A TREATISE

ON

THE HINDOO LAW

OF

INHERITANCE,

COMPRISING

THE DOCTRINES OF THE VARIOUS SCHOOLS,

WITH

THE DECISIONS OF THE HIGH COURTS

OF

THE SEVERAL PRESIDENCIES OF INDIA,

AND

THE JUDGMENTS OF THE PRIVY COUNCIL ON APPEAL.

BY

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"God having created the four classes, had not completed His work; but, in addition to it, lest the Royal and Military class should become unsupportable through their power and ferocity, He produced the transcendent body of Law. Since Law is the King of kings, far more powerful and rigid than they. Nothing can be mightier than Law, by whose aid, as by that of the highest monarch, even the weak may prevail over the strong."—1 *Morl. Dig.*, Introduction cxciv.; *Chintamani*, Pref. xxi.

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INTRODUCTION.

WHEN the Directors of The Honourable East India Company found themselves compelled, by a course of events over which they could exercise but little control, to undertake the government of the different provinces of the country, of which they originally became masters, their first inquiry was naturally directed to a consideration of the laws administered among the natives of India. Ignorant as the British were, at the commencement of their career, of the manner in which the administration of the country had been conducted by the native Governments, the wisest course that presented itself was to leave matters, as far as possible, in *statu quo*. This was the course pursued; gradually, however, alterations were introduced, as artificial as any to be found in civilised Europe.

Notwithstanding the length of time during which the Mahommedans governed the country, they abstained from interfering with the civil laws of the Hindoos, but superseded their criminal laws by those of the Koran. An apparently artificial, but when understood, in reality a simple revenue law had been introduced by the Emperor Akber. In states governed by Hindoo princes, both the Hindoo civil and criminal laws were, of course, the laws of the land. Whether the revenue law, found to exist on the assumption of power by the British, owed its origin to the Mahommedans, or was simply an adaptation of the Hindoo revenue law existing at the conquest of the country by the Mahommedans, is a question which would be difficult of solution; but from the circumstance that the revenue system throughout the country, even in those parts where the Mahommedans never exercised sovereignty, is nearly the same, we are inclined to think that

the Mahommedans wisely permitted the Hindoo revenue system to exist, and gradually introduced such changes as the requirements of the times demanded.

Some years after the British had been called upon to exercise the duties of sovereigns, they allowed the administration of the country to be conducted on the native model. It was not until the time of Warren Hastings—one of the greatest Governor-Generals that India has ever seen—that an attempt was made to place within the reach of European intelligence a knowledge of the native laws. It was in his time that a "Digest of the Hindoo Law" was compiled and translated by Mr Halled, and a translation made of the "Hidayah"—a commentary on the Mahommedan laws, civil and criminal—by Mr Hamilton. These two works gave Europeans intrusted with the administration of justice some idea of the laws they were required to administer. Lord Cornwallis, in the year 1793, introduced into Bengal a code of regulations providing for the administration of civil and criminal justice and fiscal law, altering as little as possible the existing native laws, but introducing courts of various grades, and a system of procedure. These regulations were subsequently adopted as models by the Madras and Bombay Governments; consequently, at the commencement of the nineteenth century the laws administered in India were the Hindoo laws to Hindoos, the Mahommedan laws to Mahommedans; and in the Presidency of Calcutta, Madras, and Bombay, the laws of England to Englishmen. In the Mofussil the criminal law administered to Hindoos and Mahommedans was the criminal law of the Koran, as modified by Regulation.

The judges of the Presidency towns were barristers sent out from England, for the purpose of occupying the bench of the Supreme Courts, and administering justice within the circumference of the small extent of territory comprised within their jurisdiction. Although they were required to administer both the Hindoo and Mahommedan laws, or systems of law, what they really did administer was chiefly the law of England; and with rare exceptions, few of these judges knew much of any other. The judges of the Mofussil Courts were

selected from writers or civil servants, who originally obtained their appointments from the Directors of the East India Company. These officials had probably received the ordinary education of English gentlemen. Although, however, they were required to pass several examinations in law previously to proceeding to India, but few of them had any practical knowledge of the law before their elevation to the Bench. Prior to the year 1846, English barristers were not at liberty to practice before the Mofussil Courts. Their exclusion was attended with a twofold disadvantage;—the knowledge of the principles of law could not be brought to bear upon the intelligence of the Mofussil judge, and they themselves were deprived of the inducement to study the Hindoo and Mahommedan laws with that degree of attention which might tend to elucidate their principles.

In 1855 the method of selection for the Indian Civil Service was changed, and the competitive system of examination introduced. Before this, appointments in the service were in the gift of the Directors; who were elected by the proprietors of Indian stock. It would be singular disinterestedness if Directors so elected did not duly regard the claims of their constituents. The consequence was that the Indian Civil Service was looked upon as a close preserve, and the chief recommendation to obtain admission to it was connexion with, or relationship to, an East Indian director or proprietor. Ability was a secondary consideration; and once in, whatever might be a man's qualifications, he stood a fair chance of rising to the highest post, if he only lived long enough. Promotion went not wholly by seniority indeed, but the claims of seniority were held so sacred that the force of patronage seldom ventured to set them aside. Under such a state of things, it is surprising that the Indian Civil Service succeeded in producing so many very eminent men; but in general, to quote the words of a learned author, the mass was "one dead level of incompetence." Nevertheless, we shall be glad to find that the new system produces a similar number of eminent men as compared with the incompetents. Under

the prior system of appointment, family connexion, it is to be feared, influenced the administration of the country more than a feeling for the good of the people. Hitherto it has been the custom, although a change in public opinion has already taken place, to look down upon the competition Wallah as of a class inferior to that from which the civilian of the old school had been selected. We believe no foundation for this prejudice in reality exists, and that a minute and exact investigation would lead to the conclusion that the ranks of society formerly represented in the service are equally represented in the present day. If new blood has been introduced, it has been introduced from the healthy source of intellectual superiority which in India, as in England, must equally make its way. It is to be hoped that this change will break through that system based on family connexion which induced in too many instances civilians of the old school to support each other irrespective of merit, and to make common cause when their order or personal feelings were assailed.

In 1858, in consequence of the mutiny of the previous year, the Government of the country was assumed by the Crown. In 1862 the superior tribunals—viz., the Sudder Courts, which exercised a control over the proceedings of the Mofussil Courts, and the Supreme Courts of the Presidency towns — were amalgamated under the designation of "High Court," the Judges of both Courts continuing to hold office, and future vacancies being provided for by the appointment of a proportionate number of barristers, Indian civilians, uncovenanted judges, or vakeels. It was provided by the Charter that the law and practice, as modified by subsequent enactments, which prevailed in the late Sudder Courts, should apply to cases civil and criminal coming from the Mofussil; and the law and practice of the late Supreme Courts, similarly modified, should apply to cases originating in the Presidency towns. Of late years legislation has made great progress in India. Unfettered by preconceived predilections, the legislators of the country have considered themselves at liberty, in framing their laws, to refer to first principles, and to select whatever is valuable from the

codes of other countries. Guided by experience when adopting the laws of England, they are able to avoid difficulties which English legislators have been unable to surmount; and if they continue to persevere in the same spirit, probably the Indian codes may in time become models of imitation for other countries. A code of civil procedure, simple and inexpensive, has been introduced; and although on the amalgamation of the Courts it was feared that it was not sufficiently elastic to embrace the classes of business falling within the original jurisdiction of the High Courts, its powers of expansion have falsified the fears entertained of their efficacy. A penal code has likewise been introduced which will bear a fair comparison with that of any other state. A criminal procedure code has been passed; its application, however, is confined to the Mofussil, and has not yet been extended to the Presidency towns. Other codes are in course of preparation, and in progress of time it is to be hoped that a complete code of laws will be provided, thus obviating the necessity of relying on analogies, often forced, for principles whereon to base a judgment.

The laws administered in India are therefore:—

1. The Hindoo, which is divided into,
    1. The Gauriya School, or that of Bengal.
    2. Mithila School, or that of North Behar.
    3. The Benares School.
    4. The Mahratta School.
    5. The Dravada School, or that of Madras.
2. The Mahommedan, which is divided into,
    1. The Sunni.
    2. The Shiya.
3. The common law as it prevailed in England in the year 1726, and which has not subsequently been altered by statutes expressly extending to India, or by the acts of the Legislative Council of India.
4. The Statute law which prevailed in England in 1726, and which has not been subsequently altered by statutes especially extending to India, or by the acts of the Legislative Council of India.

5. Acts of Parliament expressly relating to India which have been enacted since 1726 and have not since been repealed, and statutes which have been extended to India by the acts of the Legislative Council of India.
6. The common law of the land.
7. The Codes of Civil and Criminal Procedure.
8. The Revenue law.
9. The Civil law as it obtains in the Ecclesiastical and Admiralty Courts of England.
10. The Regulations made by the Governor-General in Council, and the Governors in Council previously to the 3d and 4th W. IV. c. 85, and registered in the Supreme Courts and the acts of the Legislative Council of India, made under the 3d and 4th W. IV. c. 85.

The charter of George II. granted in 1753 is the first instance we find of the reservation of their own laws to the natives of India. This was effected by an express exception from the jurisdiction of the mayor's court of all suits and actions between the Indian natives only.

In 1772, when Warren Hastings' celebrated plan for the administration of justice was adopted, the 23d Rule especially reserved their own laws to the natives, and provided that Moulavies or Brahmins should respectively attend the courts to expound the law and assist in passing the decree.

In 1780, the first Regulation enacted by the Bengal Government after the Governor-General and Council were invested by Parliament with the power of making regulations embodied the 23d Rule; and the 27th section enacted "that in all suits regarding inheritance, marriage, and caste, and other religious usages and institutions, the laws of the Koran with respect to Mahommedans, and those of the Shaster with respect to Gentoos, shall be invariably adhered to."

In the revised code which passed the following year, this section was re-enacted with the addition of the word "succession."

In 1781, the declaratory Act of 21 Geo. III. c. 70, explain-

ing and defining the powers and jurisdictions of the Supreme Court at Fort-William in Bengal, by section 17 enacted that in disputes between the native inhabitants of Calcutta, their inheritance and succession to lands, rents, and goods, and all matters of contract and dealing between party and party shall be determined in the case of Mahommedans by the laws and usages of Mahommedans, and in the case of Gentoos by the laws and usages of Gentoos; and where only one of the parties shall be a Mahommedan or Gentoo, by the laws and usages of the defendant; and their laws and customs were expressly preserved to them by section 18, which enacted that, "In order that regard should be had to the civil and religious usages of the said natives, the rights and authorities of fathers of families and masters of families, as the same might have been exercised by the Gentoo or Mahommedan law, shall be preserved to them respectively within their said families; nor shall any acts done according to the rule and law of caste respecting the members of the families only be held and adjudged a crime, although the same may not be held justifiable by the laws of England;" and by section 19 the court was empowered to frame process, and make such rules and orders for the execution thereof in suits, civil and criminal, against the natives as might accommodate the same to the religion and manners of the natives, as far as the same might consist with the due execution of the laws and the attainment of justice.

These provisions were extended by the 37 Geo. III. c. 142, to the natives of the Presidencies of Madras and Bombay. The 13th section added to the words of the 17th section of 21 Geo. III. c. 70, *supra*, the following words: "Or by such laws and usages as the same would have been determined by, if the suit had been brought and the action commenced in a native court, and where one of the parties shall be a Mahommedan or Gentoo by the laws and usages of the defendant;* and in all suits so to be determined by the laws and usages of the natives, the said courts shall make such rules and orders for the conduct of the same, and frame such process

* These Regulations apply to Hindoos and Mahommedans not by birth only but by religion, *Abraham* v. *Abraham*, 9 *Moore's In. Ap.* 319.

for the execution of their judgments, sentences, or decrees, as shall be most consonant to the religions and manners of the said natives, and to the said laws and usages respectively, and the easy attainment of the ends of justice; and such means shall be adopted for compelling the appearance of witnesses and taking their examination as shall be consistent with the said laws and usages, so that the suits shall be conducted with as much ease and at as little expense as is consistent with the attainment of substantial justice."

The charters of justice for the Supreme Courts at Madras and Bombay contain the same provisions.

The charters of justice establishing the High Courts at the different Presidencies contain similar provisions.

It is therefore apparent that a young barrister who has completed his education in the Inns of Court, and who may select India as the sphere of his professional operations, will find not only much that he has learned in England useless to him in India, but that it will be necessary that he should commence a fresh course of study before he can feel any confidence in himself when conducting a case connected purely with local law. If a barrister who devotes his time entirely to the study of law will have to encounter such difficulty how much greater must be the difficulty of one, who (without a knowledge of the principles which a barrister must acquire to a greater or less extent) will have to study the number of books requisite to give him an insight into the principles of those laws.

An Indian civil servant shortly after his arrival will occupy a post which will require a competent knowledge of these various branches of law to enable him to fulfil his duties with credit to himself, benefit to the public, and satisfaction to the government. He ought to acquire that knowledge here, for amidst the great variety of official functions which he will be called upon to discharge his time will be completely occupied in India. If he fulfil those duties with fidelity, he will have little opportunity for the study, with that assiduity which is necessary to secure success, of subjects not particularly interesting or inviting in themselves

and for which he may have had no previous, or, at least, mere preliminary preparation. It is true that the young civilian will have to pass one or two examinations previous to his being entrusted with the discharge of any duties of importance; but as these examinations are of the most elementary character, the degree of study necessary to enable him to pass them is insufficient to lay that foundation upon which a solid superstructure can be built. Probably the circumstance of having passed an examination may lead the student to imagine that the knowledge he has acquired is perfection; if such should be the result of his success, farther progress can scarcely be hoped for.

The two great branches of law which the Indian civilian and the Indian barrister will find most difficult, are the Hindoo and Mahommedan. With the Mahommedan, or any other branch of Indian law, we have at present no concern. The work now offered to the public is intended to set forth the doctrines of the Hindoo law; and before adverting to our object in undertaking the task, we shall endeavour to render as clear an account as possible of the various schools of law, and the sources from which a knowledge of these doctrines can best be obtained.

The Hindoo law is, as we have before remarked, divided into five schools, differing in some respects from each other, but not to the extent that is generally imagined. The Bengal school is called the Gauriya. Its leading authority is the "Daya Bhaga" of Jimuta Vahana, a treatise of great repute among the lawyers of Bengal. In doctrine, where a difference exists, it is opposed to those of the "Mitacshara," the great treatise of the Benares school. Both works have been translated by Colebrooke, a Bengal civilian, and famous Sanscrit scholar. He carefully annotated them from the writings of various commentators. The "Daya Krama Sangraha," a compendium of the law of inheritance by Srikrishna Terkalankara, is another work held in high estimation in the Bengal school. It was translated by Mr Winch, and is one of the principal commentaries to which Colebrooke was indebted for his annotations on the "Daya

Bhaga." The Digest of Hindoo Law on contracts and successions, with a commentary by Jugganatha Tercapanchanana, was likewise translated by Colebrooke, and is another authority referred to by all schools as containing a collection of texts not easily obtained in any other work; but the book itself, and the peculiar views entertained by the commentator, are considered of greater weight in Bengal than elsewhere.

The "Mitacshara" is the leading authority in the school of Benares. The range "of its authority and influence," says Colebrooke in his preface, "is far more extensive than that of Jimuta Vahana's treatise; for it is received in all the schools of Hindoo law, from Benares to the southern extremity of the peninsula of India, as the chief groundwork of the doctrines which they follow, and as an authority from which they rarely dissent." It is a gloss on the Institutes of Yajnavalchiya, a work of considerable antiquity, supposed to have been written earlier than the second century of our era. The "Mitacshara," also called the *Vignyaneswareum*, from its author, Vignyaneswara, would appear to be so intimately associated with the Institutes of Menu, that both works are frequently cited together as *Menu Vignyaneswareum*. Colebrooke infers that its age exceeds five hundred, and falls short of a thousand years. "The works of other eminent writers* have," observes Morley, "concurrently with the 'Mitacshara,' considerable weight in the schools of law which have respectively adopted them; but all agree in referring to the authority of the 'Mitacshara,' in frequently appealing to his text, and in rarely, and at the same time modestly, dissenting from his doctrines on particular questions. The 'Mitacshara' must thus be considered as the main authority for all the schools of law, with the exception of that of Bengal."

The doctrines of the Mahratta school are contained in the "Vyavahara Mayukha," by Nilakantha, supposed to have been written about two hundred years ago. This work is considered among the Mahrattas concurrently as an authority with the "Mitacshara," though it would appear sometimes to be opposed to it. It has been translated and annotated by Mr Borrodaile of the Bombay civil service.

* Referred to under title, "Sources of the Law."

The "Vivada Chintamani" represents the doctrines of the Mithila school. The author, *Vechaspatimisra*, is stated to have written at about four hundred and fifty years ago. It has been translated by the Hon. Prosseno Coomar Tagore of the Bengal legislative council. It follows the doctrines of the "Vivada Ratnakara," a general digest compiled at a much earlier date.

In several points the "Chintamani" coincides with the "Mitacshara," which, being a commentary on the Institutes of Yajnavalchiya, was held in high estimation by the jurists of Mithila, and exercises an influence among the followers of that school.

The Dravada school is represented by the "Smriti Chandrika," which is the production of Davanna Bhut, the author of the "Dattaka Chandrika." The "Smriti Chandrika," was translated by T. Kristna Sawmy Iyer, a principal Sudr-Ameen in the Madras presidency. It is certainly an authority in the Dravada school, and derives its doctrines from the "Mitacshara," from which, as may be expected, it differs in a few points, Yajnavalchiya being the authority on which the doctrines of the Benares school are founded. Where commentators differ, the original source from which they themselves have derived their inspiration ought to be the referee to decide between them. In the course of the present work the reader will remark that we have had occasion to notice the conflict of opinion between the "Smriti Chandrika" and the "Mitacshara." In those instances where we have examined their difference with attention, we have observed that the sages, or original authorities, supported the views of the "Mitacshara," and that Davanna Bhut in one instance in particular failed to notice the subject which, upon his authority, was decided by the judges of the High Court of Madras in a manner not in accordance with the hitherto universally received construction of the Benares school, (see page 181.) We are not aware what knowledge of the Sanscrit Mr Kristna Sawmy Iyer may possess. In Madras, however, according to our information, Sanscrit is a language which is not studied to that degree of perfection

which would enable a student to obtain a familiarity with it. In making this observation, it is not our intention to disparage the erudition or the labour of the learned translator. Probably his knowledge of the language may be exceptional; but when we find for the first time a work hitherto inaccessible to the English reader ushered into the presence of the legal public from one foreign language into another by a gentleman to whom both languages are equally foreign, we are naturally led to ask, Have we a guarantee for the correctness of the translation?

The translator says, "Notwithstanding my utmost endeavours, I was unable to get a printed copy of the "Smriti Chandrika" in Sanscrit. I was hence obliged to furnish myself with several manuscript copies in Sanscrit from different quarters, such as Tangore, Madras, and Mysore. They were, of course, found to contain several clerical errors, and exhibited in some instances even inconsistent readings. I compared all the copies together with the assistance of learned shastras, and prepared at first a correct manuscript copy, trying at the same time to rectify all that appeared to me to be apparent clerical errors, and adopting such of the readings as were found more agreeable to the context."

We do not see that this statement of the translator is of a very satisfactory nature. We know not whether the "clerical errors" and "inconsistent readings" have relation to subjects important or immaterial, agreeing or conflicting with the authorities of the school of which Davanna Bhut was a follower. We know not who these learned Shastras are of whose assistance the translator availed himself — whether they were acquainted with law, or whether they really understood Sanscrit, and were competent to occupy a place in a committee convened for the purpose of preparing a new copy of the "Smriti Chandrika." The translation has not been prepared from an authentic, genuine, undoubted copy, but from a copy compiled from "several," "containing several clerical errors," and "inconsistent readings." We imagine that the translator might have easily saved himself from these observations, had he sought in the Government collections of Madras

or Bengal for a genuine copy. And if he had found the difficulty of reconciling "clerical errors" and "inconsistent readings" insuperable, we think it was the duty of a candid translator to insert in his translation not only those "clerical errors" and "inconsistent readings," in order that the practitioner or the judge might have an opportunity of deciding for himself in what manner these "clerical errors" and "inconsistent readings" ought to be rendered. The learned translator has undertaken this task, and has no doubt executed it satisfactorily to himself. We should have been more obliged to him had he not saved us this trouble; as it is, we know not what is the authentic text of "Davanna Bhut," nor how far the text has been altered by the industry of the translator. We have considered it our duty to call attention to this work as we find it differs in so many important particulars from the "Mitacshara," and we are afraid it will lead to various innovations if the doctrines which according to the present translation of the "Smriti Chandrika" are genuine, are not minutely scrutinised.

We must notice two other works, the "Dattaka Mimansa," and "Dattaka Chandrika," which are devoted to the subject of adoption. The former is the production of Nanda Pandita, the author of a commentary on the "Mitacshara." The latter was composed by Devanna Bhut, the author of the "Smriti Chandrika." Both were translated by Mr Sutherland. The doctrines of these books vary in some points, but it is asserted in the judgment of the High Court of Madras, in the great Ramnad case, that "where they differ, almost all the schools follow the 'Dattaka Chandrika' in preference to the 'Dattaka Mimansa.'" But see *W. H. Macn.* Pref. xxiii.; *Chintemani*, Pref. xxvii. We may conclude that those are received as authorities on the subject of adoption by all the schools. It would, however, appear from Mr Borrodaile's preface to the "Vyavahara Mayukha," that in 1827, the period of the publication of his translation, neither of these works existed in the original in the Bombay Presidency; that in consequence of the pundits being unacquainted with them they followed the doctrines of the "Mayukha" on

the subject of adoption. We shall close our remarks on the Hindoo treatises on Hindoo law by a reference to Menu's Institutes, the great fountain of that law. This celebrated book has been translated by Sir W. Jones, and edited by Mr, afterwards Sir Graves Haughton. It is the original source of law, unfitted, however, in its entirety to be followed at the present day. Making due allowance for the tincture imparted to its legal doctrines by the religious element which has influenced other codes as well as the Hindoo, we consider that its strict legal principles will, in respect of justice and equity, bear a favourable comparison with any other code of laws of similar antiquity.

We have abstained from referring here to other authorities which have not been translated.* Those to which we have alluded are original works of Hindoo authority, accessible to the English reader, referred to daily in our courts, and with the exception of the "Smriti Chandrika," which is but a recent production, received as safe guides.

Several Europeans have written works of authority on the subject of Hindoo law. In Bengal, Sir Francis Macnaghten, one of the Justices of the Supreme Court of Calcutta, in the year 1824, published a treatise entitled "Considerations on Hindoo Law," which exhibited great research, and a sincere desire to arrive at a knowledge of its true principles. It may, however, be regarded more as essays and notes than as a complete treatise on the subject of Hindoo law. Mr W. A. Macnaghten, of the Bengal civil service, published a treatise in 1828, entitled the "Principles and Precedents of Hindoo Law," in two vols. This is a production of deserved celebrity; it points out the distinction between the Bengal, Benares, and Mithila schools, and has been always held in great estimation.

Mr Sutherland, the translator of the "Dattaka Mimansa," and the "Dattaka Chandrika," published a synopsis on the subject of adoption, but it is greatly to be lamented that that gentleman did not employ his knowledge in composing an original treatise on the subject.

* See an enumeration of them, post, p. lix., "Sources of the Law."

Mr Elberling, of the Danish Civil Service, has published a succinct, and at the same time comprehensive treatise on Hindoo, Mahommedan, and other laws administered in India. The part devoted to Hindoo law draws a clear distinction between the Benares and Bengal schools, and, if for no other reason, for that alone, would merit the attention of the student.

Sir Thomas Strange, Chief-Justice of the Supreme Court of Madras, was the first English writer who published an original treatise on the subject of Hindoo law. If we consider the few sources to which he had access, the chaos of confusion in which the peculiar style of Hindoo legal writers envelop their meaning, the few original authorities at that time translated, his own ignorance of the country languages, we cannot but be struck with admiration at the clearness and perspicuity which he has succeeded in imparting to his work. In the words of a well-known writer, he found her a cold statue, and breathed into her life and vigour.

Glad as we are to pay this tribute to the industry of this great writer, we have been compelled in the course of the following work to differ in certain particulars from his views, but in expressing our own, we do so with diffidence.

Mr Justice Strange, late of the High Court of Madras, has worthily followed in his father's footsteps. He is the author of a manual on Hindoo law, which was held in the highest reverence in the Madras Presidency until the amalgamation of the Courts. But since then it has declined in authority. We do not agree with those who consider this work to be of no merit. On the contrary, we are of opinion that it possesses much. It is true it contains a few errors, but these might easily be removed in a subsequent edition. But those, to which any judge, whatever be his learning and ability is liable, form no grounds for the violation of the rules of propriety or for that want of good taste which has been exhibited in the wholesale condemnation of this work. From Mr Justice Strange's writings we are led to infer that he was deeply imbued with the principles of Hindoo law, derived from their original source, as they would be administered in a primeval state of

Hindoo society, uncontaminated by the admixture of foreign influence, whether pretending to be actuated by construction of what the law should be or with reference to modern progression. It is in this spirit, we think, that the legislature intended, when securing to the Hindoos the enjoyment of their laws, that the law should be administered. Doubtless, in many respects the Hindoo law, like other systems, is childish, senseless, or purposeless ; but where these defects exist, reformation should come from the Legislature, not from the Bench. When the Bench arrogates to itself the power of setting aside the law, we consider it then assumes a jurisdiction which was not conferred upon it. It may be very well, in objection to Mr Strange's views, to observe, they are opposed to the existing state of things. Such an observation may be just, but if the law says otherwise, surely the writer who enunciates the law is not in error. The Legislature may be called upon to interfere, and perhaps if the whole Hindoo law were placed in the legislative crucible and recast, a more satisfactory result might ensue than the uncertainty which exists at present. Whatever may have been the demerits of Mr J. Strange and his system, the public have the satisfaction of knowing that the principles of the Hindoo law, whether rightly or wrongly enunciated, had a chance of being uniformly administered. But at present the public know not upon what principles to proceed—change of administration has produced such a desire to demolish old things and to build up new, that they know not what image they are to worship.

After this Treatise had been printed we received two books published last year, one by Mr Reginald Thomson, Pleader of the Zillah Court of Tinnevelly, which is based on the plan of Mr Justice Strange's Manual, and professing to avoid the errors into which he had fallen. The other is entitled "A Digest of Hindoo Law," from the replies of the Shastras of the Bombay Presidency, by Mr West of the Bombay Civil Service, and Professor Bühler: the latter a work undertaken by authority, and one which we have no doubt will be found extremely useful.

It has been the custom, we may say a time-honoured

one, because it is of some antiquity, to abuse the Pundits, to accuse them of corruption, ignorance, and imbecility. But it will be observed that few of those who have had much intercourse with them indulge in their condemnation. The Pundits have borne most patiently the abuse so often heaped upon them; their patience, and the circumstance of no defence having been put forward, might lead to the conclusion that they admit the justice of the impeachment. If they understood the language of their traducers some ground might exist to justify this opinion; but as the Pundits understood no language except their own and Sanscrit, they are in a blissful state of ignorance of what has been said behind their backs. Lawyers sometimes differ with respect to the application of the law to the same state of facts. Even judges disagree as well as practitioners. Reasons are sometimes given which are unsound; conflicting opinions are frequently offered upon similar subjects. Would any Englishman be justified in saying, that under all these circumstances he could only conclude that English barristers and English judges were corrupt, ignorant, and imbecile. The Pundit has a short question put to him, either written or verbal, requiring him to state the law on the facts set forth. His reply is equally concise, and contains in many cases reference to his authority: perhaps the answer may be erroneous. Does an English barrister always give a correct opinion? and because the answer may happen to be erroneous, if he be neither ignorant nor imbecile, is there sufficient ground to conclude that he must be corrupt? Let us test ourselves by this standard, and we should not stand so high in our own estimation as we do at present. Amongst the thousands of Pundits who have held office in India, no doubt thousands of erroneous opinions have been given. If the opinions of a similar number of English lawyers were examined, would the ratio of error be less? We doubt it. It was too much to expect perfection from the Pundits, although we may complacently conclude that we possess that quality ourselves; and much as the Pundits have been abused, we observe from the Bombay Digest, that the Judges of the High Court and the Gov-

ernment of that Presidency have considered it desirable to perpetuate their opinions, and for that purpose consigned the labour of selection to men duly qualified for the task. The Pundits were acquainted with Sanscrit, and were able to refer to original sources of law, the greater portions of which, for the want of translation, are inaccessible to one who is merely an English scholar. Interwoven as their law is with their religion, the Pundits would understand its application more clearly and more readily than any one who had but a slight knowledge, if any at all, of Hindoo religious tenets or ceremonies. They were, therefore, better qualified to give an opinion than men ignorant of their language, and unacquainted with their religious tenets and ceremonies, whose knowledge was confined to half a dozen books not containing anything that had been written upon the subject, submitted for their consideration, or professing to clear up any difficulty that might arise. Among the Pundits, as among every other class of men, there have been some corrupt, some ignorant, and some imbecile; but how indignant would an Englishman in India feel if he were informed that because there were some of his countrymen corrupt, ignorant, and imbecile, the natives of the country considered all Englishmen to be of that stamp. So far from considering the reproach cast upon the Pundits to be well deserved, we think that it would be better if the Judges of the High Courts of Madras and Calcutta were to advise their respective governments to follow the example of the Bombay Presidency.

Since the period when Sir Francis Macnaghten, Mr W. H. Macnaghten, and Sir Thomas Strange wrote, the law has undergone such great changes in the construction placed upon its substantive parts, that the necessity for a work treating of the law as understood at the present day has arisen. Mr Justice Strange's Manual, small as it was, seemed, in the plenitude of its fame, to supply the requirements to a limited extent. But since the superstructure erected by Mr Strange has been shaken to its foundation, no work calculated to meet the requirements of the public on a complete scale, bringing down the law to the present time, has been published. The

author has, therefore, endeavoured to compile a book which will set forth not only the texts and expositions of Hindoo sages and glossators, but also the construction placed upon doubtful texts by judges of the Sudr, Supreme, and High Courts of India, and their Lordships of the Judicial Committee of the Privy Council. In making a selection the task was of course very laborious, occupying some years, and on some few points he saw occasion to differ from opinions recorded in elaborate and well-considered judgments of judges of acknowledged learning. Where he has done so, he has given his reasons with deference and respect, and it will be for the reader to determine whether he has been justified in the view he has taken or not. The author has deemed it advisable to quote the judgments of the High Courts and Privy Council at greater length than he would have done had he not reason to believe that the reports of one presidency are not usually in circulation in another. Students, moreover, cannot be expected to be supplied with the reports, and many of the poorer classes of practitioners in the Mofussil are unable to procure them. The author has had great difficulty to encounter, in obtaining the reports of the various Presidencies. He was under the impression that he could have had access to the reports of all the Presidencies down to the present day in one or other of the public libraries in London, but he has been disappointed. Had he been able to consult the judgments of the various Courts from the earliest period, this work would have left his hands with greater satisfaction to himself. He has confined himself in the present compilation to the Law of Inheritance, and the various subjects arising out of and connected with it; reserving for separate publication, at a future period, the Hindoo Law of Contract.

The author has found much difficulty in adopting any clear and intelligible or systematic principle in spelling Hindoo proper names. In no work on Hindoo law which he has perused has he found any uniformity adopted, and almost all writers spell the same names differently. In some instances the author has followed previous writers, whilst in others, in order to convey the correct pronunciation to the student, he

has adopted the orthography which the sound or pronunciation suggested.

Before concluding these remarks he wishes to express his acknowledgments to Mr George E. F. Shadwell of the judicial department of the India office; and to Dr Hall, the learned librarian, and Mr George Miller, sub-librarian at the East India library, for the courtesy with which they afforded him access to works which were not otherwise procurable.

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