterine brother, "shall have" her, that is, shall marry her. "In conformity with the precepts;" that is, marrying her without transgressing the law; "wearing a white dress and chaste," that is, self-restrained in mind, speech, and body, "he shall approach her," "in this form," namely, anointed with clarified butter,[1] restraining his speech, &c, "and shall cohabit with her in secret," that is, when alone, "season by season," that is once in each period, until she becomes pregnant.

[356.] This[2] is a marriage founded on textual authority. It is to be understood that the approach of an authorized person is by the same rule of anointing the body with clarified butter, &c.

[357.] Hence[3] it does not confer on her the position of the husband's brother's wife: and, therefore the child born of her belongs to the owner of the field alone, and not to the husband's brother; but to both if there is an agreement.

[358.] This authorization in the instance of a betrothed woman, is stated in accordance with the doctrine of *Vijńánayogí*. But it is to be borne in mind, that in the teaching of *Bhárúchi* and *others*, there is both an authorization of widows, and an authorization of betrothed women also.

### [*The twelve principal and secondary sons.*]

[359.] *Yájńavalkya*[4] describes the character of the principal and secondary sons: "The Aurasa[5] is he who is born of the religious wife. The Putriká[6]-son is equal to him. The Kṣhet-

[1] See Yajn. I. 68.
[2] Miták. I. x. 12.
[3] Miták. I. x. 12, 13.
[4] Yajn. II. 128 to 132. See Smṛi. Ch. x. 2. 4.
[5] The bosom-son.
[6] The appointed daughter's son.

raja[1] is he who is begotten on the wife by a near relation,[2] or by another. That son is called the Gúḍhaja,[3] who is born in the house secretly. The Kánína[4] is he who is born of a maiden: he is regarded as the son of his maternal grandfather. The Paunarbhava[5] son is he who is born of a twice-married woman, whether her first marriage was unconsummated or consummated. That son is the Dattaka,[6] whom his mother or his father has given away. And the Kríta[7] is he who is sold by them. The Kṛitrima[8] is one made by oneself. The Svayamdatta[9] is the self-given. The Sahoḍhaja[10] is he who is accepted in the womb. And that son is the Apaviddha,[11] who was taken up when forsaken.

[360.] "The Aurasa"[12] is the bosom-born. He is the son of the religious wife, and the principal son.

[361.] "Equal to him,"[13] that is, equal to the Aurasa, is "the Putriká-son," by the text of *Vasiṣhṭha*,[14] "I will give thee this brotherless maiden adorned with ornaments: the son who is born of her shall be my son."

[362.] In the term "Putriká-suta," we have a compound of the sixth case,[15] namely, 'The son of the Putriká.' As a Karmadháraya compound,[16] moreover, 'Putriká-suta' means the son who is the Putriká herself. As *Gautama*[17] says: "The

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[1] The wife-born son.
[2] Sagotra.
[3] The secret-born son.
[4] The maiden-born son.
[5] The son of the twice-married.
[6] The given son.
[7] The sold son.
[8] The made son.
[9] The self-given son.
[10] The co-bridal son.
[11] The forsaken son.
[12] Mitak. I. xi. 2; Smṛi. Ch. x. 2.
[13] Miták. I. xi. 3. See Smṛi. Ch. x. 6.
[14] Vasiṣhṭha, xvii. 12; W. and B. Dig. 545.
[15] See Prof. Monier William's Sanskṛit Grammar, § 743.
[16] Ibid., §§ 735, 755, 757, *a*.
[17] The Putriká-suta is the tenth in Gautama's series; and, so far from being "equal to the Aurasa" there, he is altogether excluded from the inheritance see W. and B. Dig. 541, 542; and Sac. B. of the East, 304.) The

third is the Putriká." The meaning is, that "the third" son "is the Putriká."

[363.] "The Kṣhetraja;"[1] the son of the wife, born by authorization. The connection with the latter word is, "by a near relation,[2] or by another."

"Or by another;" by one who is not a near relation;[3] or else by her husband's brother.

[364.] "The Gúḍhaja;"[4] one born in secret. The meaning is, one concealed in his father's house when born. "If there is a certainty that he belongs to the same class," is to be supplied.

[365.] Similarly "the Kánína"[5] and the rest are to be identified.

[366.] "That son[6] is to be recognized as the Dattima son, whom his mother and father shall give away while in distress, with outpoured water, being a fit person and endued with affection."

[367.] By the[7] use of the expression, "While in distress," he must not be given when there is no distress. This prohibition belongs to the giver.

[368.] Similarly,[8] an only son is not to be given, according to the text of *Vasiṣhṭha*, "But an only son must neither be given nor received."

[369.] Though[9] there are several, the eldest must not be given; because to him belongs the chief place in the per-

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text here quoted is Vasiṣhṭha's, xvii. 12 (W. and B. Dig. 545.); to whom the Miták. (I. xi. 3.) rightly assigns it.

[1] Miták. I. xi. 5; Smṛi. Ch. x. 4. (I.) [2] Sagotra.

[3] Sapiṇḍa. The MSS. vary here: the translation follows A.; which, however, stands alone.

[4] Miták. I. xi. 6; Smṛi. Ch. x. 4. (IV.)

[5] See Miták. I. xi. 7, ff; Smṛi. Ch. x. 4. (VI.)

[6] Manu, ix. 168; Miták. I. xi. 9; Smṛi. Ch. x. 4. (II.)

[7] Miták. I. xi. 10. [8] Miták. I. xi. 11.

[9] Miták. I. xi. 12.

formance of the duties of a son; "By[1] the mere birth of the eldest, a man becomes the father of a son.

[370.] *Vasiṣhṭha*[2] states the manner of accepting a son; "He who desires to receive a son shall invite his relations, and inform the king, and offer a fire-oblation in the middle of his house, and shall receive an unremote relation dwelling not far off."

"Dwelling[3] not far off;" by this there is a prohibition of one who is distantly removed in a foreign country and language. "An unremote relative;" by this there is a prohibition of a distant kinsman.[4]

[371.] "And the[5] Kríta is he who is sold by them;" that is, by his mother and father, or by his mother or his father. Excepting, as before, an only son, and the eldest born: and, while in distress, and one of the same class alone.

[372.] As for that which is said by *Manu*,[6]—"He is the Krítaka son, whom one shall purchase from his mother and father, for the sake of offspring, whether he is like him or unlike,"—it must[7] be explained as being like or unlike him in mental qualities, not in class; because of the restriction,[8] "This is propounded for those of the same class."

[373.] "The Kṛitrima[9] is one made by oneself;" the Kṛitrima son, moreover, is one who is made a son by a man himself, for the sake of offspring, by the enticement of the exhibition of property, fields, and the rest, and who is without mother and father; because of his dependence on them if they are alive.

[374.] The Dattátma[10] son is one who is without mother and

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[1] Manu, ix. 106. The Smṛi. Ch., x. 10, quotes a parallel verse from the Smṛiti Sangraha.

[2] Miták. I. xi. 13.

[3] Miták. I. xi. 14.

[4] Jṇáti.

[5] Miták. I. xi. 16.

[6] Manu, ix. 174.

[7] Miták. I. xi. 16.

[8] Yájṇ. II. 133.

[9] Miták. I. xi. 17; Smṛi. Ch. x. 4 (III).

[10] Miták. I. xi. 18.

father, or has been deserted by them, is invested as self-given,[1] by saying, "I am thy son."

[*The Division amongst the aforesaid Sons.*]

[375.] *Yájñavalkya*[2] states the manner of their division: "When there is no preceding one, each succeeding one of these is the piṇḍa-giver and the heir."

"Of these"[3] before-mentioned twelve sons, "when there is no preceding one" successively, each later one in succession is to be acknowledged as "the piṇḍa-giver," that is, the giver of the funeral-feast,[4] "and the heir," that is, the inheritor of the property.

[376.] *Manu*[5] pronounces a censure on the taking of the property by the Aurasa when there are an Aurasa and a Putriká together: "But when a Putriká has been created, if a son is subsequently born, in that case there shall be an equal division; because primogeniture does not belong to a woman."

[377.] Similarly,[6] the taking of a one-fourth by the other later sons, when there is a preceding one, is stated by *Vasiṣhṭha*: "If an Aurasa is born after he has been received, the Dattaka shall take a one-fourth share."

[378.] The[7] selection of the Dattaka is for the purpose of pointing out the Kríta, the Kṛitrima, and the others, because there is no difference in their creation as sons.

[379.] So also *Kátyáyana*:[8] "When an Aurasa son is born, the sons of the same class take a one-fourth share; but those of a different class receive food and clothing."

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[1] Svayamdatta.
[2] Yájñ. II. 132; Miták. I. xi. 21.
[3] Miták. I. xi. 22.
[4] Shráddha.
[5] Manu, ix. 134; Miták. I. xi. 23.
[6] Miták. I. xi. 24; Smṛi. Ch. x. 16.
[7] Miták. I. xi. 24.
[8] Miták. I. xi. 25.

"Of the same class;" the Kṣhetraja, Dattaka, and the rest: they "take a one-fourth share," when there is an Aurasa.

By the term "a one-fourth share," is meant a fifth share equal to the share which is appointed for the fourth son by equal division; in accordance with the *text*, "Afterwards the Datta, Kṛitrima, and the other sons take a fifth share." "Afterwards;" the meaning is, when an Aurasa is subsequently born.

"Those of a different class;" the Kánína, Gúḍhotpanna, Sahoḍha, and Paunarbhava. Though the names Kánína and the rest are given to these when there is a certainty that they are of the same class, still, the appellation, "of a different class," belongs to them even when the sameness of their class is in doubt.

[380.] As for that which is said by *Manu*,[1]—"The Aurasa son alone is lord of his father's property;[2] but he must provide a maintenance for the rest, for the sake of affection."

[381.] *Vijńáneshvara* says, it is to be understood to refer to the case of the Dattaka and the others being at enmity with the Aurasa, and being of bad character.

[382.] But *Someshvara* says, that the meaning of the expression, "the rest," is the provision of a maintenance for all except the Datta and the others, namely, for the Kánína, the Gúḍhotpanna, the Sahoḍha, and the Paunarbhava alone.

[383.] *Bhárúchi*, however, says, that the *text*,[3] "The Aurasa alone, &c," is, that there is a promise made to the Datta and the others, in the instance of an only son: therefore, because of the promise made to the Datta and the others, the provision of a maintenance for the Datta and the others attaches to the previously existing son, but not for the others.

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[1] Manu, ix, 163.
[2] Vasu.
[3] Manu, § 380, above.

[384.] This view is the best.

[385.] The special case of the Kṣhetraja is shown by *Manu*:[1] "The Aurasa, when dividing the paternal heritage, shall give a sixth of the paternal property, or only a fifth, as the share of the Kṣhetraja."

[386.] Of the[2] twelve kinds of sons, the division of the heritage belongs to only six: "The[3] Aurasa and the Kṣhetraja, the Putrí and the Dattaka, the Gúḍhotpanna and the Apaviddha, are the six relations who are heirs: the Kánína and the Sahoḍha, the Kríta, the Paunarbhava likewise, and the Svayaṃdatta and the Shaudra, are the six relations who are not heirs."

[387.] The relationship[4] of both classes of six is equal; and the right of both classes in the water-oblation is equal; because of the equality of their tribal relationship and Sapiṇḍaship. But it is to be understood, that when there is no other nearer heir of their father's Samánodakas and Sapiṇḍas, the inheritance of their estate belongs to the former six alone, not to the other six.

[388.] If this be said—Since the connection of the Dattima with his own father's tribe and Sapiṇḍaship ceases, in accordance with the text of *Manu*,[5] "The Dattima son shall not partake in the tribe and estate of his own father: the piṇḍa follows the tribe and estate; and the funeral invocation of the giver is severed,"—how does the text of *Vishṇu* say, "Let the Dattima make the funeral invocation of his own father."? The answer is, that it is to be understood to refer to the case of his own father having no issue.

[389.] Therefore[6] the right of all the secondâry sons apart from the Aurasa, to take the estate, is a remainder, when each

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[1] Manu, ix. 164.
[2] Mitâk. I. xi. 30. See Smṛi. Ch. x. 7.
[3] Manu, ix. 159, 160.
[4] Mitâk. I. xi. 31.
[5] Manu, ix. 142. See Smṛi. Ch. x. 14, 15.
[6] Mitâk. I. xi. 33.

preceding one is not in existence: but the Aurasa's enjoyment of the estate is stated by this *text*,[1] "The Aurasa alone is lord of his father's property."

[390.] As for this,—"Amongst brothers who are the sons of one man, if one becomes the father of a son, Manu pronounces them all to be fathers of a son through that son,"—its purpose[2] is to prohibit the adoption of others while there may be an adoption of a brother's son; not for a declaration of his sonship, because of its opposition to this *text*:[4] "Their sons, tribesmen, relations."

[391.] The author of the *Chandriká*,[5] however, says, that this text is merely for the purpose of commendation.

[392.] But *Dháreshvara* and *Devasvámí* follow the doctrine of Vijñánayogí: as it is said by *Devasvámí*,[6] "In both instances, no other must be made a substitute." Its meaning is this:—"In both instances," that is, in the two texts, "When several have one son," and,[7] "Amongst brothers who are sons of one man," while there is a possibility of making a brother's son a substitute in any way, no one besides him must be made a substitute.

[393.] It is[8] to be understood, that, since the Múrdhávasikta, and the others who are born in the direct order, are included amongst the Aurasas, when none even of them exists, the right of taking the heritage belongs to the Kṣhetraja and the others.

[394.] But[9] the son of a Shúdrá woman, though he be an Aurasa, does not acquire the whole estate[10] even when there is no other: as *Manu*[11] says, "But whether he has a true son, or

[1] See § 380, above.
[2] Manu, ix. 182.
[3] Miták. I. xi. 36; Smṛi. Ch. x. 8.
[4] Yajñ. II. 135.
[5] Smṛi. Ch. x. 9.
[6] See Smṛi. Ch. x. 11.
[7] See § 390, above.
[8] Miták. I. xi. 40. See Smṛi. Ch. x. 7, 12.
[9] Miták. I, xi. 41.
[10] Bhágaṃ.
[11] Manu, ix. 154.

whether he is sonless, he must not give to the son of the Shúdrá woman, according to law, more than a tenth."

"A true son;"[1] one who is a twice-born son. "Sonless;" one different from him.

[395.] *Yájñavalkya*[2] states a special matter in the division of the property of a Shúdra: "Even one born of a female slave by a Shúdra is declared to be an heir optionally: but when their father is dead, his brothers must make him partaker of a half-share: when brotherless, he shall take the whole, in the absence of daughters' sons."

[396.] The meaning is, that even when there is a daughter's son, the son of the female slave is partaker of a half-share.

[397.] By[3] the use of the word 'Shúdra' here, the son of a man of the three classes by a female slave, does not receive a share, even when his father desires it; not even a half; much less the whole: but he receives a mere maintenance.

[398.] Here ends the chapter on the division of unobstructed heritage.[4]

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[1] Mitá́k. I. xi. 42. [2] Yájñ. II. 133, 134; Mitá́k. I. xii. 1.

[3] Mitá́k. I. xii. 3.

[4] The colophons of the other MSS. are fuller than this of A. thus,—

MS. B. The chapter on the division of unobstructed heritage, in the section on legal procedure, in the Sarasvatí-vilása, a summary of law composed by the great king Pratápa Rudra Deva.

MS. C. The chapter [&c, as in B., down to] the great king Shrí Pratápa Rudra Deva, is concluded.

MS. D. The chapter [&c, as in C., but without the words, "is concluded."]

MS. E. The chapter [&c, as in B., down to] the great king Shrí Pratápa Rudra Deva, supreme lord of kings, supreme king of kings, who attained supreme purity, the elect son of Shrí Durgá, the defender of the Sultan Hushana Sháhi, lord of Jamuná-pura, lord of Kalubariga in the nine times ten millions of Karnáṭaka, lord of Gauḍa, the heroic Shrí Gajapatí, is concluded.

The colophon of A., at the end of the first chapter of this work, corresponds with this fuller one of E.

[*Division after the death of a divided sonless man.*]

[399.] Then with regard to the question, Who shall take the property of a divided, sonless, deceased, unreunited man?—*Yájṇavalkya*[1] says: "The wife, the daughters also alone, the two parents, the brothers likewise, their sons, the kinsman,[2] the relation,[3] the disciple, and the fellow-student; of these, in the absence of the preceding one, each next succeeding one is the heir of a deceased sonless man. Amongst all the classes this is the rule."

[*The nature of Ownership.*]

[400.] Moreover, this order of succession to proprietorship in the wife and the rest, is based on the rule of nearer and more remote relationship, and is not scriptural: because a scriptural character does not exist in the connection between property[4] and its proprietor.[5]

[401.] That is to say, ownership is secular;[6] because of its origin in secular acts, like rice and other things.[7]

[402.] In the case of the sacrificial post, the clarified butter, the priest,[8] and other non-secular things, their origin is not in the mere non-secular acts of planing &c; but their origin is in the acts of planing &c, combined with the use of prayers: therefore there is no logical error.

403.] But whatever use of sacred texts there may be on the

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[1] Yájṇ. II. 135, 136; Miták. II. i. 2. [2] Gotraja.
[3] Bandhu. [4] Svaṃ. [5] Svámí.

[6] The distinctive doctrine of this treatise, respecting proprietary right, is stated in this and the preceding section, namely:—

1. It has its origin, not in scriptural authority, but in natural right, following the order of the nearest blood-relationship.

2. It has not a religious, but a secular character.

3. Its secularity does not arise, as the Mitákshara maintains, from its being the SOURCE of secular *results*, but from its being itself the RESULT of secular *acts*.

[7] See Smṛi. Ch. i. 24. [8] Áchárya.

part of the receiver of a sanctioned gift while receiving it, it has reference to the production of a remote result[1] accompanied by a gift, and has no reference to the creation of ownership; forasmuch as the creation of ownership appears in an acceptance without sacred texts by the receiver of an unsanctioned gift, as is set forth in the Lipsá aphorism.[2]

[404.] As for that which is said by *Vijńánayogi*,[3]—"Ownership is secular, because, like rice and other things, it has the capacity of accomplishing secular acts,"—it evidently seems like the inflatedness of irrelevant composition: because it is laid down by the *Guru* in the Lipsá aphorism,[4] that the secularity of ownership arises through its capability of being created by secular acts alone. After stating his definition of ownership,—"Ownership is the capacity of alienating at pleasure,"[5]—it is laid down by that work, "By the term 'ownership' is meant, any kind of relationship arising out of acquisition."

[405.] Its meaning is this:—Acquisition is the creation of a relationship between the doer and the deed, because of its transitive character. It cannot be said that there is a logical error in such sentences as, "He has left the village," for, the highest form of connection, such as intimate union &c, is not established here; but the springing forth of the acquisition of a something additional in the subject and the object is established; and this is called their relationship, because it has the form of a cessation of their inactivity. Even in such sentences as, "He has left the village," there is a something additional

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[1] "Unprepared result," might probably be a preferable rendering of the metaphysical term 'apúrva.' But, neither this, nor any other rendering which has yet occurred to me, expresses its full meaning. It is an 'invisible' 'something additional,' which had no previous existence.

[2] "Yasmin prítih puruṣhasya: tasya lipsá artha lakṣhaṇá avibhaktatvát." Jaimini Mímáṃsá, IV. i. (2), 2.

[3] Miták. I. i. 9.

[4] See § 403, above.

[5] See Smri. Ch. i. 25.

in the village, which is pregnant with an act in the form of the separation.

[406.] It cannot be said, "Let the conjunction of the hand &c, which gives rise to the act of receiving &c, be the something additional:" because it is a logical error, since it is not present in the act of birth &c.

[407.] Nor can it be said, that "The power of creating a something additional in the object, does not belong to the act of birth, because of its non-objectivity;" because, there is objectivity on the limits of the predicability of the words "He acquires."

[408.] Its purport is this:—The essence of the doctrine of the *Guru* is as follows: Let the verbal root, 'to be born,' imply the act of an agent: then, because of the absence of a subsequent birth of him who has obtained an existence, forasmuch as the capacity of being the seat of an action does not belong to one who has previously no existence, it follows that the root, 'to be born,' expresses a connection with an act of the author of the birth, by means of the desire for independence of him who is to be born.

[409.] For instance, the very same idea has a non-objective form in the phrase, "It seems to be a water-jar," and an objective form in the phrase, "Behold the water-jar."

[410.] In the doctrine of the *Guru*, there is no difference between subjective and objective knowledge; as is said by the *Guru*, "For thought itself is objective knowledge."

[411.] The inner doctrine of the Mímáṃsá is, that the additional thing which springs up by acquisition is termed "ownership:" and therefore the irrelevancy of the composition[1] is quite evident.

[412.] Its inflatedness[2] also: because of the logical error in the appointment of the Ácháryaka effecting the acquisition of

[1] See § 404, above.

[2] See § 404, above, and § 419, below.

property, the homage of the disciple &c; and in the appointment of the Chitrakáríri, and other sacrifices, producing cattle, rain, &c.

[413.] It cannot be said,[1] that, "Just as it is right to say, that the effecting of the secular act of baking in the sacrificial fire, is by means of the form of its secular flame, and not by means of that form combined with the mass of the non-secular sacramental ceremonies, and so the logical error is removed; so it is right to say, that the logical error even in a remote consequence[2] is removed in the same way:" forasmuch as it is impossible to create a distinction between the forms of the secular and the non-secular in the wholly non-secular remote consequence.

[414.] It has been said, that, "The remote consequence which arises out of the Chitrá sacrifice, is to be known to be of the nature of a result by means of the Shástras alone. It is not, however, the instrumental cause of cattle and the rest by means of that form; but by means of its effective power, when it has been created: and this form of it is not to be learnt by means of the Shástras alone; because it is to be learnt by reasoning from effect to cause. Hence, it may be said, that, as in the case of the sacrificial post, the sacrificial fire, and the rest, there is no logical error."

[415.] That is incorrect. It is possible to establish even non-secularity in the sacrificial post, the sacrificial fire, and the rest; because, in their secular form, the precepts are inapplicable: whereas, in a wholly non-secular form, the establishment of secularity is not possible; because of the absence of a cause.

[416.] Moreover, the remote consequence, which has sprung up, cannot be learnt by reasoning from effect to cause; because

[1] Namely, as is done by Vijñánayogí. See Miták. I. i. 9.
[2] See note 1 to § 403, above.

the desire for it does not arise. Or, if it does arise, there is no kind of defect; because, the reasoning by means of a description of a form which is to be learnt from the Veda, —namely, that the remote consequence which is to be learnt from the Veda has sprung up, because of the springing up of the cows and the rest, which are its results,—does not touch the foregoing question.

[417.] As it is said by the *Guru*, in the commencement of his ninth chapter: "Although the form of that which is learnt from the Veda is a secular thing, the true nature of that which is learnt from the Veda is non-secular."

[418.] *Nárada* explains the purport of that passage thus: "The knowledge which has this form, namely, that an unforeseen consequence is to be expressed by the potential mood, touches the unforeseen consequence solely by means of the description of the form which is capable of being learnt from the potential mood; because potentiality has no visibility: and therefore, seeing that it has been learnt by means of this kind of knowledge, there is no difficulty regarding the unforeseen consequence which has the mark of having been learnt from the Veda alone; for, there is no difficulty regarding the ascertainableness from the Veda alone of the sacrificial post, the sacrificial fire, and the rest, which have been learnt by means of the description of their form which has been learnt by means of the Veda."

[419.] Therefore, the inflatedness of his argument is established.[1]

[420.] "Now the office of the Áchárya," it is said, "is a secular thing, since the term 'Áchárya' is used for one who performs the duty of teaching: therefore, that which it has been admitted is to be expressed by the potential mood may be put far aside. As it is said by the *Ancients*: "The term 'sacrifi-

[1] See §§ 404, 412, above.

cial post,' and the rest, may optionally be admitted to have a non-secular meaning; because, they are not anywhere used in ordinary language, but are used in such matters as are established by precept. The term 'Áchárya,' has not a non-secular meaning, since these two things do not apply to it." Thus the grounds of the doctrine of the *Guru* are verily refuted by the learned."

[421.] Not so. It must be admitted for the present, that the text,[1]—"But that twice-born man they call an 'Áchárya,' who must teach his disciple the Veda, together with its ritual and its inner meaning, after he has invested him with the sacred cord,"—was composed by thoughtful men for the purpose of removing doubt respecting the meaning of the term 'Áchárya,' as used in the Veda and the law-codes.

[422.] In whatever sense this text is settled after it has been duly investigated, in that sense must the purport of the law-codes be expounded.

[423.] There, though it seems that the purport of the words is an intimate union with acts, nevertheless, its purport is not the mere acts. If it were so, its purport would be the mere statement of a definition. This it cannot be; because, for the purpose of removing doubt, he would have stated the definition thus,[2]—"But that twice-born man who teaches his disciple the Veda, after he has invested him with the sacred cord."

[424.] A word in a precept which is inappropriate to it, being an improper thing, attaches impropriety to the utterer. If it is meant, that the definition of him is that which is enjoined by the precept, then, since the word in the precept is appropriate, it must be admitted, that the definition is made after he has, by means of the phrase,—"Whoever must teach

[1] Manu, ii. 140.

[2] That is, he would have used the indicative, and not the potential mood.

his disciple, &c,"—exhibited the matter which is established by the precept under the form of teaching.

[425.] It must not be said,—"Both purposes are impossible, because there would then be separate sentences;"—forasmuch as the faultlessness of separate sentences in a sentence which is under the control of its author, is declared by the *Author of the Aphorisms*, who uses the word "artha" in the Chodaná aphorism.

[426.] The word "But,"[1] indicates his distinction from the mere school-teaching of the Veda, which is the characteristic mark of the Upádhyáya.[2]

[427.] If it be said,—"The teaching of the Veda has not the nature of a thing which is connected with a precept, because it is obtained otherwise,"—

[428.] It is not so. He who maintains that it is obtained otherwise, is to be asked, "Is it obtained in accordance with a precept commanding one to learn; or, for the sake of a livelihood?"

[429.] It is not the former; because the powerlessness of a precept commanding one to learn, even in the fulfilment of its proper object, on account of the absence of jurisdiction, is declared by the *Guru*, in the beginning of his treatise: and it may be ascertained there.

[430.] It is not the second; because the purpose of a livelihood being attached to the teaching of the Veda, does not obstruct that precept; seeing that it comes through the Áchárya; because its object is to create the Áchárya.

[431.] Therefore, because of its not being obtained otherwise; and seeing, that when no precept is in existence, a description of the teaching which has not been obtained, by means of its characteristic marks, is improper; it is established,

[1] In Manu's text, § 421, above. [2] See Manu, ii. 141.

that the teaching of the Veda has the nature of a thing which is connected with a precept.[1]

[432.] Or else, because of the unfitness of a mere worldly transaction to be the result of a sacred text, it will be necessary to admit, that the result is the fulfilment of the gratuity-giving precept, which had for its object the ascertainment of the meaning of the term 'Áchárya.'

[433.] Hence, in the precept for the gift of a gratuity,—"A gratuity must be given to the Áchárya,"—the meaning of the term 'Áchárya' is indicated by the dative case. The meaning of the term 'Áchárya,' however, has no connection with the act of teaching in his state which is expressed by the dative case, because it has passed away.

[434.] His mere personal form, moreover, is not the meaning; because the precept would be useless, seeing that it is obtained without a precept.

[435.] The characteristic mark of a state which is united to an act which has passed away, is not used for the purpose of ascertaining the true character of the meaning of the term 'Áchárya,' as it is used in the Veda and the law-codes; because of the impropriety of an admission, that its object is the exhibition of an insignificant meaning of an illustrious text.

[436.] Moreover, that which has not been ascertained, needs to be defined; and hence, forasmuch as a special form capable of being defined from its connection with acts which have passed away, does not exist in this place,[2] as it does in the sentence, "The lion is in the cage," where the state of the lion is defined by the cage,—since it is known by the help of the precept for the gift of the gratuity, that the invisible thing[3] which is distinct from a connection with the acts[4] and

[1] See § 427, above.

[2] Namely, in Manu's text, § 421, above.

[3] Namely, the unforeseen consequence.

[4] Namely, those of Manu's text, § 421, above.

is suitable to follow the state indicated by the dative case, is pointed out by the term 'Áchárya,'—the purport of the precept of the law-code which commands the acts which constitute its definition, is settled while searching for the acts which create it.

[437.] Therefore, it is to be inferred, that a Vedic text exists, corresponding with that,[1] as its foundation, namely, "He must teach after he has made the investiture."

[438.] If it be said,—"The inference that a Vedic text exists in the form of a precept conferring authority,—"He who desires the office of the Áchárya must teach,"—has to be established, in order to establish that learning arises out of the precept which creates the Áchárya, why then is the inference to be established, that a Vedic text exists in the form of an appointment merely through the meaning of the potential mood being connected with the office of the Áchárya, namely, the text, "He must teach after he has made the investiture."?

[439.] The exhaustion of the text which had for its object the mere exhibition of a definition of the Áchárya contained in the precept for the gift of the gratuity, in the case of the mere appointment of acts which create the non-secular meaning of the term, 'Áchárya,' which was sought for by it, must be admitted; and, that its object was not to confer authority regarding them, because of its redundancy, and because it was not sought for.

[440.] The state of the Áchárya[2] is the occasion of the use of the term 'Áchárya;' because the function of the indeclinables, 'tva,' 'tal,' and the rest, is to express the ascertained occasion of the use of words.

[441.] That state of the Áchárya, moreover, is the invisible thing which arises from the teaching to which the investiture is subordinate; wherefore, let the precept prescribe that alone,

[1] Namely, with the above law-text of Manu. [2] Áchárya-tva.

and not anything besides. Hence, the purport of the precept for the appointed acts is alone sought for by the text, in order to complete the search set up by the precept for the gift of the gratuity; and not anything distinct from it as the result of the unforeseen consequence arising from authority.

[442.] Therefore, it is evident that there is both an absence of search, and a redundancy.

[443.] Moreover, it is impossible to consider the office of the Áchárya to be of the nature of an appointed reward, of the same kind as the heaven of Indra and the rest; seeing that it is not of the nature either of a joy, or of a cessation of sorrow.

[444.] Since, however, it is expressed by the potential mood, though it is not of the nature either of a joy, or of a cessation of sorrow, the office of the Áchárya is of the nature of a third benefit arising solely out of the Veda: and, therefore, since that is settled in the visible Veda as the object of the precept for the gift of the gratuity and the rest, and, consequently, it is not by inference, there is no defect whatever in the argument.

[445.] This being so, if it be said that an exhibition of the text has been suggested by *Bhavanátha* in this form, "He must ascertain the office of the Áchárya by the teaching after the investiture:"

[446.] The opinion of *Bhavanátha* is this:—"Although the exhibition of the text in this form, "He must teach after he has made the investiture," is correct; because that invisible thing which is the result of the acts, is the real meaning of the potential mood; nevertheless, since that invisible thing is settled in the law-code by the employment of the term, 'Office of the Áchárya;' and because, by that form, the desire of the teacher is incited by its capacity to produce gain in the shape of the gift of the gratuity and the rest; it has the capacity of creating authority in teaching within its own sphere by implication, by its very desirableness."

[447.] Hence, *Sháriknátha*, after setting forth a similar explanation of the text, says: "The authority of him who desires to be an Áchárya, by implication." His meaning is, that the explanation of the text has been adduced in accordance with that, to make it evident that the acquisition of authority is implied.

[448.] "If so, the supposed capacity of being expressed by the potential mood attaching to the office of the Áchárya, cannot be admitted; seeing that the capacity of the potential mood is to confirm that precept; because the object of the text is the appointment of acts for the purpose of creating the office of the Áchárya sought for by the precept for the gift of the gratuity. Although there is no confirmation of the precept as regards the state of the receiver, because of the absence of a repetition in close proximity; still, like the potential mood in the Ádhána text, there must be a repetition of the precept with regard to the state of the giver."

[449.] Not so: inasmuch as it is admitted that the potential mood possesses the capacity of confirming the unforeseen consequence of the giver; because the Ádhána ceremony has not the capacity of being expressed by the potential mood, seeing that its relation is to the flame. Moreover, the confirmative capacity of the potential mood is not to be admitted here; because the didactive capacity of the potential mood belongs to it, seeing that the relation of the ceremony which arises out of the teaching and creates the office of the Áchárya, is to the person who teaches.

[450.] "If so, again, the supposed capacity of conferring the learning must be put far away, seeing that the ceremony which creates the office of the Áchárya has not a conferring capacity in the act of teaching; because, although it possesses the capacity of producing gain, like the ceremony which creates the Ṛitvik, it has not itself the capacity of conferring authority, seeing that it enters into the precept which confers the

authority: otherwise, the ceremony which creates the Ṛitvik would have a conferring capacity in the act of causing the sacrifice to be made, as well as in the act of making the sacrifice."

[451.] Not so: inasmuch as a conferring capacity belongs to the office of the Áchárya, which was sought by the teacher for the sake of gain in the shape of the gift of the gratuity and the rest; because, practically, it possesses the capacity of conferring authority. in teaching, notwithstanding that it enters into the precept which confers the authority.

[452.] Moreover, the ceremony which creates the Ṛitvik has this difference, namely, that it has no conferring capacity, seeing that it has not the capacity of creating authority independently; because, although it has the power of producing gain, it has not the power of obtaining it of its own pleasure, forasmuch as it is under the control of another, seeing that it has to be obtained by the solicitation which is under the control of him who performs the sacrifice, and which he then makes.

[453.] Hence it is to be understood that, in reality, the exhibition of the text is in the form which is accepted by *Bhavanátha*,[1] namely, "He must teach after he has made the investiture."

[454.] Therefore, the false conclusion of the reason,[2] "Because it is the means of accomplishing secular acts," is established.

[455.] *Some* obviate it thus: "Acts;" namely, acquisition &c. "Accomplishing;" Of what? Of ownership; "that which has an accomplishment in the form of secular acts." Hence, it is a relative compound.[3] The meaning is, "Because it has the capacity of being accomplished by secular acts." There-

[1] See § 446, above. [2] See § 404, above.
[3] Bahuvríhi. See Professor Monier Williams' Sanskṛit Grammar, § 735.

fore it must be acknowledged, that there is neither irrelevancy nor false reasoning in the doctrine of *Vijńáneshvara.*"

[456.] That is incorrect: forasmuch as this abandonment of the dependent compound,[1] and adoption of the relative compound, is like one who runs away from the mud and falls into the dirt.

[*The sources of Ownership.*]

[457.] The secularity of ownership[2] being in this manner established,[3] the visible means of acquiring property, according to the law-code of *Gautama*,[4] are these: "An owner is by inheritance, purchase, partition, seizure, or finding. Acceptance is for a Bráhman an additional mode; conquest for a Kṣhatriya; gain for a Vaishya or Shúdra."[5]

[458.] Moreover, the whole five, namely, inheritance and the rest, are common to all.[6]

[459.] The term "inheritance,"[7] means the acquisition of inheritance; that proprietorship which sons and others obtain by birth in the property of their father and others.

[460.] Hence, the source of the acquisition of paternal property is stated by the same *Gautama*:[8] "The teachers say, That proprietorship which he shall obtain by birth alone."

"By birth alone;" the meaning is, "by the birth of his body in his mother's womb."

[461.] Hence also *Vishṇu*: "Ownership accrues by birth."

[462.] *Bhárúchi* says: "Of a son alone, but not of a daughter."

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[1] Tatpurusha.

[2] Svatva. This term is uniformly rendered by 'ownership' in this translation; and the parallel term, 'svámitva,' 'svámitá,' and 'svámyam,' by 'proprietorship.'

[3] See § 401, above: Miták. I. i. 12.

[4] Gaut. x. 39 to 42. Sac. B. of East, ii. 228, 229.

[5] This is Colebrooke's translation of this great text (see Miták. I. i. 8) and, as it has been almost universally adopted, it is retained here.

[6] Miták. I. i. 12. [7] Riktha.

[8] See Miták. I. i. 23, note; Smṛi. Ch. i. 27.

[463.] "Partition;"[1] the Author of the *Chandriká*[2] says, "Partition is the acquisition of a special proprietorship in the property of a father and others."

[464.] But *Vijńáneshvara*[3] says: "Unobstructed heritage is "inheritance:"[4] "partition"[5] is obstructed heritage. Although the term 'riktha,' has the meaning of obstructed heritage, as is shown by this and other texts, "He who takes the 'riktha,' must discharge the debts;" nevertheless, unobstructed heritage is meant here; since, otherwise, the term, 'division,'[6] would be a repetition. By the term, 'division,' obstructed heritage subsequent to it, is intended; because the capacity of being a source of ownership does not belong to division."

[465.] *Bhárúchi* and *others* do not agree with this: "In unobstructed heritage, the intimate relationship of birth is required: but in obstructed heritage, the absence of obstruction is not the cause; because of its insufficiency."

[466.] "Seizure;"[7] the appropriation of water, grass, firewood, and other things, found in a forest and other places, which have not been appropriated by other persons.

[467.] "Finding;"[8] the acquisition of hidden treasure, and the rest.

[468.] These means[9] being in existence, the son and the others, the purchaser, the divider, the seizer, and the finder, each in his order, becomes "owner" of the purchased, divided, seized, and discovered property of his father and the rest.

[469.] Thus, the meaning of the text of *Gautama* is to be understood in the sense of a connection with acquisition: so, "acceptance,"[10] that is, religious acceptance, "is for a Bráhman an additional mode," and his special acquisition; so,

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[1] Saṃvibhága. [2] Smṛi. Ch. i. 27. [3] Miták. I. i. 13.
[4] Riktha. [5] Saṃvibhága. [6] Vibhága.
[7] Parigraha. Miták. I. i. 13; Smṛi. Ch. i. 27.
[8] Adhigama. Ibid. [9] Miták. I. i. 13; Smṛi. Ch. i. 27.
[10] Labdhaṃ, of Gautama's text.

"conquest for a Kṣhatriya," is that which is obtained by conquest; so, "gain for a Vaishya," is that which is obtained in the form of earnings by agriculture and other means: "gain for a Shúdra," also, is that which is obtained in the form of service &c, to the twice-born; and it is his special acquisition.[1]

[470.] Hence the purport is, that this law-text is constructed, like grammar and the other institutes, with the intention of using precise terms.[2]

[471.] Here, this is its true meaning, namely, that this opening text is an attempt by Gautama to define acceptance and the other sources of ownership prevalent in the world, in a technical manner, by the mention of the Bráhmaṇ and the other classes.

[472.] Hence,[3] by the *text*,—"When Bráhmaṇs acquire any property by censured acts, they become pure by abandoning it, and by prayer and penance,"—if ownership arises solely out of authoritative books, then ownership does not belong to that which has been obtained by improper acceptances, trading, &c; and it is not divisible amongst their sons. But, if ownership is a secular thing, then, since ownership attaches to an improper acceptance, and the rest, it is divisible amongst their sons. The purification, "They become pure by abandoning it," belongs to the acquirer alone: but, since the property belongs to their sons by its nature as heritage, no connection with the fault attaches to them, in accordance with the *text*,[4] "There are seven righteous sources of property—heritage, acquisition, purchase, conquest, commerce, service, and religious donations."

[473.] In the secularity of ownership alone is there any generation of ownership for strangers, or any cessation of

[1] Mitá́k. I. i. 13; Smṛi. Ch. i. 27.
[2] See Smṛi. Ch. i. 27.
[3] Mitá́k. I. i. 16.
[4] Manu, x. 115.

ownership by a mere voluntary act. There is, moreover, sometimes a cessation of ownership through a great crime &c, and not by a mere voluntary act. Hence it is taught in the Lipsá aphorism, that, "In the case of a great crime the relationship between father and son ceases, and the relationship between husband and wife."

[474.] "Now,[1] let ownership be a secular thing, and proprietorship non-secular; as the Author of the *Sangraha*, consistently with equity, says: "He in whose possession anything is, is not its true owner: are not stolen goods &c, which are the property of another man, found in the hands of other men? Therefore, proprietorship must be by authoritative books alone, and not by possession." The meaning is this: "Therefore proprietorship is to be obtained 'by authoritative books alone,' and is not to be obtained from any other source."

[475.] Not so: as in the case of the two things "yoga" and "kṣhema,"[2] so also in the case of the two things "proprietorship" and "ownership," it is to be understood that the establishment of the secularity of either of them is, in reality, an establishment of both.

[476.] Hence, according to the present treatise, we justly perceive, that its capacity of being accomplished by secular acts is, without any logical error, the source of the secularity of ownership.

[477.] Therefore, it is established, that, because of the secular nature of ownership, the order of the succession to proprietorship is based on reason alone, and is not scriptural.

### [*The succession of the Wife.*]

[478.] This is said by *Vijṇánayogí*:[3] "With regard to the text,[4] 'The wife, the daughters, &c,' it is an arrangement of the

[1] Smṛi. Ch. i. 24.
[2] See §§ 189 to 191, above.
[3] See Miták. II. i. 3.
[4] Yájṇavalkya's; see § 399, above.

order of the succession to proprietorship, based on the rule of nearer and more remote relationship, in order to remove embarrassments in the case of there being many conflicting claimants through their relationship to the owner."

[479.] If it be said, "If there be a taking of the husband's share by his wife, by virtue of the wife and daughter rule: still, it may be the taking of their husband's share by the wives of an undivided man,[1] because of its similarity to the rule about to be stated, "The wife is declared to be the half of his body, &c."

[480.] Not so: the wife and daughter rule applies to the wives of a divided man, only where special property belongs solely to their husband. It is to be borne in mind, that the wife and daughter rule applies to the case of a divided man; because there is no possibility for the wives of an undivided man to take their husband's share in the joint property, seeing that no special property belongs to their husband.

[481.] "If so, then the right of taking the shares of all undivided brothers who have gone to heaven, would not belong to their wives. But it is thus ordained: "The right of taking his heritage belongs to the wives of an undivided man." "In the absence of all brothers," is to be supplied.

[482.] Here it is said, "The right of taking his heritage belongs to the wives of an undivided man;" that is, though their husband's kinsmen may be alive, the right of taking his share belongs to his wives alone, though he is an undivided man, just as in the case of a divided man, by an extension of the rule; because, by the absence of his brothers, there is an establishment of specialty over the heritage of all of them, by the termination of that of each of them in succession.

[483.] In that case, the doctrine of *the school of Vishṇu* is,

[1] See Mitâk. II. i. 8, 30, 39; Smṛi. Ch. xi. (§ 1), 4, 6, 23.

that no distinction is to be made between a wife who has daughters, and a wife who has no daughters.

[484.] The expression, "the wife and daughter rule," is an imitation of the elliptical compound, "the wife the danghters," in the phrase,[1] "The wife, the daughters also."

[485.] "The wife, the daughters also." Here *Manu*[2] lays down the rule of greater and lesser propinquity: "The father shall take the estate of a sonless man, or his brothers."

[486.] Their order is not signified here; because of the addition of the word "or."

[487.] The author of the *Sangraha*[3] states its intended meaning: "This is now declared, namely, by whom the property of a man of property who has died without any surviving son, is now to be taken."

[488.] Its meaning is this:—In the enquiry, by whom the property of a man of property who has died without a principal or a secondary son, "is now," that is, after his death, "to be taken"? it is declared by *Manu*, that this is now, that is, when there are no persons nearer than the father and the rest capable of rendering the various benefits, to be taken by the father and the rest.

[489.] Wherefore, recognizing the nearer propinquity of the secondary sons than that of the father, the purport of the words,[4] "The father shall take the sonless man's," is stated by the author of the *Sangraha* to be, "of a man who has died without any surviving son."

[490.] This is not to be found fault with. But just as the relationship of the secondary sons is closer, because, with respect to the father and the rest, they have a precedence by means of their capability of conferring visible and invisible

[1] In Yájñavalkya's text, § 399, above.
[2] Manu, ix. 185; Miták. II. i. 7; Smṛi. Ch. xi. (§ 1), 1.
[3] Smṛi. Ch. xi. (§ 1), 3. [4] In Manu's text, § 485.

benefits; so also a still nearer relationship to him belongs to his wife, because of her precedence, as regards the father and the rest, by means of her capability of conferring visible and invisible benefits, by meditation on the Veda, the law-codes, &c.

[491.] Therefore, its purport is thus to be inferred, that this, namely, "The father shall take the sonless man's," was laid down by *Manu*, only in the case of the wife being dead.

[492.] Hence,[1]—bearing in mind the nearer relationship of the wife than of any others, as indicated by her capacity for conferring the visible and invisible benefits when there are no secondary sons living,—the right to inherit a husband's property is shown by *Bṛihaspati* to belong to his wife alone, notwithstanding the existence of Sakulyas from the father and the rest downwards: "In sacred tradition, in the law-codes, and in the Tantras, and also by those who are learned in the established customs of the world, the wife is declared to be the half of his body, equal in the fruits of merit and demerit. Of him whose wife is not dead, the half of the body lives: how can another inherit while the half of his body is alive? Though his kinsmen, his father, brothers, or uterine sisters be alive, the wife of a deceased sonless man is his heir."

[493.] Here,[2] by the words, "declared to be the half of his body," in the second half of the verse, the nearer relationship of the wife than of the father and the rest, in effecting the visible and invisible benefits, is declared.

[494.] With respect[3] to the meaning of the phrases:—

"In sacred tradition;" that is, in the Veda, in such *texts* as this, "She who is his wife, is the half of himself."

"Of himself;" the meaning is, "of his body."

"In the law-codes,[4] and in the Tantras;" that is, in the works on religious duties; namely, in such *texts* as this,

[1] Smṛi. Ch. xi. (§ 1), 4. See Mitâk. II. i. 6.
[2] Smṛi. Ch. xi. (§ 1), 5.
[3] Smṛi. Ch. xi. (§ 1), 6.
[4] Smṛi. Ch. xi. (§ 1), 7.

"Fallen is half the body of him whose wife shall drink spirituous liquors: an expiation for a fallen half-body is not ordained."

"In the[1] established customs of the world;" the meaning is, in the scientific works which treat of established customs, in such *texts* as this, "What learned man will abandon his wife, who is the half of his body?"

"In the[2] fruits of merit and demerit;" because of their joint authority in religious ceremonies. "Of a sonless man;" that is, of one who is without both a principal and a secondary son.

[495.] "The wife;"[3] namely, she[4] who is married by the Bráhma and the other higher marriage rituals, which confer authority in sacrifices, according to the text of *Páṇini*:[5] "Na with Pati, means association in sacrifices."

[496.] Not[6] a purchased spouse;[7] because wifehood[8] does not attach to her who is excluded by the term 'Patní.'

[497.] Hence[9] another *text*: "That woman[10] who has been bought with a price, is not called a wife:[11] she has no part either in divine things, or in ancestral things: the sages regard her as a slave."

[498.] "They regard her as a slave;" this is said to show, that, since she has not the position of a wife,[12] to her belongs the capacity of conferring visible benefits alone, and not the capacity of conferring invisible benefits.

[499.] Here *some* say: "The statement of the author of the *Chandriká*,[13] that the Patní is the consort[14] married by the marriage rituals, is inapplicable; because there is no creation of wifehood[15] in the marriage rituals. In this term, 'wifehood,'

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[1] Smṛi. Ch. xi. (§ 1), 8.
[2] Smṛi. Ch. xi. (§ 1), 9.
[3] Patní.
[4] Smṛi. Ch. xi. (§ 1), 9.
[5] Páṇini's Aphorisms, IV. i. 33.
[6] Smṛi. Ch. xi. (§ 1), 10.
[7] Bháryá.
[8] Patnítva.
[9] Smṛi. Ch. xi. (§ 1), 11.
[10] Árí.
[11] Patní.
[12] Patnítva.
[13] See § 495, above.
[14] Jáyá.
[15] Patnítva.

there is nothing whatever beyond the relationship of the spouse[1] to the husband. That relationship also is the source of an act which has the form of acquiring an acquisition; and that is only a secular thing: and therefore, in a great crime &c, there is a cessation of this spousehood.[2] The consciousness of being a spouse is from her previous condition. It is said by the *Guru* in the Lipsá aphorism, that the use of the prayers at the marriage is not the origin of the spousehood; because the object of that is to complete the Vedic gift."

[500.] Not so: it is said by the *Guru*, that the ownership alone in the wife is a secular thing; not the wifehood; because there is a difference between ownership and wifehood. This is the meaning of the *Guru's* text: The wife arises out of association in sacrifices; property arises out of association with a proprietor: in a great crime &c, there is a separation even of the spousehood.

[501.] It is said by *Bhárúchi*, that the term 'spousehood' implies ownership, but 'wifehood' does not: otherwise when the expiation is made, the wifehood would not exist.

[502.] This being the opinion of the author of the *Chandriká* and *others*, it is correctly stated that the consort married by the Bráhma and the other higher marriage rituals, is termed the wife.

[503.] Hence also *Bṛihaspati* assigns the precedence to the wife, in the ancestral ceremonies of her husband, over his brothers and the rest; "But when there is no son, it shall be the wife: but when there is no wife, the uterine brothers."

"In the gift of the piṇḍa," is to be supplied.

[504.] Here *Vṛiddha Manu* says:[3] "The sonless wife, who guards her husband's bed, and is steadfast in her virtue, shall alone present his funeral-ball, and shall receive his entire share."

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[1] Bháryá. [2] Bháryatva.

[3] Smṛi. Ch. xi. (§ 1), 15; Miták. II. i. 6, 18 (here anonymously).

[505.] In the[1] latter half, the order of the sense is to be understood, rather than the order of the reading. The meaning is, that the wife shall first take her husband's share, and afterwards present his funeral-ball; not the brothers and others, while she is living.

[506.] In the same way also is this *text* to be explained: "Of these, in the absence of each preceding one, the next in succession is the presenter of the funeral-ball, and the taker of the share;" because it is said, that the taking of the share is the occasion of the presentation of the funeral-ball.

[507.] "Who guards his bed;"[2] the meaning[3] is, who is thoroughly self-restrained.

[508.] "She shall receive his entire share."[4] *Prajápati* states the meaning of the word "entire:"[5] "After she has appropriated the moveable and immoveable property, the gold, the baser metals, the grains, the liquids, and the clothes, she shall cause the monthly, half-yearly, and other funeral-feasts to be presented: she shall respect her husband's paternal uncle, his religious superior, and his daughters' sons, her husband's father and his maternal uncles, with food-offerings and benevolences, and similarly, the aged, the destitute, and the guest."

"The baser metals;" tin, lead, and the rest.

"Food-offerings;" the food dedicated to the use of the ancestors.

"Benevolences;" their kind has already been stated.

[509] This shall be explained:—After[6] she has received "his entire share," including his immoveable property, the whole body of religious duties, which are the means of her husband's

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[1] Smṛi. Ch. xi. (§ 1), 16.
[2] In Vṛiddha Manu's text, § 504, above.
[3] Smṛi. Ch. xi. (§ 1), 17.
[4] See § 504, above.
[5] Smṛi. Ch. xi. (§ 1), 20.
[6] Smṛi. Ch. xi. (§ 1), 21.

happiness, and her own, consisting of the funeral-feasts, benevolences, and the rest, which are within the authority of women, and which are effected by means of heritage and property, is to be performed by the wife according to the property taken by her.

[510.] As for[1] that which is said by *Bṛihaspati*,—"Let the wife, whose husband is dead, receive the property of a divided man, however small, of whatever kind, and including the mortgaged property, with the exception of the immoveable property,"[2]—the meaning is,[3] that in the instance of a divided man, the wife shall take the whole of that which belongs to her husband, however small, immoveable and moveable, mortgaged, and of every other kind.

[511.] From[4] the use of the expression, "a divided man," it follows, that in the case of an undivided man, the brothers and others who live together, receive the property of a deceased sonless man. This is mentioned here, though it has already been stated circumstantially.[5]

[512.] "The wife,[6] with the exception of the immoveable property." The author of the *Chandriká*[7] says: "This is the case of a wife who has no daughters: if it were the case of a wife generally, it would be contradictory of the *text*[8] above quoted; "After she has appropriated the moveable and immoveable property, the gold, the baser metals, the grains, the liquids, and the clothes, she shall cause the monthly, half-yearly, and other funeral-feasts to be presented."

[513.] Here, the meaning of the author of the *Chandriká* is this: When there are two wives together, one who has no daughter, and one who has a daughter, the immoveable property

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[1] Smṛi. Ch. xi. (§ 1), 23.
[2] See § 512, ff., below.
[3] Smṛi. Ch. xi. (§ 1), 24.
[4] Smṛi. Ch. xi. (§ 1), 25.
[5] See § 480, above.
[6] In Bṛihaspati's text, § 510, above.
[7] Smṛi. Ch. xi. (§ 1), 25.
[8] Of Prajápati: see § 508, above.

belongs to that wife alone who has a daughter; not to her who has no daughter: but the moveable portion belongs to her who has no daughter. In the moveable property, their appropriation is by shares. Where there is only a wife who has no daughter, there the immoveable as well as the moveable property belongs to her alone; not to any other woman who has no daughter, such as the mother and others, because it is stated, that with respect to a wife, she has a more remote relationship.

[514.] It[1] must not be said, in order to remove this contradiction, that this text[2] has reference to the case of the share of an undivided husband; because this same *Author*,[3] to put aside an opinion of this kind, says: "When a division is made, a woman,[4] though she is virtuous, is not entitled to immoveable property."

[515.] The[5] implied meaning is, that, since the proper capacity of immoveable property is for the maintenance of issue, and follows the capacity to have issue, the "woman"[6] who has none, "though she is virtuous, is not entitled to immoveable property," even in the case of a divided man.

[516.] "When[7] her husband is dead, she who upholds his family shall receive her husband's share; her proprietorship is for her lifetime, in gift, mortgage, and sale."

"Mortgage;" pledge.

[517.] But, even in the case of a divided man, maintenance alone belongs to the women.[8]

[518.] She is termed a woman[9] who is taken for pleasure: "That woman[10] is called a Strí, who has been bought with a

[1] Smṛi. Ch. xi. (§ 1), 26. [2] Bṛihaspati's: see § 510, above.
[3] Bṛihaspati. Smṛi. Ch. xi. (§ 1), 27. [4] Strí.
[5] Smṛi. Ch. xi. (§ 1), 27. [6] Strí.
[7] Smṛi. Ch. xi. (§ 1), 28; where this text is attributed to Bṛihaspati, and has, apparently, a different reading of the last line of the verse. It is elsewhere (see Vya. Mayú. IV. viii. 4; Víram. III. i. 3), attributed to Kátyáyana.
[8] Stríṇám. [9] Strí. [1] Nárí.

price, for the sake of pleasure, by a man seeking enjoyment, or has been captured, or has belonged to another man."

"Has belonged to another man;" another man's mistress.[1]

[519.] She is designated by the nature of the meaning of the term, 'female,'[2] in the *text*, "He who takes his females must discharge his debts."

[520.] *Kátyáyana* says, that the right to take his share does not belong to that woman:[3] "But when her lord[4] has gone to heaven, a woman[5] is a partaker of food and raiment; but she receives the undivided man's share of the property up to the time of her death."[6]

The latter half refers to a wife.[7]

[521.] A share does not belong to the undivided wife[8] even, as[9] the same *Author* says: "The sonless wife, who guards her husband's bed, and is steadfast in her continence, and docile, shall have possession until her death: after her, the heirs shall have it."

[522.] It is to be understood, that this is when their fathers-in-law are unable to provide a maintenance; as *Bṛihaspati* says:[10] "Let him provide a subsistence annually, or a share in the grain-fields, whichever he pleases."

"Annually;" year by year.

The meaning of the term 'subsistence' is, wealth sufficient for their maintenance alone.

[523.] *Nárada* states the smallest amount of wealth which is sufficient for a maintenance:[11] "The virtuous wife, whose husband is dead, shall receive year by year twenty-four ádhakas, and forty paṇas."

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[1] Kántá. [2] Yoṣhit. [3] Strí.
[4] Svámin; proprietor. [5] Strí.
[6] Smṛi. Ch. xi. (§ 1), 35. [7] Patní. [8] Patní.
[9] Smṛi. Ch. xi. (§ 1), 32. [10] See Smṛi. Ch. xi. (§ 1), 41.
[11] Smṛi. Ch. xi. (§ 1), 39.

"Ádhaka;" a heap of grain measuring one hundred and ninety-two handfuls.

"Paṇa;" a coin: *others* say, an eightieth part of a legal niṣhka.

[524.] *Kátyáyana*[1] says, that that which has been given to women is to be upheld: "That which has been given to a woman for her maintenance out of the immoveable property by her father-in-law, others have no power to resume when her father-in-law is dead."

[525.] The use of the term 'father-in-law,' has the implied meaning of "the persons who provide the maintenance."

The use of the word 'immoveable' also, has the implied meaning of 'property.' Hence, it is to be understood, that property given to women for a maintenance, is not to be resumed by others.[2]

[526.] *Kátyáyana* states an exception to this:[3] "She who is diligent in the service of her elders is entitled to enjoy her appointed share; if she will not do them service, raiment and food shall be appointed."

"Withholding her appointed share," is to be supplied.

[527.] Here *Vishṇu* says, that a maintenance is to be provided as long as she lives: "Year by year forty paṇas and twenty-four ádhakas; or else, a hundred kárshápaṇas, as long as she lives; or, one-half of this."

[528.] The same *Author* says, that a resumption is to be made of the appointed share of those who do that which ought not to be done: "A resumption is to be made of the appointed share of those who are unruly."

"Those who are unruly;" those who err.

[529.] So also *Nárada*[4] says:[5] "They shall provide a main-

[1] Smṛi. Ch. xi. (§ 1), 44; where, however, this text is attributed to Bṛihaspati.

[2] Smṛi. Ch. xi. (§ 1), 45.

[3] Smṛi. Ch. xi. (§ 1), 46.

[4] Nárada, xiii. 26.

[5] Smṛi. Ch. xi. (§ 1), 48; Miták. II. i. 20.

tenance for his women as long as they live, if they guard their husband's bed; from the rest it must be cut off."

[530.] As for that which is said by *Manu*,[1]—"He shall make the same rule for fallen females also; but clothes and food must be given to them; and they must live near the house;"—it applies to the case where the husband is the agent.

[531.] So also the series of *texts* which speak of a maintenance for women; they apply to the case of the wife of an undivided man; they are to be expounded as applying also to the women of a divided man.

[532.] Regarding the two *texts*,[2]—"The sonless wife, who guards her husband's bed, and is steadfast in her continence, and docile, shall have possession until her death; after her, the heirs shall have it;"—and, "When her husband is dead, she who upholds his family shall receive her husband's share, the immoveable as well as the moveable, the grosser metals, the grains, the fluids, and the clothes; but her proprietorship is for her lifetime, in gift, mortgage, and sale;"—they are to be expounded as applying to the wife who has no daughter, on the strength of these two passages, "After her the heirs shall have it," and, "But her proprietorship is for her lifetime."

[533.] Although, upon the death of one who has no issue, her property belongs to her relations; nevertheless, upon the death of a wife who has a daughter, the inheritance[3] of her property belongs to her daughter, her daughter's son, and the rest, alone.

[534.] Similarly, it is also to be understood here, that the purport of the *text*, "After her the heirs shall have it," is, that upon the death of a wife without a daughter, that is, when there

[1] Smṛi. Ch. xi. (§ 1), 49. [2] Kátyáyana's; §§ 521 and 516, above.
[3] Práptiḥ.

is no daughter and the rest in existence, the inheritance of her property does not belong to her father and the rest.

[535.] Therefore, it is established, that the use of the word 'wife,'[1] in the series of *texts* such as, "The wife, the daughters also,"[2] has this meaning, that the religious wife[3] of a deceased, sonless, divided, unreunited man, shall take the whole of his immoveable and moveable property.

### [*The succession of Daughters.*]

[536.] There,[4] when the wife is not alive, the daughters.

[537.] There[5] *Lakṣhmîdhara* says, that the plural word "daughters," indicates the inheritance by equal and unequal shares of those of equal class.

[538.] Thus *Kátyáyana* says:[6] "The wife who is not unchaste, takes the property of her husband; if she is not alive, then the daughter, if she is unmarried."

[539.] *Bṛihaspati* also:[7] "The wife takes the property of her husband; without her, the daughter is ordained. A daughter, like a son, is born of men, limb by limb: how, then, can another man take her father's property?"

[540.] Here, when[8] there are married and unmarried together, the unmarried alone takes; when there is none, the married daughter; by the special *text*,[9] "if she is unmarried."

[541.] Similarly,[10] when there are endowed and unendowed together, the unendowed alone; when there is none, the endowed; by the equal applicability of the text of *Gautama*[11]

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[1] Patní. [2] Yájṇavalkya's; § 399, above. [3] Dharma patní.
[4] Miták. II. ii. 1. [5] Miták. II. ii. 1.
[6] Miták. II. ii. 2; Smṛi. Ch. xi. (§ 2), 20.
[7] Miták. II. ii. 2; Smṛi. Ch. xi. (§ 2), 1, 3.
[8] Miták. II. ii. 3; Smṛi. Ch. xi. (§ 2), 28.
[9] Kátyáyana's; § 538, above. [10] Miták. II. ii. 4.
[11] Gaut. xxviii. 24.

to the property of a father also: "A woman's property[1] belongs to her unmarried and unendowed daughters."

[542.] *They* say, that the word 'also,'[2] implies a declaration of the rule of equality with a son.

[543.] As *Manu*[3] says: "As a man's own self so is a son; a daughter is equal to a son: while she, that self, is alive, how can another take his property?"

"That self;" the meaning is, she who is equal to a son, who is equal to himself.[4]

[544.] "If so,[5] this rule, "When both a secondary son and a wife do not exist, the daughter,"—does not apply: since this much only is established, namely, "When there is no bosom-son alone, the daughter."

[545.] True: but it is thus stated only by way of opinion, that in the words, "When both a secondary son and a wife do not exist, the daughter," the order of their succession is to be inferred.

[546.] Therefore,[6] the rule of succession adopted by himself, namely, "When both do not exist, the daughter," is exhibited by *Nárada*,[7] for the benefit of the uneducated: "When there is no son, the daughter; because of her equal exhibition of issue."

[547.] The[8] meaning is this: that both the son and the daughter are equally producers of issue, and creators of their own father's happiness.

[548.] That[9] is to say, since the identity of natural form does not belong to a son's son and a daughter's son, and to the issue of a son and of a daughter, it is meant here that they have an equality in point of activity. Nor, again, does

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[1] Stridhana.
[2] In Yájñavalkya's text, § 399, above.
[3] Manu, ix. 130.
[4] Smṛi. Ch. xi. (§ 2), 7.
[5] See Víram. pp. 176, 177.
[6] Smṛi. Ch. xi. (§ 2), 9.
[7] Nárada, xiii. 50.
[8] Smṛi. Ch. xi. (§ 2), 9.
[9] Smṛi. Ch. xi. (§ 2), 10.

an equality in point of activity spring up in the form of discharging the debts, and taking the estate: "The debts are to be paid by the sons and the grandsons." Similarly, with reference to the wealth of a paternal grandfather, the superiority of the son's son is indicated by the *text*, "There, similar ownership belongs to both the father and the son." Therefore an equality in point of activity in invisible things, is meant here. This, again, consists in the right of providing the funeral-feast, according to the text of *Vishṇu*[1]: "But in the utterance of the invocation of their ancestors, a daughter's sons are reckoned as a son's sons.

[549.] Thus,[2] the propinquity of the daughter arises from her association with the invisible benefits through her issue.

[550.] But[3] a nearer propinquity than the daughter's evidently belongs to the wife, through her joint creation of the invisible benefits which spring from the fire-oblation and the rest. And therefore it is to be understood, that the use of the word 'son,' in the text,[4] "When there is no son, the daughter," has the force of indicating the wife also.

[551.] If it be said,[5] "Since the father alone thus confers the invisible benefits by his oblation of the funeral-feast, and he has therefore a nearer propinquity with respect to the daughter; how does the taking of the property belong to the daughter when the wife is not alive?"

[552.] It is not so:[6] because it is said by this very *text*,[7] "While she, that self, is alive, how can another take his property?" That is to say, although the daughter has a more distant propinquity than the father through the connection of the invisible benefits; nevertheless, because of her

[1] Vishṇu, xv. 47.
[2] Smṛi. Ch. xi. (§ 2), 10.
[3] Smṛi. Ch. xi. (§ 2), 11.
[4] Nárada's; § 546, above.
[5] Smṛi. Ch. xi. (§ 2), 12.
[6] Smṛi. Ch. xi. (§ 2), 13.
[7] Manu's; § 543, above.

nearer propinquity through her bodily connection, the daughter has the precedence in both respects.

[553.] "If so,[1] there would still be room for this, namely, "When there is no daughter, the father shall take."

[554.] Not so:[2] there is now no room for that; when there is no daughter, it belongs to the daughter's son; because of his nearer relationship than the father's and the rest, by reason of his capacity for obstructiveness; and also because of the text of *Vishṇu*:[3] "When there is no son, nor son's son, the daughter's son shall obtain the property; for in the utterance of the invocation of their ancestors, a daughter's sons are reckoned as a son's sons."

[555.] Here,[4] *Dháreshvara, Devasvámí, Devaráta, Shríkara,* and *others,* say, that the series of texts which establish the rule that property goes to a daughter, refer to the appointed-daughter alone.

[556.] The author of the *Chandriká* opposes their doctrine. The *Chandriká* says:[5] "It is to be understood, that the doctrine of *Dháreshvara, Devasvámí,* and *Devaráta,* is rejected, being invented in the craze of their ignorance of the established doctrine of all the authoritative works."

"The established doctrine of authoritative works;" their own established doctrine.

[557.] It is also opposed by *Vijńáneshvara:* as the Mitákshara[6] says: "This does not refer to an appointed-daughter, because the *text*,[7] "Equal to him is the son of the appointed-daughter," has been explained in the chapter on sons, by the equality of the appointed-daughter and her son with the bosom-son."

[558.] The declaration of *Dháreshvara* and the *rest* is as

[1] Smṛi. Ch. xi. (§ 2), 14.
[2] Smṛi. Ch. xi. (§ 2), 15.
[3] See Vishṇu, xv. 47.
[4] Smṛi. Ch. xi. (§ 2), 16.
[5] Smṛi. Ch. xi. (§ 2), 16.
[6] Miták. II. ii. 5.
[7] Yájn. ii. 128.

follows:—"There are only ten kinds of secondary sons together with the bosom-son. The son of the appointed-daughter, and the self-made son, have not the nature of a son, but only the right to enjoy the heritage; because they are created by his own resolution. Therefore, although the twofold sense of the compound word be admitted, namely, that the 'putriká-suta' means the son who is the appointed-daughter, and that the 'putriká-suta' means the son of the appointed-daughter, the son of the appointed-daughter is on an equality with a grandson, but the son in the shape of the appointed-daughter is on an equality with a son: and therefore, the word "also," in the text,[1] "The wife, the daughters also," has the force of a declaration of the rule, that, because of her nearer relationship than that of the wife, the inheritance of the property belongs first to the appointed-daughter, as being a son, and after her, to the wife. The plural form "daughters,"[2] has the force of including, daughters in the form of a daughter who is not an appointed-daughter, a daughter who has been created an appointed-daughter, and her who has borne a son of an appointed-daughter. Hence also, since the appointed-daughter is not included in the phrase, "without any surviving son," in the text[3] of the author of the *Sangraha*, "The property of a man of property who has died without any surviving son," the enjoyment of half the property by the bosom-son[4] is settled in the *text*, "Half of it, the son of the appointed-daughter:" and therefore, amongst the three kinds of appointed-daughters, one-half of the whole property belongs to the daughter who has been created an appointed-daughter, and one-half to the two other kinds of daughters." This sketch conveys the opinion of *Dháreshvara* and the rest.

[559.] It is not consistent. The secondary meaning of the

[1] Yájnavalkya's; § 399, above.
[2] In the same text of Yájñ.
[3] § 487, above.
[4] See Manu, ix. 134.

word "son," in the expressions, "the son of an appointed daughter," and "the son who is the appointed daughter," merely through the capacity for enjoying heritage, is inadmissible; because in the funeral ceremonies &c, of the father, to be performed by a son, the right, according to the texts, belongs to him alone, when there is no bosom-son living. The expression 'secondary sonship,' means 'not bosom-sonship,' and therefore, inasmuch as his capacity for sacrificial and charitable acts is the same as a son's, it is laid down that he takes the heritage in the first instance.

[560.] *Some* however say, that by the word "alone," in the text,[1] "The wife, the daughters also alone," the daughters of a wife associated in sacrifices are alone meant, and not those of a concubine;[2] and by the word "also,"[3] those of an ordinary wife.[4]

[561.] It is not so. If it were so, the wife's succession to the property would follow after the daughter's succession; and so there would be a contradiction of the previously stated rule.

### [*The succession of Daughters' sons.*]

[562.] Here,[5] by the word "also,"[6] the daughter's son enjoys the property when there is no daughter; because of his capacity for obstruction.

[563.] As *Vishṇu* says:[7] "When there is no son, nor son's son, the daughter's son shall obtain the property: for, in making the invocation of their ancestors, a daughter's sons are reckoned as a son's sons."

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[1] See § 399, above.
[2] Striyáḥ.
[3] In the same text.
[4] Patnyáapi.
[5] Miták. II. ii. 6.
[6] In Yájn.'s text, § 399, above.
[7] Miták. II. ii. 6; Smṛi. Ch. xi. (§ 2), 15. See §§ 548, 554, above.

[564.] *Manu*[1] also: "Whether created or not created, by that son of the same class whom she shall obtain, his maternal grandfather shall become possessor of a son's son: he shall present his funeral-ball, and shall take his property."

[*The succession of the Parents.*]

[565.] When[2] there is none, the parents, the mother and the father, take the property.

[566.] The mother takes the property in the first instance; because the word[3] 'mother,' occurs first in the compound word; because, after setting aside the compound, the word 'mother' is mentioned first in the extended form of the elliptical term; because the knowledge of the order of the meaning arises out of the order of the reading; and also in accordance with the order of inversion as regards their order of association with the property.

[567.] When[4] there is none, it goes to the father.

[568.] Moreover, the father is common to other sons:[5] but the mother is not common; and therefore she has the precedence in propinquity.

[569.] The inheritance of the property belongs to the mother in the first instance, by the *text*,[6] "Afterwards, let the Sapiṇḍas and the rest take each one's property."

[570.] The doctrine of *Vijñáneshvara*[7] is, that, between the mother and the father, the taking of the property more fitly belongs to the mother, because of her greater propinquity.

[571.] But, by the author of the *Chandriká*,[8] the right of the

[1] Manu, ix. 136. Mitak. II. ii. 6. [2] Miták. II. iii. 1.
[3] Miták. II. iii. 2. See Smṛi. Ch. xi. (§ 3), 5.
[4] Miták. II. iii. 2.
[5] Miták. II. iii. 3. See Smṛi. Ch. xi. (§ 3), 4.
[6] See Manu, ix. 187. Miták. II. iii. 3. [7] Miták. II. iii. 5.
[8] Smṛi. Ch. xi. (§ 3), 1, 9.

father to take the property in the first instance is maintained, by virtue of the text of *Vishṇu*:[1] "When there is none, it goes to the father; when he is not alive, it goes to the mother."

[572.] The doctrine of *Vijṇánayogí* is more correct than the doctrine of the author of the *Chandriká;* because it is taught by means of its being founded on reason.

[573.] By this it is to be understood, that the statement of *Shrikara*, that the taking of the property is to be divided between the two parents,[2] is rejected.

[*The succession of the Brothers.*]

[574.] When[3] the father is not alive, the brothers are the heirs.

[575.] As *Manu*[4] says: "The father shall take the estate of a sonless man, or his brothers."

[576.] As[5] for that which is taught by *Dháreshvara*, that by the text of *Manu*,[6]—"The mother shall take the heritage of a childless son; and the mother also being dead, his father's mother shall take his property,"—the father's mother, that is, the paternal grandmother, and not the father, shall take the property on the death of the mother, though the father may be living: the paternal grandmother takes, because the father's inherited property goes even to the sons who are of different class; whilst the paternal grandmother's inherited property goes to those of the same class alone:"—

[577.] *Vijṇánayogí*[7] does not agree with it; because the taking of property by sons even of different class has been

[1] Bṛihad Viṣhṇu in Smṛi. Ch. xi. (§ 3), 9.
[2] See Smṛi. Ch. xi. (§ 3), 6.
[3] Miták. II. iv. 1. See Smṛi. Ch. xi. (§ 4), 1.
[4] Manu, ix. 187. Miták. II. iv. 1; Smṛi. Ch. xi. (§ 4), 10.
[5] Miták. II. iv. 2. See also Smṛi. Ch. xi. (§ 4), 24.
[6] Manu, ix. 217. [7] Miták. II. iv. 3.

taught by this *text*:[1] "They shall take four shares, or three, or two, or one, &c."

[578.] Amongst[2] brothers, the uterine take first; because of the remoteness of the mothers of the non-uterine.

[579.] When[3] there are no uterine, the non-uterine take the property.

[*The succession of Brothers' Sons.*]

[580.] When[4] there are no brothers, their sons take the property in the order of their fathers; by the *text*, "The rule of their division is according to their fathers."

[*The succession of the Gotrajas.*]

[581.] When[5] there are no brothers' sons, the Gotrajas take the property; namely, the paternal grandmother, the Sapiṇḍas, and the Samánodakas.

[582.] There,[6] the paternal grandmother first takes the property.

[583.] The doctrine of *Vijńánayogi*[7] is as follows:—"In the obtaining of the inheritance by the paternal grandmother after the mother, by the *text*,[8] "And the mother also being dead, his father's mother shall take his property,"—there is no admission intermediately from the father and the rest down to the brother's son, by reason of the order being closed: and therefore, the reception of authority only is intended, rather than the inheritance of his property, by the words, "His father's mother shall take his property;" and hence, by the absence of a con-

[1] Yájn. ii. 125. [2] Mitá́k. II. iv. 5; Smṛi. Ch. xi. (§ 4), 1.
[3] Mitá́k. II. iv. 6; Smṛi. Ch. xi. (§ 4), 1.
[4] Mitá́k. II. iv. 7; Smṛi. Ch. xi. (§ 4), 26.
[5] Mitá́k. II. v. 1; Smṛi. Ch. xi. (§ 5), 1.
[6] Mitá́k. II. v. 2. See Smṛi. Ch. xi. (§ 5), 6.
[7] Mitá́k. II. v. 2. [8] Manu's; see § 576, above.

trary statement, the paternal grandmother takes by preference after her son."

[584.] The author of the *Chandriká*[1] does not agree with this:—"It is said, that "there is no admission intermediately from the father and the rest down to the brother's son &c;" and that the right of taking the property belongs to the paternal grandmother in succession to the mother, in accordance with the statement of the order,[2] "And the mother also being dead, his father's mother shall take his property;" and also by the text of *Vishṇu*,[3] "The property of a sonless man goes to his wife; if she is not alive, it goes to his daughter; if she is not alive, his mother and father shall take; if they are not alive, his father's mother, his brothers, and his Sapiṇḍas."

[585.] Here they say, that the doctrine of *Vijñánayogí* is correct.

[*The succession of the Sapiṇḍas.*]

[586.] If[4] the paternal grandmothers also are not alive, the Sapiṇḍas of the same gotra, namely, the paternal grandfather and the rest, take the property; because the term "relation"[5] is used for the Sapiṇḍas of a different gotra.

[587.] There,[6] if no descendant of the father is alive, the paternal grandfather, the paternal uncles, and their sons, take the property in their order.

[588.] If[7] no descendant of the paternal grandfather is alive, the paternal great-grandmother, the paternal great-grandfather, their sons, and their sons.

[589.] It is to be understood, that the taking of the property

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[1] Smṛi. Ch. xi. (§ 5), 6.
[2] In Manu's text, § 583, above.
[3] See Vishṇu, xvii. 4 to 11; where, however, the succession after the daughter is different.
[4] Miták. II. v. 3.
[5] Bandhu: see Yájn.'s text, § 399, above.
[6] Miták. II. v. 4.
[7] Miták. II. v. 5.

belongs thus to the Sapiṇḍas of the same gotra as far as the seventh degree, in accordance with the *text*,[1] "Afterwards, let the Sapiṇḍas and the rest take each man's property."

[590.] If[2] none of these is alive, the Samánodakas take the property. These also are to be understood to be the seven above the Sapiṇḍas; or, those who extend as far as the knowledge of birth and name.

[591.] As *Manu*[3] says: "Sapiṇḍaship ceases with the seventh male: and Samánodakaship ceases with the fourteenth; some say with the remembrance of birth and name. Beyond that it is called gotra."

[592.] By this, the order laid down by the author of the *Sangraha*,[4] is to be understood to be rejected; namely, "If there is no daughter of this kind, the mother shall have the property, though the father and the son and descendants of a fellow-wife, are alive. If a mother of this kind is not alive, the father's mother shall take the property, though the father and the son and descendants of a Kṣhatriyá woman, are alive. If the paternal grandmother is not alive, the father shall have the property."

[593.] This[5] order, which originated in the system which *Dháreshvara* worked out, is not confuted by us, because of its confutation, based on arguments &c, by *Vishvarúpa* and *others*, and also because of its opposition to the rule stated above.

[594.] With regard to that which is stated by the same *Author*,[6]—"If there are the two kinds of brothers, uterine and non-uterine, the uterine alone are the heirs, notwithstanding the existence of the non-uterine,"—it is to be respected, because it is founded on correct knowledge.

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[1] Manu's: see § 569, above.
[2] Miták. II. v. 6.
[3] Miták. II. v. 6; where the text is attributed to Bṛihad Manu.
[4] See Smṛi. Ch. xi. (§ 4), 24.
[5] Smṛi. Ch. xi. (§ 4), 24.
[6] Smṛi. Ch. xi. (§ 4), 25.

[*The succession of the Bándhavas.*]

[595.] The Bándhavas are exhibited in another law-code in the order of their greater propinquity: "The[1] sons of a man's own paternal aunt, the sons of his own maternal aunt, and the sons of his own maternal uncle, are recognized as a man's own Bándhavas. The sons of his father's paternal aunt, the sons of his father's maternal aunt, and the sons of his father's maternal uncle, are recognized as his father's Bándhavas. The sons of his mother's paternal aunt, the sons of his mother's maternal aunt, and the sons of his mother's maternal uncle, are recognized as his mother's Bándhavas."

[596.] If[2] there are no Gotrajas, the connection through property belongs to these.

[597.] There[3] also, the order to be recognized is, that a man's own Bándhavas first take the property, on account of their nearer relationship; if there are none, the father's Bándhavas take the property; if there are none, the mother's Bándhavas.

[598.] It must not be said here, that because of the greater eligibility of the mother than of the father, the enjoyment of the property belongs to her Bándhavas before the father's Bándhavas. We perceive it to be right that the enjoyment of the property should belong to the mother's Bándhavas after the father's Bándhavas, because, by the *text*, "Of these, the mother is more venerable than the father," the greater eligibility belongs to the mother alone, and not to the mother's Bándhavas.

[*The succession of the Achárya.*]

[599.] If[4] there are none, the Áchárya.

[1] This passage is variously attributed to Vṛiddha-Shátátapa, and Baudháyana: see Mitá́k. II. vi. 1, Colebrooke's note. In the Smṛi. Ch. xi. (§ 5), 13, 14, as here, it is anonymously quoted.

[2] Mitá́k. II. vi. 1.

[3] Mitá́k. II. vi. 2.

[4] Mitá́k. II. vii. 1: See Smṛi. Ch. xi. (§ 6), 4.

[600.] It is shown by this *text*,[1] "But that Bráhman they call an Áchárya, who must teach his pupil the Veda, together with its ritual and its inner meaning, after he has invested him with the sacred cord,"—that the connection through learning, like the connection through birth, is a source of the divisibility of property.

[*The succession of the Disciple.*]

[601.] If[2] there is none, the disciple; because the connection through learning exists in the disciple also.

[602.] Wherefore *Ápastamba*:[3] "If he has no son, he who is his nearest Sapiṇḍa · if there is none, his Áchárya: if his Áchárya is not alive, his disciple."

[603.] Hence, by the words, "If he has no son, he who is the nearest," in this text, the connection through birth is the source of the division of the property; and by the words, "If there is none, his Áchárya," and the rest, the connection through learning is the occasion of the division of the property.

[*The succession of the Fellow-Student.*]

[604.] If[4] he has no disciple, his fellow-student takes his property.

[605.] He[5] who received his investiture, and his instruction in reciting the Veda, and in the knowledge of its meaning, together with him, from the same Áchárya, is a fellow-student, equal to a brother.

[*The succession to the property of an heirless Bráhman.*]

[606.] *Viṇáneshvara*[6] says, that if there is none, any Shro-

[1] See § 421, above. [2] Mitâk. II. vii. 1; Smṛi. Ch. xi. (§ 6), 1, 4.
[3] Ápa. II. vi. 14., vv. 2, 3. Mitâk. II. vii. 1.
[4] Mitâk. II. vii. 2; Smṛi. Ch. xi. (§ 6), 1.
[5] Mitâk. II. vii. 2; Smṛi. Ch. xi. (§ 6), 3.
[6] Mitâk. II. vii. 3; Smṛi. Ch. xi. (§ 6), 5, 6.

triya may take the wealth of a Bráhmaṇ, in accordance with the text of *Gautama*:[1] "Shrotriyas shall take the estate of an issueless Bráhmaṇ."

[607.] *Bhárúchi*, however, and *others*, say, that by virtue of the fraternal equality of the fellow-student, it belongs to his sons and wives; and that it goes to a Shrotriya Bráhmaṇ when he has no wives and the rest.

[608.] But *Asaháya* and *others* say, that after the connection by birth, this property goes to the Áchárya, by virtue of the connection through learning. If he is not alive, it goes to his son. If he is not alive, it goes to his wife. To his wife, because of her equality with the mother of the owner of the estate; to the Áchárya's son, because of his equality with the Áchárya. When both are not alive, it goes to the disciple. If he is not alive, it goes to his son. If he is not alive, it goes to his fellow-student. If he is not alive, it goes to a pure Shrotriya Bráhmaṇ. If there is none, it goes to the Shrotriya's mother. If there is none, it goes to the Bráhmaṇ's mother.

[609.] As *Manu*[2] says: "When none of all these are living, Bráhmaṇs learned in the three Vedas, pure, and self-controlled, take the estate. Thus religious duty will not suffer decay."

[610.] The king[3] shall never take the wealth of a Bráhmaṇ, according to the text of *Manu*:[4] "It is established for ever, that the wealth of a Bráhmaṇ shall never be taken by the king."

[611.] It is also said by *Nárada*:[5] "If there are no heirs whatever of a Bráhmaṇ's substance at his death, it must be given to a Bráhmaṇ alone: otherwise the king will incur sin."

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[1] Gaut. xxviii. 41.
[2] Manu, ix. 188; Miták. II. vii. 4; Smṛi. Ch. xi. (§ 6), 5.
[3] Miták. II. vii. 5; Smṛi. Ch. xi. (§ 6) 5. [4] Manu, ix 189.
[5] Miták. II. vii. 5, with Colebrooke's note; Smṛi. Ch. xi. (§ 6), 6.

[*The succession to the property of heirless men of the other Classes.*]

[612.] With regard to that which is said by *Manu*,[1]—"But of the other classes, if all are wanting, the king shall take,"—the meaning is, that setting aside the Shúdra, the property of the Kṣhatriya and Vaishya classes alone, when there is no one down to the fellow-student, the king shall take, not a Bráhmaṇ.

[613.] But[2] the property of a Shúdra goes to the king when there is none down to a brother; "If the Shúdra has no uterine brother, the king shall obtain his property."[3]

[*The succession to the property of Ascetics.*]

[614.] *Yájṇavalkya*,[4] after stating the order of taking heritage by the uterine line, because of its precedence in the two lines of those connected by birth and by learning, lays down the order of taking heritage by the line connected by learning: "The heirs of the estate of the Vánaprastha, the Yati, and the Brahmachárí, in their order, are the Áchárya, the virtuous disciple, and the religious brother of the same religious school."

[615.] The[5] meaning is, that "the heirs of the estate," that is, of the property, "of the Vánaprastha, the Yati, and the Brahmachárí, in their order," that is, in the inverted order, "are the Áchárya, the virtuous disciple, and the religious brother of the same religious school."

[616.] The Brahmachárí[6] is of two kinds; namely, the Upakurváṇa, and the Naiṣhṭhika.

[1] Manu, ix. 189; Miták. II. vii. 6; Smṛi. Ch. xi. (§ 6), 6.
[2] Smṛi. Ch. xi. (§ 6), 8.
[3] This text is from the Smṛiti Sangraha: see Smṛi. Ch. xi. (§ 6), 8.
[4] Yájṇ. ii. 137; Miták. II. viii. 1; Smṛi. Ch. xi. (§ 7), 1.
[5] Miták. II. viii. 2; Smṛi. Ch. xi. (§ 7), 1.
[6] Miták. II. viii. 3; Smṛi. Ch. xi. (§ 7), 2.

[617.] The mother and the rest take the property of the Upakurváṇa.

[618.] The Áchárya and the rest take the property of the Naiṣṭhika; because there the connection through learning is stronger than the uterine connection.

[619.] But[1] the virtuous disciples alone take the property of the Yati.

[620.] The Yati is of four kinds, according to the distinctions between the Kuṭíchaka, the Bahúdaka, the Haṃsa, and the Paramahaṃsa.

[621.] If the Áchárya of the Kuṭíchaka, the Bahúdaka and the Haṃsa, is not alive, the taking belongs to the disciple.

[622.] But, since the Paramahaṃsa has no Áchárya, his disciple alone takes.

[623.] The[2] religious brother of the same religious school takes the property of the Vánaprastha.

"Of the same religious school;" belonging to the same convent.

"The religious brother;" accepted as a brother. The meaning is, "made his own by brotherhood," through their discipleship under the same Guru.

[624.] *Vijńáneshvara*[3] says, that it is a descriptive compound, meaning, a disciple in the same convent who is a religious brother.

[625.] The[4] text of *Vasiṣṭha*,—"Those who have entered another state of life are not sharers,"—has this meaning, that connection with an estate is not by pleasure.

[626.] Since[5] it is said of the Vánaprastha, "Let[6] him make an accumulation of necessary things, sufficient for a day, a month, six months, or a year: and in the month of Áshvayuja

[1] Mitát. II. viii. 4.
[2] Mitát. II. viii. 5.
[3] See Mitát. II. viii. 5.
[4] Mitát. II. viii. 7.
[5] Mitát. II. viii. 8.
[6] Yájn. III. 47.

let him abandon that which is made;"—and since it is said of the Yati, "He must wear clothes to cover his nakedness;" and similarly, "He must take such things as are necessary for the yoga, and a pair of sandals;"—and, "The Naiṣhṭhika possesses clothes and the rest sufficient for his body and for his pilgrimages;"—it is to be recognized, that it is proper to explain the manner of their division.

[*The doctrine of Lakṣhmídhara.*]

[627.] Here follows the doctrine of *Lakṣhmídhara.*

[628.] Here the venerable *Lakṣhmídhara*[1] says: The property of a deceased, unreunited man, who has no surviving son, goes in the first instance to his wife. If she is not alive, it goes to his daughter. If she is not alive, it goes to his daughter's son, by virtue of the word "also."[2] If he is not alive, his mother and father shall take. If they are not alive, it goes to his brother. If he is not alive, it goes to his son. If he is not alive, his Bándhavas must take in their order.

[629.] In the first instance, the succession to the estate is in the wife and the rest, in his own family. After them, the succession is in his father's family, in his father's brother, and his son, and the rest. After them, the succession is in his paternal grandfather's father, as far as the seventh degree. After them, in the Samánodakas. If there are none, the succession is in his own Bandhus: after them, in his father's Bandhus: after them, in his mother's Bandhus: and down to the Shrotriya.

[630.] In this way, the property goes to the daughter after the wife. It descends regardless of the fruitfulness or fruitlessness of the daughters.

[631.] Therefore, the plural form "daughters"[3] is sig-

[1] This summary of the doctrine of Lakshmídhara extends to § 709, below.
[2] In Yájn̤.'s text, § 399, above.
[3] In Yájn̤.'s text, § 399, above.

nificant. Hence, similarly, the plural form "brothers,"[1] is used without regard to the distinction between the fruitful or the childless condition of the brothers. Hence also, the singular form "wife." In the case of competition between two wives, the one having children, and the other childless, the immoveable property belongs to her who has children, and not to her who is childless. Hence also, in the words "their sons," in the case of competition between a brother's sons, the one having children, and the other childless, the taking of the estate belongs to him who has children. Similarly, further on also; the use of the plural form "fellow-students," for those who dwell in the same place as for those who dwell in various places, is for the sake of respect.

[632.] Moreover, although the estate which goes to a daughter is obstructed, it obtains the nature of unobstructed heritage at the time of its devolution on the daughter, if there is a daughter's son in existence.

[633.] The word "alone," teaches, that the acquisition of ownership simultaneously belongs to the conjoined daughter's son, by the unexpressed conjunctive meaning of the word "also."

[634.] So also the phrase, "the brothers likewise;" the word "likewise," is correlated with the word "as," connecting it with the phrase "their sons," by virtue of the perpetual association of the words 'what' and 'that.'

[635.] Hence, the connection is this:—After the devolution of the heritage upon the father, authority over the heritage, by virtue of its being unobstructed, belongs to the sons who are included in the word "brothers." So also, when they have sons, the heritage is unobstructed.

[636.] *Somashekhara* says:—"With regard to that which is said by *Vijñánayogí*,[2]—"The property goes in the first instance

[1] In the same text: so also the other terms following.

[2] Miták. II. iii. 2.

to the mother, by the force of the elliptical compound, 'both parents:' if she is not alive, it goes to the father;"—it is not so: since the dual, like the plural, has the faculty of expressing equal pre-eminence, the proprietorship of both in his estate is equal: but that kind of share-taking has its foundation in reason, in accordance with the text of *the school of Vishṇu:* "He shall take a share by the rule of the reception of the seed, in conformity with the *text*, "A male, when the seed of the male preponderates."

[637.] Not so: if it were so, the succession after the brother's son in the father's group, would in that case be in the maternal uncles and the rest, following the order of their connection with the mother, and not in the group of the paternal great-grandfather. As *Bhárúchi* says, in commenting on the text of *Vishṇu:* "The word "seed," means the 'piṇḍa:' having set that free here, it seeks association with the piṇḍa: because of the mother's Sapiṇḍaship with the father, the succession belongs to them both: the precedence belongs to the father: if he is not alive, it belongs to the mother."

[638.] It is to be understood, that this is the purport of the text of *the school of Vishṇu* which the author of the *Chandriká*[1] has exemplified.

[639.] Here the truth is as follows:—As in the case of a father's heritage, his son's appropriation of the heritage is bound up, and the son is proprietor in his father's wealth by reason of his sonship; so, in the instance of the daughter and the rest: if her issue in the shape of a son is in existence, his proprietorship is by his sonship: hence the words, "their sons," are used.

[640.] If it be said, that by the word "their," in this place, it seems that the brother of a sonless man is meant, and not a

[1] Smṛi. Ch. xi. (§ 3), 3; xi. (§ 5), 9 ff.

mere brother, and that his son is not eligible for unobstructed heritage:—

[641.] Not so: the phrase, "brother of a sonless man," comes from the nature of the word which is associated with the word "brother:" the particular kind of brother is indicated by the addition of the adjective "sonless" to the word "brother," and not to the word "their;" because the signification of the word does not extend so far as that.

[642.] It must not be said here, that by taking the estate, the duty of discharging the debts created by him would belong to his brother's sons; and in that case the *text*, "He who takes the estate must discharge the debts," would contradict it by its universality: nor can that be an agreement; because it is established everywhere that debts must be paid. His debts must be paid by them, because of the taking of the estate which belonged to him, in accordance with all that has been said before.

[643.] Here this must be mentioned:—The text of *the school of Vishṇu* says, "On the death of all down to the daughter's son, the mother and father shall take;" and the text of *Yájṇavalkya*,[1] "The wife, the daughters also &c," says, that on the death of all down to the daughter's son, who is included in the word "also," the mother and father take the property by the rule of the pinḍa: whereas, after the death of the daughter's son, the property goes to his son, and does not go to the mother and father.

[644.] The correct doctrine here is this:—The purport of the text of *Yájṇavalkya* is to be accurately determined by the words "also" and "alone;" namely, that even in the case of obstructed property, when male issue is in existence, the heritage is unobstructed.

[645.] By the force of the *text*, "He who takes the estate

[1] § 399, above.

must discharge the debts," considering that the taking of the estate is a substantial matter, the payment of the debts is a proper thing: but the proprietorship is unobstructed.

[646.] Therefore, when a daughter's son takes the heritage, it is unobstructed; not when a daughter takes. If it were so when the daughter takes, the estate to which the daughter's son succeeds, would, in his absence, go to the mother and father: but this all learned men disallow. In the case of the succession to an estate by a daughter who has no issue, or by one who has no issue in the shape of an appointed-daughter, her estate, after her death, would pass to her daughters, or her relations; and that would not be right.

[647.] Therefore, it is ordained: "These take the paternal estate of a sonless daughter, namely, the father, the brother, his son, and the other other Gotrajas; not the Bándhavas."

"The Bándhavas;" the maternal uncles and the rest, and the father's sister and the rest.

[648.] Therefore *Vishṇu:* "The estate of a childless woman does not go to the Bándhavas."

[649.] The meaning is this:—The estate of childless women, or of a childless man, is obstructed heritage, and passes to the Sagotra relations;[1] but not to the relations[2] of childless daughters, or of those who are connected with the issue in the form of an appointed daughter; because Sagotraship does not belong to them.

[650.] Wherefore *Hárita*[3] says, in the case of the wife: "The sonless wife, who guards her husband's bed, and is steadfast in her continence, and docile, shall have possession until her death: after her the heirs shall have it."

[651.] By the *text*, "The sonless wife," here, and by the *text*,[4] "The estate of a childless woman does not go to her

[1] Jṇáti.
[2] Jṇáti.
[3] See Kátyáyana's text, § 521, above.
[4] Vishṇu's, § 648, above.

Bándhavas,"—since the two words "childless" and "sonless" agree in the same meaning, the property of a daughter who has an appointed-daughter and issue together, does not go to her appointed-daughter after her daughter.

[652.] Hence the same *Author* says: "It does not go to the appointed-daughter; it does not go to the Bándhavas; but the Jn̲átis shall take the property of a sonless man who has an estate."

[653.] Here *some* say:—The daughter's son, included in the word "also," in the text,[1] "The wife, the daughters also alone," is not indicated by the determinative meaning of the word "alone;" and therefore, though the property goes to a daughter's son, it goes to the mother and father, when the daughter's son is not alive, and not to his son.

[654.] The *Ancients* do not agree with this: the conclusion of the *Ancients* versed in the three Vedas, is, that the property goes to the daughter's son, and if the daughter's son is not alive, it goes to his son.

[655.] Therefore, when it goes to a daughter, it passes on to the daughter's son: and if he has a son in existence, his estate casts glances at him also.

[656.] But there is this specialty; that if there is no one alive down to the daughter's son, it does not pass on to the daughter's son's son: but the estate clings to the mother and father; because in them there is an intermediate nearer relationship.

[657.] If it be said: Since the succession of the mother and father is nearer than the succession of the daughter's son, seeing that when the daughter is not alive the succession does not belong to him, the mother and father should come in after the daughter:—

[1] Yájn'y: § 399, above.

[658.] Not so: a nearer relationship belongs to the daughter's son than to the mother and father.

[659.] The text of *Vishṇu*[1] says: "When there is no son, nor son's son, the daughter's son shall obtain the property; for, in making the invocation of their ancestors, a daughter's sons are reckoned as a son's sons."

[660.] And the text[2] of *Manu*: "Whether created or not created, by that son of the same class whom she shall obtain, his maternal grandfather shall become possessor of a son's son: he shall present his funeral-ball, and shall take his property."

[661.] Here the expression, "or not created," is used for the purpose of illustration; because the capacity of the son of the created appointed-daughter to take unobstructed heritage, by virtue of his sonship, is stated by his taking the half-share. The maternal grandfather becomes "possessor of a son's son," by the son of the uncreated, just as by the son of the created.

[662.] By this, the *text*, "The son of the appointed-daughter must perform the funeral ceremonies[3] of his maternal grandfather according to rule,"—is set aside; because the son of the appointed-daughter is mentioned amongst the sons.

The grandson of the wife is alone spoken of by the term, "the son of the appointed-daughter."

[663.] The *Ancients* are in conflict in their explanation of the two texts of *Manu* and *Vishṇu*; saying, that the funeral ceremonies of a daughter's son for his maternal grandfather have a substantial cause; and are not, like the funeral ceremonies for a father, without a substantial cause.

[664.] That is to say; the performance of the shráddha of a maternal grandfather by his daughter's son is attached to the taking of his property; according to the text of *Vishṇu*,[4] "He who inherits from any one, must perform the shráddha for

[1] § 563, above.
[2] See § 564, above.
[3] Vishṇu, xv. 49.
[4] Shráddha.

him;" and in accordance with the text of *Vyása*, "The shráddha of the maternal grandfathers must of necessity always be performed according to law by the daughter's son who takes their property, in return for their substance."

[665.] With regard to that which is said by *Pulastya*,—"Three are spoken of as maternal grandfathers, beginning with the mother's father; the daughter's sons must perform their shráddha, as their father's,"—it is to be understood, that it refers to the case of the shráddha of the maternal grandfather, which is conformable with the shráddha of the father.

[666.] As it is said by *Pitámaha*: "Wherever fathers are worshipped, there also the maternal grandfathers: it must be done without any difference; if a difference is made, he shall go to hell."

[667.] *Vyása* also: "The twice-born man must satisfy his fathers and his maternal grandfathers with the shráddha: if he is free from the debt due to his ancestors, he shall go to the world of sacrifices."

[668.] In the *Skánda Puráṇa* also: "When he has performed the paternal shráddha to the three beginning with the father, he shall similarly perform his maternal grandfathers' also, from motives of unindebtedness."

[669.] With regard to the *text*,[1] "The son of the appointed-daughter must perform the shráddha of his maternal grandfather according to rule: he who is connected with the substance of both, must perform the ceremonies of both,"—

[670.] *Some* say here: There are two kinds of sons of appointed-daughters: the one, connected with his maternal grandfather; the other, connected with his father as well as with his maternal grandfather: the maternal grandfather's shráddha is to be performed by him who is connected with his maternal grandfather; and the ceremonies of both are to be performed by him who is connected with both.

[1] See § 662, above.

[671.] The purport is this:—Since the term "maternal grandfather," may have reference to him, whether it is the seat of a compound of the possessive case, thus, "the son of a Putriká," or the seat of a descriptive compound, thus, "the Putriká-son," the connection of the son of the appointed-daughter[1] with his maternal grandfather arises out of the voluntary address,[2] "The son who is born of her shall be my son:" but the connection with both belongs to the other.

[672.] Here it is said in reply, that *Vishṇu* says that a daughter's son, like a son, has authority in his maternal grandfather's shráddha: "The shráddha of a daughter's son to his maternal grandfather is without an interested motive."

"Interested motive;" his own succession to his estate.

[673.] The meaning is, that the authority of a daughter's son in the shráddha of his maternal grandfather, is as it were constant.

[674.] Here *Bhárúchi* says: "By *Vishṇu* saying, "without an interested motive," it is to be understood, that the succession to its performance does not belong to the daughter's son, when there are sons and others in existence to perform it otherwise by reason of their nearer relationship."

Here, by the expression, "and others," the wife is intended.

[675.] Although women have no authority in ceremonies performed with fire and learning, nevertheless, by the force of such *texts* as this,[3] "The wife shall alone present his funeral-ball, and shall receive his entire share," they have authority in that matter.

[676.] So also *Gautama:* "The authority of daughters' sons in their maternal grandfather's shráddha, is as it were constant."

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[1] Putriká.

[2] See Manu, ix. 127.

[3] Vṛiddha Manu's; § 504, above.

"As it were constant;" the comparison is in the inherent meaning.

[677.] Hence the *text*,[1] "Whether created or not created, by that son of the same class whom she shall obtain, his maternal grandfather shall become possessor of a son's son: he shall present his funeral-ball, and shall take his property,"—is to be understood to refer to the son of a consort who is designated a Patní, and to the son of a daughter who is a created appointed-daughter.

[678.] If it be said:—The text, "Whether created or not created &c," thus refers to the creation of an appointed-daughter, by the word "created," and to a daughter of one married by the Gándharva and other marriages, by the word "uncreated." By the force of the phrase, "by him his maternal grandfather shall become possessor of a son's son," both of them possess the relationship of grandsons; the appointed-daughter through her sonship, and her son through his grandsonship. Seeing that the grandsonship is there, since there is no loss of either the Sápiṇḍya or the Sagotra relationship to the maternal grandfather in the Gándharva marriage, the authority in the maternal grandfather's shráddha would be as it were constant for both of them, and not for the daughter's son alone;—

[679.] Not so: since the inheritance of the property in the passage, "he shall present his funeral-ball, and shall take his property,"—has its source in the wife;[2] and since she who is married by the Gándharva and the other marriages is excluded by the term "patní," which implies association in sacrifices; the inheritance of property having its source in the wife, is far removed from her sons. Moreover, the expression, "possessor of a son's son," has no force in the case of the son of the daughter of a woman married by the Gándharva and other

[1] Manu's; § 660, above. [2] Patní.

marriages; because his character as a daughter's son[1] is inferior.

[680.] If it be said:—The text of *Vishṇu*[2] says, "He who inherits from any one, must perform the shráddha for him;" and the other text of *Vishṇu* says, "The shráddha of a daughter's son to his maternal grandfather is without an interested motive;"—but this opposes both:—

[681.] Not so. Here the doctrine of the venerable *Bhárúchi* is brought forward. "Its purport is this: "He who," having authority in the shraddha, "inherits" property "from any one," through propinquity, "must preform the shráddha" with that wealth which he has received, "for him," that is, for his benefit, as an exchange of good fortune."

[682.] It is to be understood that it is laid down by *Bhárúchi*, from the intention of the chapter, that in the case where there are several sons, and in the case where there are several daughters' sons, in the matter of the funeral ceremonies of a father or of a maternal grandfather, the authority in the performance of the nine shráddhas and the sixteen shráddhas, does not belong to the many, but to one alone.

[683.] *Someshvara*, however, disregarding the context, and by the force of the literal meaning of the text, says, that the *text*,[3] "He who inherits from any one, must perform the shráddha for him,"—refers to such heirs as are different from sons and daughters' sons.

[684.] This also is said by *Vishṇu* immediately afterwards: "The sixteen shráddhas must be performed by one able man with the riches which he has received."

The mention of the sixteen shráddhas implies the nine shráddhas.

[685.] Hence *Gautama* says: "He must perform the nine

[1] Dauhitratva.

[2] See § 664, above.

[3] Vishṇu's; § 664, above.

shráddhas and the sixteen shráddhas also with the sum of the wealth."

[686.] The word "also," indicates the condiments for the road. By the word "the sum," we learn, that the authority belongs to one person only, and not to several.

[687.] In the verse of *Vishṇu*, the word "able," includes power and authority.

[688.] Therefore, the meaning is this:—The word "one,"[1] refers to the fittest: the fittest is the eldest: if he has ability, he alone has the authority; otherwise, the rule of the next succeeding one is the settled meaning. "Able man;" means strong of limb. "One," namely amongst the daughters' sons, alone has the authority.

[689.] It is to be borne in mind, that the *text*,[2] "He who inherits from any one, must perform the shráddha for him," has been explained by *Bhárúchi* in this manner from its context in the chapter; and that by the venerable *Someshvara*, whose stand-point is reason, the chapter is passed over from motives of reason.

[690.] Therefore, it is to be understood, that the remaining texts which create the heirs to an estate,—"The[3] shráddha of the maternal grandfathers must of necessity be performed by him who takes the property," and others,—have reference to the sixteen shráddhas.

[691.] The meaning of the *text*,[4] "The shráddha of the maternal grandfathers must of necessity always be performed according to law by the daughter's son who takes their property, in return for their substance,"—by adhering to the doctrine of *Someshvara* and *Bhárúchi*, is as follows:—

[692.] By the word "substance," the purpose is indicated;

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[1] In Vishṇu's text, § 684, above.
[2] Vishṇu's; § 664, above.
[3] See Vyása's; § 664, above.
[4] Vyása's; § 664, above.

namely, to the extent of the debt: "in return for" that; in order to be free from the debt.

[693.] When there are many contending daughters' sons, one able one is alone the heir. After he has taken the property, he must perform the sixteen shráddhas, the nine shráddhas, and the accompanying oblations, with the wealth which he has taken; because, when the sons are far away, or there are none in existence, and when the widow is not alive, and when the next succeeding performers of the ceremonies are living, the authority of any other more distant performer is excluded.

[694.] Therefore *Vishṇu* says: "While the performer is living, the right of another to perform is not ordained; nor the next succeeding right to perform of the next succeeding performer."

"The shráddha," is to be supplied: *some* say, "the sacramental ceremonies."

[695.] Hence *Vyása*:[1] "The twice-born man must satisfy his fathers and his maternal grandfathers with the shráddha: if he is free from the debt due to his ancestors, he shall go to the world of sacrifices."

[696.] Unindebtedness here refers to the debts to these three, namely, to the Ṛishis by religious study, to the Gods by means of sacrifice, and to the Ancestors by means of offspring: and it is established that it belongs to a daughter's son, as to a son's son, by his character as the offspring of his maternal grandfather, and not otherwise.

[697.] But, since a daughter has no authority in ceremonies performed with fire and learning, and the authority in them belongs to the daughter's son alone, the maternal grandfather's unindebtedness arises from his obtaining a daughter's son through his daughter.

[1] See § 667, above.

[698.] Hence, a daughter's son is placed separate from a son's son.

[699.] Hence, a daughter's son has no immediate eligibility for the appropriation of heritage without obstruction, like a son's son, but through the daughter.

[700.] Hence, since a daughter's son is only partially competent to be a son's son, his unindebtedness arises from his performance of his maternal grandfather's funeral ceremonies as a son.

[701.] Hence the Vedic *text:* "A daughter is declared to be competent to be a son, and a daughter's son to be a son's son."

[702.] It must not be supposed that this refers to the creation of an appointed-daughter; because of the absence of connection in the dependent word "competent:" in the creation of an appointed-daughter, the appointed-daughter becomes a son; an appointed-daughter has no competency to be a son.

[703.] Hence, it is established, that a daughter is partially competent to be a son, and a daughter's son is partially competent to be a son's son.

[704.] With regard to the *text*[1] which speaks of the conjoined shráddha of the maternal grandfather,—"Wherever fathers are worshipped, there also the maternal grandfathers: it must be done without any difference; if a difference is made, he shall go to hell,"—it is common to the two maternal grandfathers, namely, to him who has a living son, and to him who has no living son.

[705.] Therefore *Yájñavalkya*[2] says: "Two turning eastwards, in that[3] of the gods; three northwards, in that of the ancestors; or one at each: the same also in that of the

[1] Pitámaha's; § 666, above.

[2] Yájñ. i. 228.

[3] Namely, the shráddha.

maternal grandfathers: or else the ritual of the obsequial gods."

[706.] The text,[1] "The son of the appointed-daughter must perform the shráddha of his maternal grandfather according to rule &c," is in conformity with that text.

[707.] But *Vijńánayogí* and *others* say, that the conjoined shráddha of the maternal grandfather, which is in question, is optional.

[708.] Wherefore it is established, that, since the daughter's son has a nearer relationship than the mother and father, through the visible and invisible benefits, the property goes to him.

[709.] This exceedingly profound doctrine of *Lakṣhmídhar-áchárya*[2] has been exhibited in a mere general form.

[*Reunion.*]

[710.] Then *Vishṇu* states that which supersedes the rule of the wife and daughter: "The property of a reunited man does not go to his wife."

[711.] *Bhárúchi* says here: "As in the undivided state, so also in the reunited state, the ownership of several men in the property is settled together; so that, even when the ownership of one man ceases at his death, the ownership of the other men continues as before: and therefore, the question, "Who shall take?", lies dormant. Similarly, the rule of reunion makes its appearance with a sudden swoop to harass the rule of the wife and daughter."

[712.] The truth is this:—The rule of reunion means, the mutual adventurousness, involving the burden of contingent loss, which attaches to a continuance in union, after making an agreement at some time subsequent to a division, to unite the

[1] See § 662, above.

[2] See § 627, above.

wealth, to conduct the family affairs together, and to bear the profit and loss.

[713.] This order of succession to the ownership of reunited persons is founded on natural right; because, by this rule, reunited persons possess more power than the wife and daughter, and also than the unreunited father and the rest who are included in that order.[1]

[714.] The reunited man:—Reunion[2] is the subsequent mingling together of the divided wealth with other divided wealth: he who has that, is a reunited man.

[715.] The meaning is, that another reunited man must take the property of that man when sonless; and not the wife and the rest.

[716.] The[3] state of reunion does not belong to all; but to the father, brother, and paternal uncle, alone.

[717.] Therefore *Bṛihaspati:* "A divided man who dwells again in the same place with his father, or brother, or paternal uncle, through affection, is termed a reunited man."

[718.] *Vishṇu* also: "Reunion is with a paternal uncle, a father, or a brother, alone; not with others."

[719.] *Bhárúchi* says here: "This rule of reunion is ambiguous."

[720.] The meaning is this:—Reunion with a paternal uncle, a father, or a brother, is voluntary; because of the use of the word "affection" in the text,[4] "or with his paternal uncle through affection."

[721.] Hence this is not included in the chapter, "On the Concerns of Partners." There the rule of the wife and daughter comes in; for, amongst partners in business, the wife &c

[1] Namely, the order of succession in Yáj̱n̤.'s text, in § 399, above.
[2] Smṛi. Ch. xii. 2. [3] Miták. II. ix. 3; Smṛi. Ch. xii. 1.
[4] Bṛihaspati's; § 717, above.

of one deceased, take his share of the property, by the text of *Vishṇu*.

[722.] The meaning is this:—The texts of *Vishṇu*,[1]—"Reunion is with a paternal uncle, a father, or a brother, alone; not with others;" and, "The[2] property of a reunited man does not go to his wife,"—being a supercession of the rule of the wife and daughter, the text, "Reunion is with a father &c alone, not with others," is an exact definition. Wherefore, this rule has no meaning amongst partners in business.

[723.] Here *Vishṇu*[3] states a special matter: "Amongst reunited men, he who presents the funeral-ball is he who takes the share."

[724.] Here *Bhárúchi* says: "In the text,[4]—"Of these, the presenter of the funeral-ball, and the taker of the share,"—the offering of the funeral-ball is the motive-cause in the taking of the share."

[725.] The truth is this:—It is established by all the law-codes, that the taking of the share is the motive-cause of the presentation of the funeral-ball; since the order of the meaning in the *text*, "Of these, the presenter of the funeral-ball, and the taker of the share," has more force than the order of the reading.

[726.] So it is said, that in the case of an unreunited man, the rule implied in the presentation of the funeral-ball, is a supercession of the rule[5] of mutual adventurousness involving the burden of contingent loss: and therefore, that its purport is merely indicatory, and not that the presentation of the funeral-ball is in very truth the motive-cause of the taking of the share.

[727.] Hence, in the present chapter, both the rule of reunion and the interior rule, come in according to their suit-

[1] § 718, above.
[2] § 710, above.
[3] See Vishṇu, xv. 40.
[4] § 506, above.
[5] See § 712, above.

ability: and therefore, in some places, the right of taking the property by the reunited man by the rule of reunion is stated; in other places, the right of taking the property by the reunited man by the interior rule; and in others, the right of taking the property by the unreunited man by the interior rule.

[728.] Thus, by making it evident in these three ways, that the wife and the rest do not take the property, the result of the rule is established.

[729.] Wherefore, the meaning of the text of *Vishṇu*[1] is, that the property of a reunited man, who has no son, nor brother, nor father, goes to his paternal uncle.

[730.] Hence *Yájṇavalkya*[2] says: "Of the reunited man, the reunited man."

[731.] Where, again, a paternal uncle and a uterine brother are reunited, there, *Yájṇavalkya*[3] says, that the property of the reunited man goes to his uterine brother, and not to the paternal uncle; "Of the uterine brother, his uterine brother."

[732.] The meaning of the text is, that the uterine brother alone shall take the property of his uterine reunited brother; and, though reunited, the paternal uncle and the rest shall not take; because to him alone belongs the authority in the presentation of his funeral-ball.

[733.] *Yájṇavalkya*[4] says, that the share of a reunited man must be given to his son born after his death: it must not be taken; "He shall give, and he shall retain, the share of him who is born, and of him who is dead."

[734.] Where, again, some of the non-uterine brothers are reunited, there being no uterine brothers, and the paternal uncles also, and the rest, are reunited, there *Yájṇavalkya*[5]

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[1] § 710, above. [2] Yájṇ. ii. 138. See Mitá. II. ix. 7.
[3] Yájṇ. ii. 138. See Mitá. II. ix. 5.
[4] Yájṇ. ii. 138. See Mitá. II. ix. 4.
[5] Yájṇ. ii. 139. See Mitá. II. ix. 7; and Mandlik, p. 223.

says, that the property goes to the non-uterine brothers alone; "But the non-uterine brother who is reunited, must not take the property of his non-uterine brother."

"Who is unreunited," is to be supplied.

[735.] As *Vishṇu*[1] says: "Amongst non-uterine brothers, the reunited shall take."

[736.] Here *Bhárúchi* says: "The expression, "amongst non-uterine brothers," is in the particularizing possessive case; in the midst "of the non-uterine brothers," "the reunited" alone "shall take" the property."

[737.] The truth is this:—Although the authority of his reunited and unreunited non-uterine brothers in the presentation of his funeral-ball is equal, by virtue of the *saying*, "By a disregard of the difference between the eldest and the youngest and the rest;" nevertheless, since the rule[2] exists in the form of the mutual adventurousness involving the burden of contingent loss, there is not any absence of demonstration that the right to take the property is there alone, notwithstanding the equality by the interior rule in the shape of the authority in the presentation of the funeral-ball.

[738.] It has been said, that the property of a man reunited with his father, brother, or paternal uncle, does not go to his father, nor yet to his paternal uncle, but goes to his brother alone: if so, the succession to ownership would be scriptural, and not based on reason; and therefore it would contradict that which was said before: wherefore, even in the case of a reunited man, reason alone should be stated in the precedence of the brother over the father and the rest.

[739.] It is replied:—This much has been said,[3] that in the subsequent reunion of divided men, its continuance has the mutual adventurousness involving the burden of contingent

[1] See Vishṇu, xvii. 17.
[2] § 712, above.
[3] See § 712, above.

loss, set before it: and that kind of perseverance belongs to brothers alone, not to a father; because of the accomplished or unaccomplished association with the impossibility of preventing the succession of the essential losses and the external losses in the uncertain reunion between a father and his son.

[740.] It is written, "As a son when poor, imposes on his father, so a father, when poor, imposes on his son:" wherefore, since the continuance has the mutual adventurousness involving the burden of contingent loss set before it, in the reunion of brothers alone, and not in the reunion of a father, the precedence of the brother is based on natural right.

[741.] "If so, at the death of a father divided from his son, and reunited with his own brothers, his property would go to his reunited brothers; it would not go to his son."

[742.] Not so; because, like the rule of the wife and daughter, the rule of reunion applies to the case of a sonless man.

[743.] As *Nárada*[1] says, in his section on reunion: "If any one of the brothers should die without issue, or go abroad."

[744.] *Devala* also: "Then, the uterine brothers of a sonless man must divide his heritage."

[745.] *Shankha* also: "The wealth of a sonless man who has gone to heaven, goes to his brother."

[746.] If it be said, that the existing son spoken of, is one who is divided, and not one who is reunited:—

[747.] How can that be? Is not an unreunited son a son? For, the precedence of the son is owing to his sonship alone, and not to his state of reunion, nor to his undivided state: forasmuch as no doubt can arise respecting the right to take

[1] Nárada, xiii. 25.

his property by another; since it is described by the selfhood mentioned in the prayer, "Thou hast sprung from each of his limbs."

[748.] Similarly also, just as the son, though divided, has the precedence over the wife and the rest by his sonship alone; even so, the son though unreunited, has the precedence over the reunited brother by his sonship alone; and therefore, the property goes to him.

[749.] If it be said:—For what purpose was the reunion of the father and his brother and the rest, when it is said, that the property of a father reunited with the paternal uncles and the rest, is destined for his son alone?—

[750.] It is said in reply: The formation of the reunion was for the sole purpose of profit during his lifetime: but it had no purpose at his natural death. Hence, wherever the ownership may be settled, upon just investigation after his death, there alone is it to be taken; and therefore, at the death of a reunited father, the property which remains after its enjoyment during the reunion with the reunited paternal uncles and the rest, and the debt which remains undischarged, are to be appropriated by the divided and unreunited sons alone. Thus there is no contradiction whatever.

[751.] *Yájñavalkya*[1] states the right of the unreunited alone to take the property by the interior rule: "Though unreunited, he shall obtain."

[752.] *Bhárúchi* says, that by the word "though," the uterine brother of the *text*,[2] "Of the uterine brother, his uterine brother," is brought forward.

[753.] But *Lakṣhmídhara* says, that by the word "though," the uterine brother alone is conjoined by the force of the phrase,[3] "the reunited when not born of a different mother."

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[1] Yájñ. ii. 139.

[2] Yájñ.'s; § 731, above.

[3] In the same text of Yájñ.

[754.] The meaning of that is this:—The unreunited uterine brother alone must take the property of the reunited; but he that is born of a different mother, though reunited, must not take. This is said, because the authority to present his funeral-ball belongs to him alone, though the unreunited brother has not the mutual adventurousness involving the burden of contingent loss.

[755.] By this rule it is to be understood, that amongst uterine brothers, on the death of the reunited middle one, though the authority in his funeral ceremonies belongs to the unreunited youngest, even when the reunited eldest is in existence,—the right to divide the share of the middle one does not belong to him.

[756.] Here *some* say:[1] They say, that in the text,[2] "Though unreunited, he shall obtain; the reunited &c," the meaning of the word "reunited" is two-fold, and describes a uterine brother, and an owner of reunited property.

[757.] The doctrine of *Vijńánayogí*[3] is, that the word "reunited," may be connected with both words by facing both ways; and, that the diverse meaning in the different sentences is no fault.

[758.] It is said, that the inheritance of the property belongs to sons reunited with their father; and, that the right of taking the father's property does not belong to unreunited sons: just as the right of taking the father's property belongs to the son born to a divided man, and not to the other sons.

[759.] Not so: the inheritance of the father's property falls to the lot of the son born after a division, by the following out of a hundred other *verses:* "Amongst divided men, a son born of a woman of the same class is a sharer in a division;"[4]—

[1] See Miták. II. ix. 9.
[2] See § 751, above.
[3] See Miták. II. ix. 7 to 11.
[4] Yájn. ii. 122.

"But he who is born after a division shall take only the paternal property;"—"The whole[1] of that which is self-acquired by a father divided from his sons, belongs to him who is born after he is divided: those who were previously born are denominated non-proprietors:" no single text of this kind appears which gives the father's property to a reunited son.

[760.] If it be said:—"If so, this would contradict that which was said before; inasmuch as the ownership in his father's property of a son born after a division, would be of scriptural origin:"—

[761.] Not so: division is of scriptural origin here, because the scriptural character of division is set forth when it is said, that division is to be made amongst those who are desirous of an increase of religious acts, by this[2] and other *texts:* "In division there would be an increase of religious duty:" therefore the ownership in his father's wealth of a son born after division arises from natural right.

[762.] That is to say; if, at the time of the appropriation of the father's wealth by the son born after division, the other divided brothers should take for themselves an equal share of the wealth, there would then be but a very small share for the son born after division; and therefore there would be an unequal division: and if, in order to remove that defect, they all should make a subsequent division with the son born after division, the previous division made by their father would then be in vain. The brothers must separate the reunited share, and give it to the reunited one, and take the father's wealth alone.

[763.] Hence, the proprietorship of reunited and unreunited sons in their father's wealth is properly equal.

[764.] So also *Bhárúchi* concludes, saying: "The liquida-

[1] Bṛihaspati: see Víram. iv. 12.

[2] Gaut.'s text, § 26, above.

tion of the debt created by a father by his reunited and unreunited sons by equal shares, is proper. Though there may be, through avarice, a desire for a division when there is a large quantity of wealth accumulated by their father, there is no division; forasmuch as no action is taken when there is a loss, because there is no disposition to bear the burden of a loss: but they say, that the text of *Manu*[1] is a reminder that the taking of the father's property belongs to the son born after the division alone."

[765.] As *Manu*[2] says: "Or he shall divide with those who may have reunited with him."

[766.] The meaning of this is, that the son born after division shall, after the father's death, divide with those who were divided and reunited with the father. And the implied meaning is, that the son born after division has no division with his unreunited brothers.

[767.] With regard to that which is said by *Manu*,[3] when treating of the division of a reunited man,—"Amongst these, if the eldest or the youngest should have been passed over at the distribution of shares, or should either of them die, his share shall not lapse: his uterine brothers, such of the brothers also as are reunited, and his uterine sisters, shall assemble together, and divide it equally:"—

[768.] *Vijńánayogí*[4] explains it thus: "Amongst these" reunited brothers, "if the eldest or the youngest" or the middlemost "should have been passed over," that is, should have lost his proper share either by entering another order, or by Bráhmaṇicide &c, or by death, "at the distribution of shares," that is, at the time of the delivery of the shares, (the affix 'taḥ'[5] is substituted for all the cases,) namely, at the

[1] See the next section
[2] Manu, ix. 216.
[3] Manu, ix. 211, 212.
[4] Miták. II. ix. 13.
[5] In the word, 'pradánataḥ,' "at the distribution," in the above text of Manu.

time of division, then "his share shall not lapse:" hence, it must be taken up separately; the meaning is, that the unreunited must not take. He states the devolution of that which is taken up; "his uterine brothers shall divide it." The meaning is, that "his uterine brothers," namely, such uterine brothers as are unreunited, "such of the brothers also as are reunited" and born of another mother, "and his uterine sisters," "shall assemble," that is, though they had gone to a foreign country, shall meet "together," that is, in concert, "and divide it," namely, the share taken up, "equally," that is, without being less or greater."

[769.] His meaning is this:—In the case of the non-uterine reunited brothers, the efficient cause in the taking of the share is their capacity to bear the burden of the loss: but, in the case of the uterine, the efficient cause in the taking of the share is the interior rule attached to their authority to present the funeral-ball: when there is no reunited uterine brother, both efficient causes are to be understood. Division, however, does not belong to the sisters, but some little is to be given from affection at the division of reunited property, just as at the division of heritage; because the connection of reunion does not belong to them, and division belongs to those alone who have that connection. Hence, the conclusion is, that equal division belongs to non-uterine reunited brothers, and to unreunited uterine brothers.

[770]. But *Aparárka*, the author of the *Chandriká*,[1] and *others* say, that the rule of natural right, "The wife, the daughters," is superseded by the scriptural order stated by *Shankha*, "The wealth of a reunited sonless man goes in the first place to his brother; if he is not alive, it goes to his father; if he is not alive, it goes to his well-conducted wife;"

[1] Smṛi. Ch. xii. 31.

and that therefore the *text*, "His uterine brothers must divide it," is the correct order.

[771.] It is not so: it has been shown above,[1] that the order stated by *Shankha* has the nature of natural right.

[772.] It is to be understood, that by the employment of the term "wife," in the text of *Shankha*, some little is to be given to the wife at the time of the division of reunited property, just as to the sisters.

[773.] Hence, the doctrine of *Bhárúchi* and *Vijñánayogí* is alone correct.

[*Supplementary.*]

[774.] Now, something supplementary to all the divisions is stated.

[775.] As *Manu*[2] says: "When a division of the debts and the property has been made according to precept, the whole of that which may subsequently be discovered, must be divided equally."

[776.] *Kátyáyana*, however, states a special matter:[3] "But that which has been concealed by any one, when it is subsequently discovered, the sons must divide it equally with the brothers, since the father is not alive."

[777.] The meaning is, that if the father is not alive, the whole of the sons must divide that which is discovered.[4]

[778.] As *Yájñavalkya*[5] says: "Whatever wealth is discovered, after a division has been made, to have been concealed by one from another, it is a settled rule that they must divide it subsequently in equal shares."

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[1] See § 745, with § 740.

[2] Manu, ix. 218. See Smṛi. Ch. xiv. 1. [3] Smṛi. Ch. xiv. 4.

[4] Smṛi. Ch. xiv. 5.

[5] Yájñ. ii. 12; Miták. I. ix. 1; Smṛi. Ch. xiv. 6.

[779.] Here,[1] by saying, "in equal shares," there is a prohibition of the division with deductions: and by saying, "they must divide," it is shown, that that which is discovered by any one is not to be taken by him alone.

[780.] *Bhárúchi*, *Aparárka*, *Someshvara*, and *others* say, that according to this text, it is understood that no blame attaches to the heirs in their abstraction of common property.

[781.] But *Vijńáneshvara*[2] says: "Now it is shown by *Manu*,[3] that in the abstraction of common wealth, blame attaches to the eldest alone, and not to the younger; "That eldest brother who through avarice cheats his younger brother, shall lose his primogeniture and his share, and be subject to punishment by the kings." This[4] is not the case of an eldest son alone, but of all the younger ones also: therefore the *scripture* says: "He who thrusts out a sharer from his share, or cheats him, punishes either his son or his grandson, if he does not punish him."

"He[5] who thrusts out a sharer," that is, one who has a right to a share, "from his share," that is, removes him from his share, or does not give him his share; he who is thrust out from his share does not thus punish the other, that is, destroy him, or make him criminal; and if he does not destroy him, he destroys either his son or his grandson. It is declared, that blame attaches to him who abstracts common wealth without special reference to the eldest."

[782.] Here the doctrine of *Bhárúchi* and the *others* is alone correct; because by both *Manu's* and *Kátyáyana's* texts, since it is a case of giving up a share, it is a case of violent division.

[783.] With regard to that which is said by *Kátyáyana*,[6]— "That property which is obtained by a divided man alone,

[1] Mitá. I. ix. 3.
[2] Mitá. I. ix. 5.
[3] Manu, ix. 213.
[4] Mitá. I. ix. 6.
[5] Mitá. I. ix. 7.
[6] See Smṛi. Ch. xiv. 8.

shall belong to him alone: but that which is obtained after being stolen, or lost, and that which was mentioned before, he shall subsequently divide: "—

"Mentioned before;" stated before in the *text*, "That which has been wrongfully abstracted &c." The employment of the expression, "mentioned before," is for the sake of corroboration.[1]

[784.] Therefore,[2] "That which has been wrongfully abstracted, obtained with difficulty, or irregularly divided, *Bhṛigu* says, must be subsequently divided in equal shares, when recovered."

"Irregularly divided;" divided in unequal shares, different from the mode stated in the books of authority.[3]

"Lost;" lost by deposits, &c, and subsequently recovered.

"Obtained with difficulty;" debts &c, in the hands of evil disposed people.

[785.] Thus it is the settled rule of the books of authority, that a division by equal shares alone,[4] is to be made by the brothers, of that which is discovered after a division, to have been abstracted by others, irregularly divided, lost, abstracted by one of themselves, or hard to be recovered.

## [*Proof of a Division.*]

[786.] Then *Nárada*[5] states the mode of the settlement of doubts respecting a division: "Divided brothers may reciprocally give evidence, undertake suretyship, and make donations and receipts; but not the undivided."

[787.] *Bṛihaspati*[6] says: "Persons possessed of property,

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[1] Smṛi. Ch. xiv. 8.
[2] Kátyáyana.
[3] Smṛi. Ch. xiv. 7.
[4] Smṛi. Ch. xiv. 9.
[5] See Mitá. II. xii. 4; Smṛi. Ch. xvi. 8.
[6] See Smṛi. Ch. xvi. 11.

who have distinct incomes and expenditure, and have mutual transactions in money-lending and trade, are no doubt divided."

[788.] *Vishṇu* also: "Mutual transactions in buying, selling, giving, receiving, suretyship, giving evidence, becoming partners, burying treasure, &c, are sources of division."

[789.] This is a source of authority in the case of purchase and sale. Hence, giving evidence, becoming surety, making donations, receipts, &c, are not mutually interchangeable affairs; because the undertaking of suretyship and the rest amongst brothers with respect to their divided paternal uncles and the rest, belongs to only one of them with the consent of the others.

[790.] Therefore the *text*, "That one who has obtained the consent of the others may undertake suretyship."

[791.] *Yájñavalkya*[1] says, with the same intention: "Suretyship, debt, and evidence, are not ordained between brothers, a wife and her husband, and a father and his sons, when in the undivided state."

"Reciprocally," is to be supplied.

[792.] Hence *the same author*[2] says: "When there is a denial of a division, the existence of the division is to be ascertained from relations, connections, witnesses, and written documents, and also from their private property in houses and land.'

[793.] "When[3] there is a denial of a division;" that is, when it is concealed.

"The existence of the division;" that is, the certainty of it.

"From relations;" namely, from their father's Bandhus, and their divided paternal uncles, and the rest.

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[1] Yájñ. ii. 52; see § 70, above; Smṛi. Ch. xvi. 10.
[2] Yájñ. ii. 149; Mitá. II. xii. 1; Smṛi. Ch. xvi. 1.
[3] Mitá. II. xii. 2, 3. See Smṛi. Ch. xvi. 2, ff.

"Connections;" namely, their mother's Bandhus, and their maternal uncles, and the rest.

"Witnesses;" namely, those who have the before-described credentials.

"By written documents;" namely, by the deed of division.

Similarly, "from their private property;" namely, separately made "houses and land."

By the words "and also," separate undertakings in agriculture &c, and the separate performance of the five great sacrifices and other religious duties, are included.

[794.] Therefore *Nárada:*[1] "When there is a doubt respecting the act of division amongst heirs, its ascertainment is by means of their relations, the deed of division, and the separate undertaking of affairs."

[795.] Here, written documents, witnesses, and the rest, have the nature of a memorial cause; because of their power of recollecting the completion of the division when there is a doubt respecting division. But the effectiveness of a division, even in the absence of efficient causes, shall be described later on. The effect of an absence of ten years, conjoined in the expression, "and also," in the phrase,[2] "and also from their private property in houses and land," shall also be described later on.

[*The effect of the characteristic marks.*]

[796.] If it be said, that in these two texts, the convincing capacity of the characteristic marks is stated by their equality with written documents and witnesses: and that cannot be; because the characteristic marks do not, like them, possess the power of affording information, seeing that their capacity is, by a form of reasoning, to afford assistance to proofs:—

[1] See Nárada, xiii. 39; Miták. II. xii. 3; Smṛi. Ch. xvi. 2.

[2] In Yájn.'s text, § 792, above.

[797.] Not so: in this subject of litigation, the characteristic marks possess the power of affording information alone; but the characteristic marks do not possess the capacity of affording assistance to proofs, as in the other seventeen subjects of litigation.

[798.] That is to say: amongst brothers capable of division, mutual transactions, such as debt, suretyship, evidence, donation, acceptance, and the worship of ancestors and gods, do not possess an equality of proof with the torch-bearer who shows stolen goods. Considering that these in some way imply a division, since they exclude the undivided by means of the *text*, "But not the undivided in any way &c," they are conjoined in the *text*,[1] "When there is a denial of a division &c," as characteristic marks, by reason of their precise equality with witnesses and written documents. In the other subjects of litigation, witnesses and documents possess the power of affording proof; and therefore, the assistance afforded by these belongs to the others. But here it is not so: but, by this very text, it is ascertained, that in this instance, a power of affording proof attaching to the characteristic marks, different from written documents and witnesses, is acknowledged.

[799.] Wherefore *Bṛihaspati* says:[2] "Where there are no witnesses, a heinous crime, the proprietorship of immovable property, and a previous division amongst the owners of an estate, may be ascertained by inference."

[800.] The meaning is, "when there are no" written documents or "witnesses." The use of the word "witness," implies strong proof: hence, written documents are included.

[801.] Wherefore, it is further said by *the same author*:[3] "Those by whom these affairs are transacted with their fellow-

[1] Yájn.'s; § 792, above.
[2] See Smṛi. Ch. xvi. 12.
[3] See Smṛi. Ch. xvi. 9.

heirs in the world, must be considered to be divided, even without written documents."

The use of the term "written documents," includes witnesses also.

[802.] *Some* say, that, here it is to be understood, that when there is a denial of a division, the characteristic marks possess equal force with written documents and witnesses. Hence, the author of the *Chandriká*[1] says, in his commentary on the words "are transacted," that "separately or together," must be supplied. It is not so; because it is stated, that there is a difference between mutually performed evidence, suretyship, and the rest, and the memorial causes.

[803.] *Vijńáneshvara* says, that by the employment of the word "witnesses," its separate use is for the purpose of making known their superiority in the ascertainment of a division, even over the evidence of relations and others, though they are impartial witnesses.

[804.] *Some* say, that the use of the word "witness," means one who is made a witness.

[805.] *Bṛihaspati* says:[2] "Amongst those who live with one kitchen, the worship of the ancestors, the gods, and the twice-born, must be single: amongst those who are divided, it must be in each separate house."

[806] The author of the *Chandriká*[3] says: "Thus, the separate performance of the Vaishvadeva and the other ceremonies, which does not exist among undivided persons, indicates a state of division: therefore it is unobjectionable to say, that when there is a doubt respecting a division, it is used as a means for its removal."

[807.] Its purport is this:—In the phrase, "the worship of the ancestors, the gods, and the twice-born," by the term

[1] Smṛi. Ch. xvi. 9.

[2] See Smṛi. Ch. xvi. 6.

[3] Smṛi. Ch. xvi. 7.

"the ancestors," their annual ceremony is spoken of; because, amongst undivided persons, the authority in the new-moon and other shráddhas, belongs to one of them with the consent of the others: and by the term "the gods" here, the remaining Vaishvadeva shráddha which is connected with it, is spoken of, but not the sacrifices &c to the gods, inasmuch as they are ordained for undivided persons also by the *text*, "The Vaishvadeva and other ceremonies are to be performed by undivided persons also."

[808.] Moreover, amongst *those* in whose doctrine the matrimonial fire is non-secular, the Vaishvadeva and the other ceremonies are efficient causes; since, in the side of its secularity, the Agnihotra, the Vaishvadeva, and the rest, are to be performed after a division. The annual ceremony is an efficient cause amongst both of them.

[809.] Here *some* say thus:—"It is said by the author of the *Chandriká*,[1] that "the characteristic marks come in, when there is no better proof of the settlement." Moreover, when written documents and witnesses are in existence, its settlement by their means is final; and therefore they are said to be superior, but not in their power of affording proof. It is deserving of enquiry, whether, in the case of a denial of division, the superior force, in the midst of written documents, witnesses, and characteristic marks, belongs to the characteristic marks, &c: just as between the law-codes and religious practices, whilst they possess equal power of affording proof of the Veda, whether the proof of the Veda which is built upon the law-codes is more feasible than the proof of the Veda which is built upon religious practices."

[810] Not so: the conclusion of the author of the *Chandriká* is, that by the term "characteristic mark," a cause is sup-

[1] Smṛi. Ch. xvi. 12.

posed; and, moreover, that it is only memorial; and that amongst the efficient causes, it possesses a superiority, but not equality.

[*The effect of an absence of ten years.*]

[811.] Here *Kátyáyana* says:[1] "Those brothers also, who live for ten years with separate religious duties and separate ceremonies, are to be recognized as divided from the paternal property."

[812.] The author of the *Chandriká*[2] says, that the use of the word 'brothers,' here, has the implied meaning of "persons connected with the estate;" and that the use of the word 'paternal,' has the implied meaning of "inherited property."

[813.] It is not so: because there is no generation of ownership. This shall be explained.

[814.] If it be said, that this would contradict that which was said in the preceding chapter,—"When heritage is not taken possession of for ten years, whether from connection with business, or from inability, litigation is closed,"—

[815.] Not so: the author of the *Chandriká*[3] says, that although the heritage may not have been actually taken possession of, they are divided in accordance with the method of stratagems; just as in the *text*,[4] "There is a loss of land which is visibly and outspokenly enjoyed by another person for twenty years; and similarly of property for ten years."

[816.] Here, 'stratagems' are those which arise from his own negligence.

[817.] If it be said that it has been explained by *Vijńánayogí*, that in the *text*,[5] "There is a loss of land," the loss is of the produce, not a loss of a cause of action, nor a loss of the

[1] Smṛi. Ch. xvi. 14.
[2] Smṛi. Ch. xvi. 14.
[3] Smṛi. Ch. xvi. 15.
[4] Yájń. ii. 24.
[5] § 815, above.

thing itself; and that, similarly, here[1] also, it is a loss of the produce alone, not a loss of the thing itself, nor a loss of the cause of action;—

[818.] Not so: in the expression, "loss of land," by the rule of the objective genitive case, the meaning of the sentence arises, that possession during twenty years deprives of the land; and consequently the loss of the thing itself is stated, when it is said, that possession during ten years forfeits the property.

[819.] If it be said, that in accordance with the *text*,[2] "Rejecting stratagems, the king must conduct the proceedings according to the facts,"—a law-suit is to be conducted in accordance with the method of facts alone;—

[820.] Not so: the word 'stratagems,' has here a secondary meaning, and not its literal meaning; because the discernment of a judgment in legal proceedings is by means of a dependence on real stratagems.

[821.] That is to say, one of the two methods of legal proceedings is mentioned, namely, the help from stratagems; in accordance with the *text*, "Two modes are set forth; by the method of facts, and of stratagems." Otherwise, by the *text*, "This judicial procedure has four feet, religious duties, judicial proceedings, custom, and the king's decree: the later impedes the earlier,"—the power of impeding religious duties belonging to the later, namely, judicial proceedings, custom, and the king's decree, and arising out of the method of stratagems, would be a contradiction. If this method of stratagems were unreal, the authors of the law-codes would have no authoritative weight.

[822.] Wherefore it is to be understood, that the use of the word 'stratagems,' in the *text*,[3] "Rejecting stratagems, according to the facts," refers to secondary stratagems.

[823.] Hence it is said by the author of the *Chandriká*, and *Vijñánayogí*, while commenting on the *text*, "When there is a

[1] Namely, in Kátyáyana's text, § 811, above.
[2] Yájñ. ii. 19.
[3] Yájñ.'s; § 819, above.

doubt, he who confesses, or is partly convicted, shall deliver,"—that the method of stratagems alone is to be employed.

[824.] It is laid down in a general way, even by *Vijńánayogí*, that a settlement by the method of stratagems is to be admitted, when he says: "In the *text*,[1] 'In disputes respecting immovable things, let him eschew ordeals,'—there is no ordeal in case of impediment;" and also when he says, "In the *text*,[2] 'There is a loss of land which is visibly and outspokenly,'—but the loss is of the produce."

[825.] There *some* say: "If it be said, how can a man's separate ceremonies and separate religious duties lead up to ownership, seeing that the separate performance of ceremonies and religious duties have not the nature of a source of ownership, since they do not possess the nature of heritage, purchase, division, acceptance, and the rest?—it is said in reply, their ownership arises from the *text*,[3] "They are divided from the paternal property."

[826.] That is to say, it has been said above,[4] that by the term 'division,' is meant, the arrangement in each place separately of several proprietorships subsisting in an aggregate of wealth: and that is learnt from precept. As has been said by *Vijńánayogí*, that, "In the *text*,[5] "When the property has doubled, the pledge shall be forfeited if unredeemed,"—the cessation of ownership, and the acquisition of ownership by another, are scriptural."

[827.] It is proper to be said by the author of the *Chandriká* also, that the acquisition of ownership is textual, when he says that there is a division by the method of stratagems.

[828.] Now it has thus been said by the author of the *Chan-*

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[1] Smṛi. Ch. xvi. 17; where this text is attributed to Vṛiddha Yájńavalkya.
[2] Yáj.'s; § 815, above. [3] Kátyáyana's; § 811, above.
[4] This is Vijńáneshvara's definition in a slightly varied form. See § 23, above. [5] Yáj. ii. 58.

*driká* on the *text*, "The pledge shall be forfeited;"—"The popular conclusion is, that, admitting a pledge to be of the nature of a barter, after the example of the barter of sesamum seed and the rest, its barter has the nature of a source of ownership." So, it may also be said here, by the aid of this popular conclusion in another way, that even possession arising out of personal negligence from indifference would become a source of ownership; inasmuch as the rejoinder is made by this *text*,[1] "There is a loss of land which is visibly and outspokenly."

[829.] Moreover, it has been already said on that text, that possession ought to be made by the author of the *Chandriká*, either of the ultimate nature of a scriptural gift, or else of the ultimate nature of a sale; seeing that bartered wealth is of the nature of a sale-price.

[830.] It has been said when expounding the *text*, "The pledge shall be forfeited," that the term "scriptural nature of ownership," has a technical character; and that technical character cannot be mentioned here, because of the continuance of the silence during the ten years.

[831.] The meaning of the phrase, "though the absence of the taking of the heritage is in the strict sense of the word," in the *Chandriká* treatise, is this:—"In the strict sense of the word," means, as a matter of fact: "Taking of the heritage," means, a division: and its "absence," implies, brothers divided from the paternal property.

[832.] Its purport is this:—Ownership is the capacity of disposal according to pleasure: and that is settled by birth.[2]

[833.] When the efficient causes exist, namely, mutually performed evidence, suretyship, gifts, acceptances, purchase, sale, entering into partnership, the appropriation of hidden

[1] See § 815, above.

[2] See Miták. I. i. 27; Smṛi. Ch. 1. 45.

treasure, and the rest, immediately there is a springing up of division; because, by the performance of these things, there is an admission of the power of making them known. Since they are prohibited to the undivided by the *text*,[1] "Divided brothers may reciprocally have transactions, but not the undivided,"—they make known that a division is to be made. It is to be understood, that just as the second part of the subject brings up the distinctions in the authoritative books, and makes their distinctions known; in the same way are they recognized here also by the *Mímámsakists*, by their being of the nature of efficient causes.

[834.] Here, the accepted correct doctrine of the author of the *Chandriká* has been followed up, namely, that amongst brothers, ownership arises from birth alone; nevertheless, while concluding that causes depending upon a duration of ten years have the capacity of creating a division, because of the absence of an efficient cause of division, the conclusion of a division of ownership also becomes evident at the same time.

[835.] Hence, the purport of adding the word, "also,"[2] is, that when these characteristic marks exist, there is necessarily a division.

[836.] With regard to that which is said by the author of the *Chandriká*,[3] that by the whole body of *texts*, "Within ten years," and the rest, "A new division must be made,"[4] forasmuch as the ordeal is prohibited in the case of a doubt respecting division; and that therefore the force and the weakness of the characteristic marks is stated;—the purport of that is, that within the ten years the force of the characteristic marks

[1] Nárada's; § 786, above.

[2] In Kátyáyana's text, § 811, above.

[3] Smṛi. Ch. xiii. 16 to 19.

[4] This quotation is from a text which is attributed to Manu in the Mádhavíya, p. 56, the Smṛi. Ch. xvi. 18, the Vyav. Mayú. IV. vii. 36, and the Víram. x. 4. In § 837, below, it is attributed to Vishṇu. It is not found in either Manu's or Vishṇu's Institutes.

is equal to the proofs by witnesses and documents; but, that after the ten years, though documents and witnesses may exist, there is no need of them, because of the superior force of the characteristic marks.

[837.] Moreover, the inadmissibility of the ordeal is scriptural, according to the precept of *Vishṇu*:[1] "When all are wanting, a new division must be made."

[838 ] *Someshvara* and *others* say, that when documents and all the other memorial causes, as well as all the efficient causes, are absent, the word, "division," has this purport, namely, that when the brothers are helpless and poor, something is to be given to them according to pleasure, as in the case of the wife's division.

[839.] It is not so: *Bhárúchi* says, that when all are wanting, a fair division must be made; forasmuch as the ordeal is inadmissible, and the method of personal pleasure is inadmissible also.

[840.] This view alone is correct.

[841.] *Some*, however, state the opinion of *Someshvara* and the *others* thus; that when the doubt respecting the division has been removed, though the division has been established, the brothers must be supported, and something must be given them. Thus the whole becomes unobjectionable.

[842.] This accepted correct doctrine of the author of the *Chandriká* has been followed up.

[843.] By this *text*,[2] "Those brothers also who live for ten years with separate religious duties and separate ceremonies are to be recognized as divided from the paternal property,"—a division of the religious duties is to be made amongst very poor persons, when no wealth exists, in accordance with this,[3]

[1] See note to last section.

[2] Kátyáyana's; § 811, above.

[3] Gautama's text, § 26, above.

and other *texts:* "In a division, there will be an increase of religious duty."

[844.] Hence it is said by *Bhárúchi*, that they who perform separate religious duties and separate religious ceremonies for ten years without prejudice to their father's wealth, are divided; because of the ability of each to make for himself a division of religious duty without the consent of the others.

[845.] It was stated at the commencement of this chapter,[1] that the capacity of being designated by the word "division," belongs to this kind also. It has also been stated,[2] that the heirs possess no authority in wealth acquired without prejudice to the father's wealth. Hence, it is to be understood, that though wealth acquired without prejudice to the father's wealth may exist, still, because of its non-divisibility, the division of religious duty alone takes place here; forasmuch as the expression, "from the paternal property,"[3] is the ablative case with the elision of 'lyap.'

[846.] Here, the essence of the doctrine of *Bhárúchi* is as follows:—In the expression, "who live for ten years,"[4] by the aid of the ablative case with the elision of 'lyap,' the property of those who have relinquished their father's property, and for ten years have been separate in their religious duty, which has been subsequently obtained from friends and others, is alone not to be divided: that which was obtained from friends and others in the course of the ten years, is alone to be divided. That such property as has been self-acquired whilst in the undivided state, such as the gifts of friends, is subject to division, is the conclusion of the rule of the alternative.[5]

[847.] As *Vishṇu* says: "Non-paternal property, uterine property, such as is connected with religious duties, received

[1] See § 26, above. [2] See §§ 169, ff. above.
[3] In Kátyáyana's text, §§ 811, 843, above. [4] In the same text.
[5] See §§ 40, 41, above.

from friends, obtained by learning, or unexpectedly acquired, is subject to division up to the end of ten years: subsequently, the whole is indivisible."

[848.] Here *Bhárúchi* says: "Non-paternal property," is that which is not expended out of the father's wealth; and this is adjectival to three: "uterine property" is woman's property: "connected with religious duties," is such as comes from sacrifices, charities, and the rest: "received from friends;" obtained through friends: "obtained by learning;" received on account of learning: "unexpectedly acquired;" obtained by accident, hidden treasure and the rest, received as a religious donation and the rest; of these five kinds of wealth, the last three are subject to division, because of their undivided state when a division of religious duty does not exist: but when a division of religious duty exists in the form of residence for ten years, they are not subject to division."

[849.] The purport is this:—The expression,[1] "up to the end of ten years," implies a division of religious duty.

[850.] It must not be said, that "this text means, that after nine years an unequal division is reversed, after the manner of the text of *Bharadvája*, "An alliance, an exchange, and a division, when equal, cease up to ten days, and when unequal, up to nine years,"—which establishes a reversal of an unequal division up to nine years; because this text has not that meaning."

[851.] That is to say, this text was delivered with reference to doubts respecting division: and the force also of the text seems to be such alone. The act of dwelling for ten years, specialized by the characteristic and distinctive marks of the performance of separate religious duties and separate ceremonies, is shown to be a source of division by the *text*,[2]

[1] See § 847, above.

[2] Kátyáyana's; §§ 34, 811, 843, above.

"Brothers who live for ten years with separate religious duties and separate ceremonies, are divided." If its purpose was to establish an unequal division, there would be a contradiction: and a division arising out of the force of a characteristic mark in the expression, "brothers are divided," would be a contradiction; because the characteristic marks have not the capacity of establishing ownership in another person; and also because legal proceedings by the method of stratagems are just: and therefore it must be acknowledged, that in that text there is the ablative case with the elision of 'lyap.'

[852.] It is not so; because it is said, that, forasmuch as the characteristic marks of a division possess the nature of efficient causes, they have force in the creation of a division; and because ownership has been established to be by the birth of the sons alone; and also because the method of real stratagems has been shown to be in accordance with right.

[853.] Here, the substance is as follows:—When there is a doubt respecting a division, its settlement is to be effected in some cases by means of documents; in others, by means of witnesses; in some cases by means of relatives; in others, by means of connections; and in others, by means of respectable men. When none of these exist, the settlement is by means of the efficient causes. When both exist, the efficient causes are to be put aside. Moreover, with respect to the memorial causes, the settlement is by means of those which are set up during the ten years, and not by any others. It has, in fact, been stated, that the settlement is by means of those efficient causes alone which are self-inherent in the effective capacity of the memorial causes connected with the duration of ten years. But there is this specialty; namely, that the settlement by means of the efficient causes is spontaneous, because the settlement of the division is immediate: but that by means of the efficient causes in the shape of the memorial causes, is at the expiration of ten years. When all are

wanting, forasmuch as the ordeal is forbidden, a fair division is to be made. When the settlement of a division by means of these stated causes has been effected, something is to be given to the contending brothers; and so everything will be unobjectionable.

[854.] The Recreation on the topic called, "The Division of Heritage," in the chapter on legal procedure, in the Sarasvatí-vilása, a summary of the law composed by the great king Pratápa Rudra Deva.

GILBERT AND RIVINGTON, PRINTERS, ST. JOHN'S SQUARE, LONDON.

# CORRECTIONS.

Page 4, line 29; *for* Usho, *read* Upo.

P. 4, l. 34; *for* sacrfiice, *read* sacrifice.

P. 5, l. 9; *for* ssuraḥ, *read* ssvarom.

P. 5, l. 20; *after* successive, *add* separate performance of the rite is itself a division; and on the side of the secularity, the successive

P. 8, l. 11; *after* union, *add* and the getting of offspring in distress.

P. 12, l. 24; *after* [63.], *add* But owing to the infrequency of 'Division during life' at the desire of the father, there is no separate division of time.

P. 19, l. 25; P. 29, l. 1; P. 50, l. 3; for Yajñá and Yajña, *read* Yájñavalkya.

P. 24, note [4]; *for* Vastu, *read* Vasu.

P. 34, l. 12; *after* blemish, *add* Blemishes; impotence &c.

P. 39, l. 16; *after* wealth, *add* so also, whatever has been obtained by learning acquired by the expenditure of the father's wealth;

P. 41, l. 3 & l. 8; *for* yogak-ṣhema, *read* yoga-kṣhema.

P. 52, l. 27; *add* "That which is received;" "property" is to be supplied.

P. 59, l. 26; *write* Vijñáneshvara in *italics*.

P. 61, l. 9; *after* Shulkam, *add* the Shulkam belongs to the uterine brothers alone.

P. 63, l. 16 ; *for* Shulkam, *read* sister's Shulkam.

P. 89, l. 18 ; *after* [439.], *add* Not so :

P. 90, last l. ; *add* It is not through the nature of the appointment, as in a perpetual appointment &c. For the purpose of making his teaching clear, the teacher has adduced an elucidation of the text, that is, the purport of the exposition of the logical connection of the proximate cause and its action, in the form, "He must ascertain the office of the Áchárya."

P. 93, l. 4 ; *before* relative, *insert* inferior

P. 93, l. 5; *after* from, *add* fear of

P. 105, l. 13 ; *omit* not.

P. 107, l. 2 ; *add* "From the rest ;" that is, "from those who err." "It ;" that is, "a maintenance."

P. 114, l. 25 ; *add* When there is none, the father is the enjoyer of the property.

P. 121, l. 15 ; *for* If he, *read* If the disciple.

P. 134, l. 2 ; *add* Hence the former statement is correct.

P. 144, l. 1 ; *after* another, *add* when there is an actual son of the deceased owner of the property in existence.

P. 151, l. 8 ; *after* Therefore, *read* The meaning is that he should bring in, equally, that which has been irregularly divided, that which has been secretly abstracted, that which has been mutually abstracted, that which has been lost, and that which has been obtained with difficulty.

# INDEX.

☞ *The references are to the Sections, not to the Pages.*

H.

T.



U.

## W.

Y.