A NEW EDITION

OF

THE THESAWALEME,

OR

THE LAWS AND CUSTOMS ON JAFFNA.

TOGETHER WITH

THE DECISIONS OF THE VARIOUS COURTS

ON THE SUBJECT.

The English Translation of the Seventy-two Orders.

THE ORDINANCES No. 18 OF 1806 AND No. 1 OF 1842.

MR. ATHERTON'S EDITION OF THE THESAWALEME,

WITH ORIGINAL NOTES.

And an Appendix,

INCLUDING

THE TAMIL VERSION OF THE THESAWALEME.

THE TAMIL VERSION OF THE SEVENTY-TWO ORDERS.

AND

A Tamil Translation of the most important Schedule & Pre-emption Cases.

BY

HENRY FRANCIS MUTUKISNA OF LINCOLN'S INN, Esq.,

Barrister-at-Law and Deputy Queen's Advocate and Justice of Peace Northern Circuit and Late Unofficial Member of the Legislative Council.—CEYLON.

Lex est ratio summa, insita in naturâ, quæ jubet ea, quæ facienda sunt, prohibetque contraria. Eadem ratio cum est in hominis mente confirmata et confecta, lex est.—CICERO.

PRINTED AT THE "CEYLON TIMES" OFFICE, COLOMBO, CEYLON.

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TO

P. A. DYKE, ESQUIRE,

AS A SLIGHT BUT SINCERE PROOF OF GRATITUDE, FOR HIS SINGULAR DEVOTION—DURING MORE THAN A QUARTER OF A CENTURY—TO THE INTERESTS OF THE PROVINCE, WHOSE LAWS AND CUSTOMS ARE NOW FOR THE FIRST TIME COLLECTED TOGETHER AND PUBLISHED, THIS WORK IS, BY PERMISSION, MOST RESPECTFULLY DEDICATED.

BY

THE EDITOR.

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PREFACE.

THIS work has cost me much time and trouble. It is no easy task to go over musty old Records (often barely legible) extending over a period of more than half a century. I have not, it will be observed, interfered with the text of the old version of the Thesawaleme, except where there were manifest and material errors. I had once intended to have re-written the whole, but when I came to read the Decisions for a series of years, referring to this very version, I changed my mind, reluctant—for the sake perhaps of a little more precision, and it may be for a little more correctness or elegance of style—to disturb what had acquired the venerable sanction of age. Innovations, without a practical object, are always undesirable and often dangerous, and no practical object could have been secured by any unnecessary interference with the established text of the "Thesawaleme," as published in 1797.

The Decisions commence from the year 1801 and come up to the end of 1860, the time when the work was put into the hands of the Printer. It was at first my intention to publish only a Digest of them, making Harrison my model ;* finding, however, Harrison's Epitome often unsupported by the Reports *in extenso* of cases, I at once abandoned the idea, convinced that such a Digest would be considered an unsatisfactory authority, and by necessitating constant reference to the original Decisions, deprive the work nearly of all its value. The Judgments therefore are given in full, and in

* Some specimens of this will be found in the body of this work.—*Ed.*

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the very words of the Judges and Magistrates. This also affords an opportunity for the public to mark, to a certain extent, what progress we have made in the character of the men employed in the administration of justice.

Whenever any judgment was in itself defective, I have added explanatory Notes, and extracts from the Pleadings and Evidence, to illustrate the doctrine embodied in it.

The Decisions since December 1860, that is, since the work went to the Press, will be separately published, in the course of a very short time.

The reader will see from the Translator's Preface, that the Translation of the Seventy-two Orders was never intended to be published. But in comparing it with the original, with the assistance of one of the ablest Pundits in Jaffna, Mr. CARTIGASER MOOTTOTAMBY, who understands Tamil perfectly, and English sufficiently well to detect any errors, I found there was nothing requiring any material alteration, and therefore took the responsibility upon myself of publishing it without the express sanction of the Translator. If these pages ever attract his attention, he will, notwithstanding his modest estimate of its merits, be gratified to know that, by making this translation, he has added to the many obligations under which his great talents and his unwearied labors for years have placed the people of this Province. I take this opportunity of conveying my personal assurance to him, that though all correspondence between us has ceased for some time past, he is still remembered by those who owe him so much, none more than the Editor, with affectionate gratitude.

Mr. ATHERTON'S edition of the Thesawaleme has never been recognized in our Courts, but I have included it in my collection, to make the work as complete as possible.

As for the Tamil portion of this publication, my Pundit, above referred to, is chiefly responsible ; my share of the work being confined to the exercise of sufficient control to prevent foreign and high sounding words from being introduced, with a view to make the language "*classical*," which means "highly obscure." It is not therefore the fault of the Pundit, that he has not made the ver-

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sion as difficult for ordinary Tamil Scholars to understand as possible, by an ample infusion of Sanskrit words. My object was to make it generally useful, by rendering it plain and intelligible, and I hope I have succeeded, to the very great mortification of my very learned Pundit. I trust this part of the work will be found useful not only to the Headmen and the people of Jaffna, but to the gentlemen preparing for the Civil Service Examinations.

It has been my anxious desire to make the Index copious and complete.

I am indebted for some of the most valuable papers published in this Collection to the kindness of Mr. DYKE, who, interested as he is in everything relating to the Northern Province, besides affording me every encouragement, very readily placed them at my disposal.

I have to acknowledge my obligation to Mr. PRICE, the District Judge, and the various Magistrates of the Peninsula, for permitting free access to the Records of their respective Courts.

I take this opportunity of thanking my Apprentice Mr. CHARLES STRANTENBERGH, for the great assistance rendered by him from the very commencement of the work.

I may also mention that Mr. NICHOLAS GOULD, (another articled Clerk of mine) made himself useful in assisting to frame the Index.

I must not forget to thank Mr. CAPPER, for the pains he has bestowed not only in the printing of the work but in carefully revising the proof-sheets, &c. A distance of 250 miles between the Printer and the Editor, has caused much delay and much inconvenience to both parties, and I trust this may be considered my excuse for many typographical errors, as well as for not bringing the work out as early as I had anticipated.

Instead of a List of Errata, (which is inserted often as a mere matter of form, and is almost useless), I have adopted what I think the more advantageous plan, of correcting in the body of the Book every mistake of any consequence. I have in conclusion, to bespeak the indulgence of the Public and the Profession, for the very many imperfections in the work, of which I am perfectly conscious, but they will please to remember that this is not only the first col-

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lection of the kind, but that whilst engaged in it, I had to attend not only to my own private practice and duties as Acting Deputy Queen's Advocate, but had for several months to discharge at the same time the duties of the Acting District Judge, Police Magistrate, Commissioner of the Court of Requests, &c., of Jaffna, and of Chavagacherry.

HENRY F. MUTUKISNA.

Paseoore, Jaffna,
May 30*th*, 1862.

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COUNTRY LAWS.

A description of the established Customs, Usages, and Institutions, according to which Civil Cases are decided among the Malabar or Tamul Inhabitants of the Province of Jaffna on the Island of Ceylon, and particularly those respecting Inheritances, Adoptions, Grants, Appropriations, Sales, Purchases, Mortgages, and Redemption of Lands and Gardens, Pursuant to the Order contained in a letter bearing date the 14th August 1704, written here by the Honourable Governor of Ceylon, Dr. Cornelis Joan Simons, and Councils at Colombo, and collected together by me, the undersigned, after an experience of thirty-five years, having been for the most part of that time amongst the natives.

SECTION I.

Of Inheritances and Succession to Property.

1. Different kinds of property.
2 Of dowry.
3—6. Of the marriage of daughters, and the dowry given with them.
7. Of the marriage of sons, & their portions.
8. Of resignation of property.
9. Of succession to property where children and their mother are left.
10. Property how to be divided, where the mother marries again.
11. Of succession to property, where children and their father are left.
12. Of the division of property, where orphan children are left.
13. Division of property, where there are half brothers and sisters.
14. Division of property, where there is issue of both marriages.
15. Division of property, where two persons, each being the sole child of their respective parents, die without issue.
16. Property, how to be divided where it has been improved.
17. How, where a Pagan marries a Christian woman.
18. How, where two Pagans intermarry.

I will commence by stating that a man and woman being married, the descending heirs proceed from them, and by those, the ascending heirs are ascertained, so as to point out their shares of inheritances.

Different kinds of Property.

1. From ancient times, it has been an established custom or law, that the goods brought in marriage, or acquired by such husband and wife, have from the beginning been distinguished by the denomination of *Modesiom*, or hereditary property, when brought by the husband; and when brought by the wife, it was denominated in the Tamil language *Chidenam*, which in our language signifies *dowry*; and such property, as is acquired during marriage, is denominated *Thadiathatam*, or in our language, *acquisition*. On the death of the father, all the goods brought in marriage by him were inherit-

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ed by the son or sons; and, when a daughter or daughters married, they received dowry or *Chidenam* from their mother's property, so that the husband's property always remained with the male heirs, and the wife's property with the female heirs, but the acquisition or *Tedijeteutom* was divided among the sons and daughters; the sons however, were always obliged to allow the daughters to get a larger share.

Of Dowry.

2. But in process of time, and in consequence of several changes of Government, particularly those in the times of the Portugese (when the Government was placed by order of the king of Portugal in the hands of Don Philip Mascarenha,) several alterations were gradually made in those customs and usages, according to the testimony of the oldest Modliars, so that, at present, whenever a husband and wife give a daughter or daughters in marriage, the dowry is taken indifferently, either from the husband's or wife's property, or from the *acquisition*, in such manner as they think proper; that is to say, by parts and pieces, for there is scarcely any person who can say that he possesses the sole property of entire pieces of ground, gardens, slaves, &c., for it will generally be found that he is only entitled to the half or to one-sixteenth part of the property.

Of the Marriage of Daughters, and the Dowry given with them.

3. The nearest relations, either on the father's or mother's side from a particular regard to the bride, often enlarge the dowry, by adding some of their own property to it: and such a present should be particularly described in the *doty*, *marriage act*, or *ola*, which must specify by whom the present or gift is made, and the donor must also sign the act or ola; but such a donation or gift is voluntary. When the act of doty is executed, it is presumed that it is done without fraud; but the donor does not point out therein what his share is of the pieces of ground, gardens, or slaves, which he gives by pieces to his daughter or daughters, but says merely "such and such part of such a piece of ground;" so that, frequently, the receiver or bridegroom finds himself deceived in his expectations: which always causes differences and disputes, for many often expect to get a sixth part, when they do not get more than one-sixteenth. For instance, a husband and wife having five children,

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viz., two sons and three daughters, and possessing a quarter or fourth part of a ground, called *Worlancooly ;* of which they give as a dowry to each of their daughters, when they marry, a fourth part of their (the husband's and wife's) share in the said ground, which together is three-fourths, and retain the other one-fourth for themselves as long as they live: but after their death the two sons come and take each the half, consequently the daughters have no more than one-sixteenth part each of the said ground, and the two sons each but one thirty-second part: and it is the same with the donations of gardens, slaves, &c., from which often disputes also arise. The daughters must content themselves with the dowry given them by the act or *doty ola,* and are not at liberty to make any further claim on the estate after the death of their parents, unless there be no more children, in which case the daughters succeed to the whole estate. And in case the new married couple, to whom one or more pieces of the said gardens, slaves, &c., have been given in marriage, do not take possession therof within ten years, they forfeit their claim thereto: for there has been of old, since the time of the Tamil Kings, a proverb, *Ottioem chidanaoem pattyaal,* that is, immediate possession, must be taken of dowry and pawns. If this be not done, the lands, gardens, slaves, &c., again becomes a part of the common estate in the same manner as if they had never been given to the young married couple; unless they can produce an act of their parents concerning their delay in taking such possession.

4. If a father or mother gives as a dowry to their daughter or daughters, a piece of land or garden which is mortgaged for a certain sum of money, and say in the doty ola "*a piece of land called Kalloenanpuende, which is mortgaged to Kandaapoedam for sixty fanams, but which the bridegroom and his bride must redeem for that money ;*" and if they are unable to do it, and the mortgagee does not wish to retain any longer the mortgage for the money lent by him, the parents themselves are obliged to redeem it ; and notwithstanding (although it be fifty years afterwards) the said mortgaged land or garden devolves again to the child to whom it was originally donated by the doty ola, provided the money for which it had been mortgaged is paid by such a child.

5. If one or more pieces of land, garden, or slaves, &c., are given as a marriage gift, respecting which at the expiration of some years, a law suit arises ; and the young couple lose the same by the suit, the parents who gave the same (and after their decease the sons) are obliged

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to make good the loss of the land, garden or slaves, &c., for a well drawn up and executed doty ola must take effect; because it is by this means that most of the girls obtain husbands, as it is not for the girls, but for the property that most of the men marry; therefore the dowry they lose in the manner above stated must be made good to them, either in kind or with the value thereof in money. Should it happen, that after the marriage of the daughter or daughters, the parents prosper considerably, the daughters are at liberty to induce their parents to increase the doty, which the parents have an undoubted right to do.

If all the daughters are married in the manner above stated, and each has received the dowry then given by their parents, and if one or more of them dies without issue, in such case the property indisputably devolves to the other sisters, their daughters, and grand-daughters; but if there should be none of them in existence, the property, in such case falls in succession to the brothers, their sons and grandsons, if any; if not, the property reverts to the parents, if alive; and if not, the father's *Modesiom* or hereditary property, and the half of the *Tedijeteutom*, or acquired property, (after deducting therefrom the half of the debts), devolves first to his brother or brothers, then to their sons and grandsons; and the mother's *chidenam*, or dowry, with the other half of the acquired property, after deducting therefrom also the remaining half of the debts, devolves to her sister or sisters, their daughters or grand-daughters, *ad infinitum*.

6. Although it has been stated, that, where a sister dies without issue, the dowry, obtained by her from her parents, devolves to her other sister or sisters, yet it sometimes happens that her mother, having in the meantime become a widow and poor, requests the sister or sisters of deceased to allow her to take possession of the property of her deceased daughter, and to keep the same as long as she lives, to which they sometimes agree, but are by no means bound to do it; but in order that they may not subject themselves to any loss, they ought to have the property described and registered, otherwise, on the mother's death, the son or sons will come and take possession of all that she has left.

Of the Marriage of Sons and their Portions.

7. Having pointed out the manner in which the daughters are given in marriage, and what becomes of their property when they die, I will now proceed to state what relates to the sons. So long as the parents live, the sons may not claim anything whatsoever; on the contrary, they are bound to bring into the common estate (and there to let remain)

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all that they have gained or earned during the whole time of their bachelorship, excepting wrought gold and silver ornaments for their bodies which have been worn by them, and which have either been acquired by themselves or given to them by their parents, and that until the parents die, even if the sons have married and quitted the paternal roof.*

So that when the parents die, the sons then *first* inherit the property left by their parents, which is called *Modesiom* or hereditary property, and if any of the sons die without leaving children or grand-children, their property devolves in the like manner as is said with respect to the daughters' property, which devolves to the women as long as there are any. The property of the sons, therefore, devolves to the men, and, in failure of them, to the women: and although the parents do not leave anything, the sons are nevertheless bound to pay the debts contracted by their parents, and although the sons have not at the time the means of paying such debts,† they nevertheless remain at all times accountable for the same; which usage is a hard measure, though according to the laws of the country.

Of Resignation of Property.

8. ‡ Should it happen that age renders the parents incapable of administering their own acquired property, the sons divide the same,|| in order, that they may maintain their parents with it, and it will be often found that sons know how to induce their parents to such a division or resignation of their property, with a promise of supporting them during the rest of their life; but should the sons not fulfil their promise, the parents are at liberty to resume the property which has been so divided among the sons, which is not done without a great deal of trouble and dispute. And the experience of many years has taught us, that such parents (in order to revenge themselves on their sons) endeavour by unfair means, to mortgage their property for the benefit of their married daughters or their children: and for this reason it has been provided by the *Commandeur* that such parents may not dispose of their property either by sale or mortgage, without the special consent of the *Commandeur*, which is now become a law.

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* See Colebrooke's Hindu Law, Vol. 3. p. 27.
† See Colebrooke's Hindu Law, Vol. 1. p. 273. and 274. and the note by Sir W. Jones.
‡ See Colebrooke's Hindu Law, Vol. 3. p. 23—24.
|| See Colebrooke's Hindu Law, Vol. 3. p. 38—39.

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Of Succession to Property, where Children and their Mother are left.

9. If the father dies first, leaving one or more infant children, the whole of the property remains with the mother, provided she takes the child or children she has procreated by the deceased, until such child or children (as far as relates to the daughters) marry; when the mother, on giving them in marriage, is obliged to give them a dowry, but the son or sons may not demand anything so long as the mother lives, in like manner, as is above stated with respect to parents.

Property, how to be divided where the Mother marries again.

10. Should, however, the mother marry again, and have children by her second marriage, then she does with the daughters as is above stated with respect to parents. But it is to be understood, that, if she has daughters by her first husband, she is obliged to give them, as well as the daughters by her second husband, their dowries from her own doty property; and if the son or sons, marry or wish to quit her, she is obliged to give them the hereditary property brought in marriage by their father, and the half of the acquired property obtained by the first marriage, after deducting therefrom the dowry which may have been given to the daughters.

If the mother, of whom we have just spoken, also dies, the sons, both of the first and second marriage, succeed to the remaining property which the mother acquired by marriage; besides which such son or sons are entitled to the half of the gain acquired during the mothers' marriage with his or their father, and which remained with the mother when he or she married, and provided that therefrom are also to be paid the debts contracted by her or their father when alive.

But if any part of that property is diminished or lessened during the second or last marriage, then the second husband, if he still be alive, or if he be dead, his son or sons are obliged to make good the deficiency either in kind or in money, in such manner as may be agreed upon.

On the other hand, the son or sons of the second marriage are entitled to the hereditary property brought in marriage by his or their father, and also to the property acquired during marriage, after all the debts contracted by him shall have been paid from the same.

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Of Succession to Property, where Children and their Father are left.

11. *If the mother dies first, leaving a child or children, the father remains in the full possession of the estate so long as he does not marry again, and does with his child or children and with his estate in the like manner as is above stated with respect to the mother.*

If a father wishes to marry a second time, the mother-in-law or nearest relation generally takes the child or children (if they be still young) in order to bring them up: and, in such case, the father is obliged to give at the same time with his child or children the *whole* of the property brought in marriage by his deceased wife, and the half of the property acquired during his first marriage. When those children are grown up and able to marry, that is to say, the daughters (if any there be), the father must go to the grandfather or grandmother with whom the children are, in order to marry them and to give them a dowry both from their deceased mother's marriage portion and from the acquired property, which, as before stated, had been given to the relations with the children, and from his own hereditary property.

This being done, and if any thing remains of what had been given to the relations with the children as above stated, and if the son or sons have acquired a competent age to administer what remains, they then take and posses the same without dividing it until they marry, when they divide it equally among themselves, together with the profits acquired thereon; but if they make a division immediately on taking possession of what remains, so that each possesses his share separately, then they are not obliged to share with each other what each has acquired.

But should there remain nothing of the mother's property, and of the half of the acquired property during marriage, the sons, whether young men or married, must do as well as they can until their father dies; for these sons by the former marriage cannot claim anything from this their father.

If such a father has by his second wife a child, or children, and among them a son or sons (for it is unnecessary to say anything further concerning daughters), and dies, his property which exists is divided into two equal shares, one of which the son or sons by the first wife take, and the other the son or sons by the second wife, although there should be but one son of the first and five or

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six of the second. And what remains of the half of the acquired property during the first marriage must also devolve to the son or sons of that marriage; but, if any part thereof has been diminished during the second marriage, then the sons of this marriage are obliged to make good the deficiency to the sons of the first marriage, in the manner above stated, and the son or sons of the second marriage, divide the property acquired during that marriage, and also the remaining part of that which has not been given as a dowry to the sisters, (but not before their mother is dead); in which case the sons are obliged to pay all the debts contracted by the father during his marriage with their mother.

Of the Division of Property, where Orphan Children are left.

12. If the father and mother die without being married more than once, and their surviving children are infants under age, then the relations of both sides assemble to consult to whose care the children are to be entrusted; and a person being chosen, the children are delivered to him, together with the whole of the property left by the parents, which remains with such persons until they attain a competent age to marry; and, when they are grown up, it is to be supposed that it will be the turn of the eldest first to marry, when the friends must again assemble to consult what part of his or her parents' property shall be given to him or her as a dowry, with which he or she must be content. In order to understand the following observations better, we will limit the number of brothers and sisters remaining unmarried to *three*, that is to say, two brothers and one sister, which last, on account of some misfortune or other, remains unmarried. If the brothers (having attained in the meantime a competent age) marry, and if she desires that the remaining property of her parents shall be divided, the relations and possessors thereof may not refuse it; but the brothers must, in such case, allow their sister who remains unmarried to have a larger share. This, however, the brothers often oppose, particularly when there is but little, because, when the unmarried sister dies, the married one succeeds to all that the unmarried one was possessed of.

But should it happen that both the brothers after they have grown up and are married, possess the before mentioned property without having divided it, and that the unmarried sister receives nothing else besides what is necessary to provide herself with subsistence and clothing until her death; in such a case, the whole of the property remains with the brothers, and the married sister has no right or claim thereto: and should it happen that the unmarried sister had allowed herself to be de-

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flowered and thereby had a child, she (in order to bring it up decently) ought to agree with the brothers and sisters to divide the estate of their parents, in order to enable her to allot her child a certain portion thereof.

DIVISION OF PROPERTY WHERE THERE ARE HALF-BROTHERS AND SISTERS.

13 With respect to the succession of half brothers and sisters, if a woman, who has been married twice, and, by the first husband has had a son, and by the second a son and daughter, and these all survive their parents, and act with their parents estate as is above-mentioned, and if the son of the second marriage dies without leaving a child or children, and the question is, who shall inherit the deceased's estate? respecting which the principal Modliars and inhabitants have not agreed,—many are of opinion, that the full sister must be preferred above the half brother, but this would be quite contrary to the old established laws. Therefore I agree in opinion with the greatest part of the inhabitants who have been consulted on the subject, that the half-brother from the side he is brother, that is to say, from the mother's side, must succeed to the inheritance, and the sister, because there cannot be brothers from the father's side, must succeed to all that is come from the fathers's side, and the acquired property must be divided, half and half, between the half brother and full sister, provided that it has been acquired by means of the mutual property.

DIVISION OF PROPERTY, WHERE THERE IS ISSUE OF BOTH MARRIAGES.

14. If the husband has been married twice, and has, by his first wife, had a son and daughter, and only one daughter by his second wife, and if the daughters have been married and received a dowry, and the father dies, it would be supposed from what has been stated, that the son must succeed to the estate of the deceased; but in this case it may not take place: for the daughter of the second marriage must inherit equally with her brother, there being no full brother to inherit. If a man has a child or children, and his brother and sister die before or after him, without children, then this man's son succeeds both to his brother's and sister's property, as well as to that of his deceased father.

It is the same with a woman who has a child or children, and whose brother or sister dies afterwards without leaving children, for this woman's daughter or daughters inherit both from the brother and sister of her or their deceased mother; but if the said brother and sister die first, and if the mother of the before-mentioned daughter is still alive, then

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the mother inherits from the brother and sister, whereby the daughters remain deprived of that inheritance; for, when the mother afterwards dies, her son or sons are justly entitled to all that their mother leaves at her death.

DIVISION OF PROPERTY, WHERE TWO PERSONS, EACH BEING THE SOLE CHILD OF THEIR RESPECTIVE PARENTS, DIE WITHOUT ISSUE.

15. In the case of two married persons, each in particular being the sole child of their respective parents, all that the mutual parents possessed must be brought together: and if the husband dies without leaving a child or children, then the property which proceeded from the father returns to the father's nearest relations, and to his mother's nearest relations all her dowry which he inherited, and of the acquired property and debts, each a fourth part. The same usage obtains, as it respects her, for all that she inherited from the father returns to the father's nearest relations, and her mother's dowry to the mother's nearest relations, and of the acqui ed property and debts to each a fourth part: excepting that the gold and silver, made for the husband's use, goes rec procally to his own father and to his mother's relations, and all that was made for the wife's use, and worn by her, goes to her relations, although there should be, on the one side, the value only of ten rix-dollars and on the other the value of one hundred rix-dollars.

Having thus stated what is to be done with the property, when a husband and wife dies, one after the other, without leaving a child or children, it is now necessary that we shew, in case one of them dies, what the heirs ought to do, to prevent all difficulties and losses. They must cause the survivor to return what was brought in marriage by the deceased, and also the half of the acquired property, they being justly entitled thereto: but if, from motives of affection or otherwise, the heirs wish to leave the survivor in the possession of any part of the inheritance, they must do it in writing. If they neglect to do this, they must, when the survivor marries again, take back the property left in his or her possession. But if they do not do this also, and if he or she, having children by the second marriage, dies, in such case the heirs who have suffered so many years to elapse without claiming the property as are established by the laws of the country, remain deprived thereof. With respect to the crops that have been gathered, when one of them has died, disputes have often risen, one pretending that so much was produced from the hereditary lands, while the other pretends that so much

was produced from the dowry lands; but no attention is paid to such claims, for all kinds of grain collected are considered as acquired property, which they really are, and as such are divided equally.

Should any of the man's hereditary property or woman's dowry be diminished during marriage, when one of them dies and the property is divided, the same must be made good from the acquired property, if it be sufficient; if not, he or she who suffers the loss must put up with it patiently.*

PROPERTY HOW TO BE DIVIDED, WHERE IT HAS BEEN IMPROVED.

16. Should husband and wife during marriage considerably improve a piece of ground, whether it be husband's hereditary property or wife's dowry,—for instance, by building houses, digging wells, and planting all sorts of fruit-bearing trees thereon,—the heirs of the wife, should she die first, and should the improved ground be the husband's hereditary property, shall not be at liberty to claim any remuneration for the expenses made.† In the like manner also, the husband's heirs cannot claim any remuneration should the wife's dowry ground have been improved.

HOW, WHERE A PAGAN MARRIES A CHRISTIAN WOMAN.

17. If a Pagan comes from the coast, or elsewhere, and settles himself here, and being afterwards inclined to marry a Christian woman, procure himself to be instructed in the Christian doctrine, and being sufficiently instructed, is at last baptised and married, and by his industry acquires property by means of what his wife has brought in marriage, his heirs (should he die afterwards without leaving a child or children) shall not be entitled to any thing: for, not having brought any thing in marriage, they, consequently, shall not carry any thing out, and being moreover Pagans. But should the wife die first, without leaving any child or children, the husband is lawfully entitled to the half of the acquired property it having been gained by his industry.

HOW, WHERE TWO PAGANS INTERMARRY.

18. If a Pagan comes here as just stated, and marries a Pagan woman, and such Pagan dies without leaving a child or children, his relations inherit the half of the property acquired during marriage; because should he have left any child or children, and should they or his relations claim the inheritance, they certainly would get it without his having brought anything in marriage, they being Pagans; but having once

* See Van Leuwen, p. 420. See also, Vanderlinden, p. 75 and 175. Domat, Vol. 1 p. 167—168.

† See Van Leuwen, p. 427.

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embraced the Christian religion, the Pagan relations are not entitled to anything. Pagans consider as their lawful wife or wives, those around whose neck they have bound the taly with the usual Pagan ceremonies; and should they have more women, they consider them as concubines. If the wives, although they should be three or four in number, should all and each of them have a child or children, such children inherit, share and share alike, the father's property; but the child or children by the concubines do not inherit anything.

SECTION II.

Of Adoption.

1. Ceremonies of adoption.
2. Of the succession to, and division of, property, in the case of adoption, where the parties adopting leave other children.
3. Where the adopted person dies without issue.
4. Where two children, not related, are adopted.
5. Of the division of property among adopted children, to the adoption of whom some of the relatives of the person adopting consent, while others refuse their consent.
6. Where one of three brothers adopts a child.
7. Of the adoption of a person of a higher or lower caste.

Ceremonies of Adoption.

1. If a man and woman take another person's child, to bring up, and both or one of them be inclined to make such child their heir, they must first ask the consent of their brothers and sisters if there be any; if not, that of their nearest relations, who otherwise would succeed to the inheritance: and if they consent thereto, saffron water must be given to the woman, or to the person who wishes to institute such a child their heir, to drink in the presence of the said brothers or sisters or nearest relations, and also in the presence of the witnesses after the brothers and sisters, or nearest relations, and also the parents of the child, shall previously have dipped their fingers in the water, as a mark of consent. Although there be other witnesses, it is nevertheless the duty of the barbers and washermen to be present on such occasions.

If the brothers and sisters refuse to give their child, such a man and woman may take the child of another person, although a stranger, but they are not at liberty to drink saffron water without the consent of their brothers and sisters, or of those who conceive themselves to be heirs; although this litigious people, from mere motives of hatred, often endeavour to prevent a man and woman who have brought up a child

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with the same love and tenderness as their own, from adopting such child. Nevertheless, according to the testimony of all the Modliars, such a man and woman may, in spite of the opposition, adopt such a child, and bequeath it one tenth part of the husband's hereditary or wife's dowry property: out of the acquired property they may bequeath more than one tenth, provided they have not many debts. But such an adoption may not be made without the consent of the magistrate, in order to keep them within the bounds of discretion, and also in order to prevent them from adopting children, from motives of hatred towards their relations.

Of the succession to, and division of, Property, in the case of Adoption, where the parties adopting leave other children.

2. But when the said man and woman have both together drunk saffron water, such or such a child shall inherit all that they leave when they die: and if, after such adoption, they have a child or children of their own, then such adopted child inherits together with the lawful child or children. And it is to be observed, that such an adopted child, being thus brought up and instituted an heir, losses all claim to the inheritance of his own parents, as he is no longer considered to belong to that family, so that he may not inherit from them. If the adopting father alone drinks saffron-water, then such a child shall succeed to the inheritance of his or her own mother; and if the adopting mother has alone drunk saffron-water without her husband, then such a child inherits also from his or her own father.

Where the adopted person dies without issue.

3. If such an adopted person dies without leaving a child or children, then all that he or she might have inherited returns to the person or persons from whom it came, or to their heirs.

Where two children, not related, are adopted.

4. If a husband and wife adopted two children, a boy and a girl, who are not related to one another by blood, so that they can marry together, and if both husband and wife together drink saffron-water in manner above stated, and if both the said adopted persons be married together, after they arrive to the age of maturity, and at the expiration of time one of them dies without leaving a child or children; then the survivor inherits the whole on account of the adoption, which binds them as brothers and sisters, and not in the blood. It goes in the same manner, if husband and wife, after having adopted a boy, have a daugh-

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ter of their own. Such a boy is allowed to marry with the daughter, provided they are not nearer related by blood than brothers' and sisters' children, and they inherit from one another as before mentioned.

DIVISION OF PROPERTY AMONG ADOPTED CHILDREN, TO THE ADOPTION OF WHOM SOME OF THE RELATIONS OF THE PERSON ADOPTING CONSENT WHILE OTHERS REFUSE THEIR CONSENT.

5. If a husband and wife wish to adopt another person's child, to which adoption some of his or her brothers and sisters or nearest relations consent; and others do not consent; in such case, the husband and wife, are at liberty to adopt such a child, and to make him the heir to so much as the share amounts to, of those who have consented to the adoption; and who, as a token thereof must have dipped their fingers in the saffron-water drunk by the husband and wife leaving the inheritance to which the non-consenting party is entitled, at that disposal, until such a time as husband and wife, or one of them, dies; when the child and each of them take the shares to which they are entitled. But if the said heirs, either through negligence or otherwise, permit or allow the adopted person to remain for several years in the peaceable possession of the property, the heirs, by their silence, forfeit their claim and title thereto.

WHERE ONE OF THREE BROTHERS ADOPT A CHILD.

6. If there are three brothers one of whom has two children and of the other two have none, and if one these wishes, from pure motives of affection, to adopt one of his brother's children, which the other brother, who has also no children wishes to approve, the two brothers may carry their design into execution, leaving to the third brother the action which he pretends to have on the inheritance. On the death of such adopting brother, all his property is divided between the adopted child and the non-consenting brother, share and share alike. If the non-consenting brother who has no children wishes to give some of his property to the child, who has remained with the father unadopted, the question is, whether the adopted child can prevent it? The general opinion now is, that, on account of the right which he had thereto (as nephew and heir of his uncle) being lost by the adoption, he must allow the giver to do with his property what he pleases, as long as he lives.

OF THE ADOPTION OF A PERSON OF A HIGHER OR LOWER CASTE.

7. If a man adopts, in the manner above stated a youth of a higher

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or lower caste than his own, such child not only inherits his property, but immediately goes over into his adopted father's caste whether it be higher or lower than his own. But if a woman adopts a child, such child cannot go over into her caste, but remains in the caste of his own father, and will only inherit the woman's property after death.

If a man adopts a girl of another caste, in the manner above stated, *she* (it is true) goes over into the caste of her adopted father but not her children or decendants: for if she marries, and has a child or children, they follow their father; except among slaves, in which case it has another tendency, for there the fruit follows the womb.

SECTION III.

OF THE POSSESSION OF GROUNDS AND GARDENS, &C.

1. Of joint possession, or tenancy in common.
2. Of the renting of ground.
3. Division of produce, where fruit trees overhang the ground of another.
4. To whom the possession of Palmyra trees belongs.

OF JOINT POSSESSION OR TENANCY IN COMMON.

1. If two or more persons possess together a piece of ground without having divided it, and one of them incloses with a fence as much as he thinks he would be entitled to on a division, and plants thereon cocoanut and other fruit bearing trees, and the other shareholders do not expend, or do anything to their share of the ground, until the industrious one begins to reap the fruits of his labour, when the other, either from coveteousness or to plague, and disturb, come (which is frequently the case among the Tamils) and want to have a share in the profits, without ever considering that their laws and customs clearly adjudge such fruits to the person who has acquired them by his labour and industry,—when, in such a case (not being able to obtain the fruits,) they generally request to divide the ground, to know what belongs to each person, such division may not be refused But care must be taken in making it, that the part, which has been so planted, falls to the share of the brother who planted the same, and that the unplanted part falls to the share of the other joint proprietors: unless they wish to put off the repartition of the ground, and give one another time to plant an equal number of trees, and by proper attention to get them to bear fruit; in which case the repartition must be general, without considering who has planted the ground

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Of the Renting of Ground.

2. If a person has not a proper piece of ground of his own on which to plant cocoanut trees, and is allowed to do it on another man's ground, he gets two thirds of the fruits which the trees planted by him produce, provided that he himself furnished the plants; and the owner of the ground receives the other third. But if the owner of the ground supplies the plants, the planter gets but one third, and the owner of the ground the other two thirds. If, however, they have *both* been at an equal expense for the plants, then they are each entitled to an equal share of the fruits and trees. This division mostly takes place in the province of Timmoraatje : for, in the other provinces, they know better how to employ their grounds than to let strangers plant cocoanut trees thereon. If a laborer squeezes out his *pannegays* and sows the kernels, in order to obtain plants, and on digging them out forgets some of them, which afterwards become full grown trees, bearing fruit, the fruit which they produce remains the property of the owner of the ground, the trees having grown of themselves, without any trouble (such as watering them,) having been taken.

Division of Produce where fruit trees overhang the ground of another.

3. If any one plants on his ground, near the boundaries thereof, any fruit bearing trees, which must be cultivated with a great deal of trouble, and if by a crooked growth the tree or any of the branches grow on or over the neighbours' grounds, the fruits of such tree nevertheless remain the entire property of the planter, without his neighbour having any right to claim the fruit of the branches which hang over his ground : but, if any trees, such as Tamarinds, Illeppe, and Margosy, grow of themselves, without having been planted or any trouble having been taken, in such case the fruits belong to the person whose ground they overshadow.*

It seems, that many customs have been invented here for the sole purpose of plaguing one another: for it is sufficient to say, that the trees which stand on a person's own ground have grown up of themselves, without trouble or labour, and that he is not to be the owner of the branches and fruits, which grow over his neighbour's ground, the fruits of such branches being indisputably his; and he is even at liberty

*See Grotius. p. 209 Section 21.

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to cut the branches, if they hinder him, and sell the same for his own profit, without the consent of the owner of the ground on which the trees stand. And the owner of the branches cannot also prevent the owner of the tree from cutting it down, but, in such a case, he must give the branches to the person over whose ground they hang. But, on account of the Margosy oil, it has been ordered, since the company has had possession of the country, that the trees are not to be cut down without the special consent of the persons in power; and it is the same with all other fruit-bearing trees.

To whom the possession of Palmyra Trees belongs.

4. Although a piece of ground belongs to one person, and the old palmyra trees standing thereon belong to another person, the owner of such trees cannot claim the young trees, as they must remain to the possessor of the ground; excepting in the village of Araly where it is an ancient custom that the owner of the old trees takes possession of the young trees; which is the reason why only a few young trees are found in that village. For although a few ripe pannegays fall occasionally from the trees upon the grounds, from which young plants proceed, the owner of the ground, when he wants to cultivate it, has a right to extirpate such plants, in order to get rid of other persons' trees on his ground.

In the province of Tenmoraatje and Patchupalle, in so far as the trees and not the grounds stand mentioned in the company's Thomboos, the owners of the old trees take the young ones; but where the grounds are mentioned and also the young trees, and for which rent is paid, then the young palmyra trees belong to the owners of the ground.

SECTION IV.

Of a Gift or Donation.

1. In what cases a gift may or may not, be made, where husband and wife live separately.
2. How far they may make donations to their nephews and nieces.
3. When they receive a gift of land from another person.
4. How far gifts to one of two sons are good.
5. Presents to sons being bachelors, by relations, remain to them on their marriage, but no other presents.

1. When husband and wife live separately, on account of some difference, it is generally seen that the children take the part of the mother, and remain with her: in such a case the husband is not at liberty to give any part whatsoever of the wife's dowry away; but if they live

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peaceably, he may give some part of the wife's dowry away. And if the husband, on his side, wishes to give away any part of his hereditary property which he has brought in marriage, he may then give away one tenth of it without the consent of the wife and children, and no more; but the wife being subject to the will of her husband, may not give any thing away without the consent of her husband.

How far they may make Donations to their nephews and nieces,

2. If a husband and wife have no children, and are therefore desirous to give away some of their goods to their nephews and nieces, or others, it cannot be done without the consent of the mutual relations * and if they will not consent to it, they may not give away any more of their hereditary property and dowry; and, if their debts be not many, they may also give something from the property acquired during their marriage. If those nephews and nieces who have received such donation, die without issue, then the brothers inherit from brothers, and sisters from sisters; and the children and grand children succeed also, if there be any: if not, it devolves to the parents of those who obtained the donation, that is to say to their father's side, and to his brother and his children; and in like manner, on their mother's side, to her sister and her daughters, and on failure of them, to the brothers and their children, and in default of heirs on his or her side, the gift returns to the donor and his nearest heirs.

When they receive a Gift of land from another person.

3. If a husband or his wife receives a present or gift of a garden from another person, so much of such gift or present as is in existence on the death of one of them, when the property is divided, remains to the side of the husband or wife, to whom the present was made, without any compensation being claimable for any part of the gift that may have been alienated: but the proceeds thereof acquired during marriage, must be added to the acquired property. But if any one has a present of a slave, cow, sheep, or anything else that may be increased by procreation, such present, together with what has been procreated, remains to the side where it was given, without any compensation being claimable for what might have been sold or alienated thereof.

How far gifts to one of two sons are good.

4. If a husband and wife have two sons and no daughters, and the

* See Colebrooke's Hindu Law, Vol. 2d, p. 246.

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husband, from a greater affection which he bears the eldest son more than the youngest, wishes to give him a part of his hereditary property, he may do it by executing a regular deed: and if, after the expiration of some time, the youngest son dies without issue, and afterwards the parents die one after the other, then it will be as if the gift never had been made, for every thing devolves to him who received the gift; and if he dies also without issue, his property is inherited in the manner above stated. The father's hereditary property and the half of the acquired property, after deducting therefrom the debts, go to his brother or brothers, and the mother's dowry property, and the other half of the acquired property (after deducting also therefrom the half of the debts) go to his sister or sisters, without the latter being at liberty to claim anything on account of what the father gave to his son, as above stated. The same also obtains, if the grant or gift had been made on the mother's side; but if the gift has been obtained from any other person besides the father and mother, then it is divided both on the father's and on the mother's side.

If husband and wife have two, three, or more sons, and have given and delivered to them a piece of ground or garden; and if, after having possessed it for several years, the father and mother die, which causes a division of the estate, and if the above mentioned son, who has obtained the grant or gift, demands that it shall be first delivered him from the estate, it may not be refused to him, if he can prove it by a written document; if not, the gift is considered of no value, and is equally divided.

Presents to Sons, being Bachelors, by Relations, remain to them on their Marriage, but no other Presents.

5. We have stated above, that all the property acquired by the son or sons while they are bachelors, must be left by them to the common estate when they marry; but this is by no means understood to include the presents that have been made them by relations or others, which must remain to the persons to whom they have been given.

Should a husband and wife, who have no children, have acquired during their marriage any property; and should the husband, without the knowledge of his wife, give a part thereof to his heirs, and both afterwards die; in such case, on the division of the estate, the relations of the wife must receive beforehand a part equal to that which was given away by the husband to his relations when he was alive.

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SECTION V.

Of Mortgages and Pawns.

1. Of Mortgages of lands, on condition that the mortgagee should possess the same, and take the profits thereof, in lieu of money.
2. Mortgagee so in possession to be liable to all land taxes or duties.
3. Of redemption of a Mortgage, where due.
notice has not been given by the mortgagor.
4. Of Mortgages for certain terms of years.
5. Of Mortgages of fruit trees.
6. Of Mortgages of slaves.
7. Of Loans of money for the use of beasts.
8. Of Pawns of Jewels, &c.

Of Mortgage of Lands, on condition that the mortgagee should possess the same, and take the profits thereof in lieu of money.

1. When any person has mortgaged his lands or gardens to another for a certain sum of money, upon condion, that such lands or gardens be possessed by the mortgagee, and that the profits thereof should be enjoyed by him instead of the interest of his money; then the mortgagor of such lands or gardens cannot redeem the same whenever he pleases, but after the crop has been reaped, he must give information of his intention to the mortgagee, so as to prevent any farther trouble, labour and expence to the latter. In such case the mortgagor must, without failure, pay to the mortgagee the sum of money for which the said property has been mortgaged, namely, for the *warrego lands* in the months of July and August, and for the *paddy* lands in the months of August and September: but should the mortgagee have left the ground for the space of one year without sowing, for the purpose of having a better crop, in that case the mortgagor will be obliged to pay the money for which the grounds have been mortgaged in the month of November in the same year; and the month of November also must be redeemed, the *palmyra*, *betel* and *tobacco gardens*. Yet, should the mortgagee conceive a dislike to the land or garden mortgaged to him, on account of the same not yielding so much profit as the interest of the money for which the lands have been mortgaged, and should therefore wish to get rid of the same and to recover his money, he shall be obliged, in that case, to wait for his money one year after the lands or gardens have been delivered to the proprietor or the mortgagor: and if the mortgagor is and remains unable to redeem such land or garden, in that case the same must be offered for sale to his heirs; who then may purchase such lands or gardens, in case the same are worth more than the amount for which they were mortgaged; but should they *not* be worth so much, the mortgagee must then accept and keep the same for the sum advanced by him, provided

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he is confirmed in the full possession thereof, by a title deed drawn up in proper form.

MORTGAGEE SO IN POSSESSION, TO BE LIABLE TO ALL LAND TAXES OR DUTIES.

2. The mortgagee is to pay all such taxes and land duties to which the mortgaged land is subject, so long as he remains in the possession of the same, even for that year in which the mortgaged land is redeemed; for the payment of which taxes and duties the mortgagee must take a receipt from some person belonging to the Cutcherry, except in the province of Waddemoratchie, where the custom differs; because there, the proprietor receives a tenth part of the fruits produced by the ground mortgaged by him, and he therefore pays the land duties and takes a receipt for the same in his own name; and for the palmyra trees, he receives the duties upon the trees from the mortgagee or possessor, which duties he, as mortgagor, then pays to the majorals, and takes a receipt for the payment thereof, in his own name.

OF REDEMPTION OF A MORTGAGE, WHERE DUE NOTICE HAS NOT BEEN GIVEN BY THE MORTGAGOR.

3. In case the mortgagor wishes to redeem his mortgaged ground, but out of ignorance informs the mortgagee too late of his intention, namely, after the ground has been dug or other labour has been bestowed on it; in that case, the redeemer must give to the mortgagee his proper share from the fruits, which the land has produced in that year, for the labour and expences which he has bestowed upon such lands: in such case, the redeemer must observe the customs prevailing in the province and village.

Yet, when the mortgagee receives the money advanced by him, but cannot agree with the proprietor with respect to the profits expected by him according to the custom of the country, the proprietor in that case must permit the mortgagee himself to sow that piece of land; provided that he gives to the proprietor of the land, according to the custom of the country, the *terrewakom*, that is, the ground duty.

OF MORTGAGES FOR CERTAIN TERMS OF YEARS.

4. At present it is the prevailing custom here, that many persons mortgage their lands for a fixed term of three, five, eight or ten years; yet, in case the mortgagor, before the expiration of the stipulated time, shall be compelled to sell a piece of mortgaged land, either for the pur-

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pose of discharging his debts, or for some other reasons, the mortgagee cannot prohibit such a sale, but must consent to it, and receive or accept the sum of money advanced by him, according to the custom of the country.

Of Mortgages of Fruit Trees.

5. If any person has mortgaged to another, in the manner above mentioned, any fruit-bearing trees, viz., cocoa-nut, mango, jack or areca trees, and is able to redeem the same, he must do so in the months of December or January; and the mortgagee may pluck such ripe fruits as are eatable from the said trees, before he delivers over the same to the proprietor.

Of Mortgages of Slaves.

6. If any male or female slaves have been mortgaged upon the before-mentioned condition, and if they have fallen sick after some time; it is the duty of the mortgagee to give information thereof to the proprietor, in order that he may cause his male or female slaves to be cured of such disease as they labor under. But, should the mortgagee cause such male or female slaves to be cured at his own expense, without giving notice thereof to the proprietor, all such expenses, as were incurred by him for that purpose, are to be defrayed by himself, and he cannot demand the same from the proprietor. Yet, should such male or female slaves happen to die, the proprietor must then return to the mortgagee the sum, for which such slaves had been mortgaged.

Of Loans of money for the use of Beasts.

7. Should any person lend a sum of money to another, upon condition that the debtor, instead of paying the interest, should furnish the lender with one or more beasts for the purpose of having his land ploughed, without mentioning however what buffaloes or bullocks are to be delivered by him during the period that he keeps the borrowed money under him, and should a beast or beasts, so delivered to be used in ploughing the land, happen to die during the said period, the debtor or the proprietor of such beast or beasts is obliged to furnish the lender of the money with one or more beasts instead of those which are dead, in order to be kept by the lender of such sums of money until his land has been ploughed, after which the borrower of the money may acquit himself from the said obligation by returning such sums of money as were borrowed by him.

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Of Pawns and Jewels, &c.

8. Should any person take in pawn any jewels or wrought gold or silver for a certain sum of money, in order to receive a monthly interest upon the same, and should the proprietor of the pawned goods be able to prove that the pawnee has either worn them himself, or has lent out the same to be worn by others, the pawnee in such case will forfeit the interest of the sum of money lent by him*; and such pawnee will be obliged, in such case, to return the pawn for such an amount as was lent by him to the pawner.

SECTION VI.

Of Hire.

Of the hire of Beasts.

1. When any person has hired one or more beasts, in order to plough his land, the proprietor of such beasts is not obliged to furnish the person who has hired the same with fresh beasts, in case such as were hired become sick or happen to die during the time that they were used to plough the land. In case any person borrows from another any beasts for his use, with the free consent of the proprietor, such proprietor, according to the custom of the country, may not demand from the borrower any indemnification for such of the beasts as are hurt or have broken their legs, but must consider the loss as accidental, and consequently bear the same.

SECTION VII.

Of Purchase, and Sales.

1. Of sales of Land.
2. Of sales of Cattle.
3. Of the sale of children.

Of Sales of Land.

1 Formerly, when any person had sold a piece of land, garden, or slave, &c. to a stranger, without having given previous notice thereof to his heirs or partners, and to such of his neighbours whose grounds are adjacent to his land, and who might have the same in mortgage, should they have been mortgaged, such heirs, partners and neighbours were at liberty to claim or demand the preference of becoming the proprietors of such lands.† The previous notice,

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* See Colebrooke's Hindu Law, p. 149, Vol. I.
† See Vanleenveen, p. 384.

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which was to be given to persons of the above description, was to be observed in the following manner, viz: to such as resided at the village, one month; to persons residing in the same province but out of the village, three months; to those residing in another province, six months; and to those who reside abroad, one year. The above periods having expired without such persons having taken any steps upon the information given to them, the sale was considered valid; yet this mode of selling lands underwent an alteration afterwards, in consequence of the good orders given on that subject during the time of the old commandeur BLOOM (of blessed memory): as, since those orders, no sale of lands whatever, has taken place until the intentions of such as wish to sell the same have been published on three successive Sundays at the church † to which they belong; during which period such persons as mean to have the preference to the lands for sale, according to the ancient customs of the country, are to come forward, and to state the the nature of their preference; in consequence whereof they then became the purchasers of the same.

It is customary, under this nation, that a piece of land which has been mortgaged to one person is sold to another, for which sale, according to the above cited order, proper title deeds are granted, although the new purchaser is unable to discharge the amount of the purchase money, and in consequence thereof pays immediately to the seller, only that part of the purchase money which exceeds the sum for which the land has been mortgaged, and afterwards leaves the same in possession of the former mortgagee for the amount for which it was mortgaged by the former proprietor, until the new purchaser has the means to pay the amount for which the said land has been mortgaged. This manner of dealing creates many disputes, as it occurs very often that such sums of money are not discharged before the expiration of eight, nine, or ten and more years; on which account I am of opinion, (yet submitting mine to wiser judgment), that the passing of title deeds without the purchase amount being fully discharged should be prohibited, or at least that orders should be given, that in cases of the above described nature, the mortgage deed made previously in the name of the seller

† See also Grotius. p. 352.

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should be repealed, and that a new one should be passed in the name of the purchaser, instead of that which has been repealed.

Of Sales of Cattle.

2. If any person wishes to sell cattle, viz, bullocks, cows, buffaloes, sheep, &c., &c. the sales thereof are to take place without any application or acts in writing, which sales are considered valid when the dry dung or excrement of such animals as were sold, has been delivered by the seller to the purchaser; and in case the animals so sold happen to die or to get young ones before they are delievered up, the purchaser being able to prove by witnesses that the seller has sold them to him for a sum of money, and that the dry dung or excrement of those animals has been received in token of their having been sold, obtains the right of a proprietor of such animals as were purchased by him as well as of their young ones, without any claim whatever being made to them by any other person whomsoever, or any compensation for loss in case of death.

Should any person sell any of his bullocks or buffaloes, &c., &c. upon a statement that they are fit to be employed in ploughing lands, and should the contrary appear to be the case after the price has been agreed upon and paid for them, the purchaser may, in such case, within the period of fifteen days, deliver back to the seller such of the above described animals, and may demand from him the price paid for the same, who in that case, is also obliged to restore it to the purchaser.

Should any person sell a cow or a she buffaloe to another, stating that the animal sold has once or several times had young ones, and should it appear afterwards that the animal sold upon the above statement, instead of having had young ones once or several times, is a cow which never bears a calf, and consequently unfit for generation, the purchaser may in that case deliver back to the seller the cow or such other animals as were purchased by him; and he may demand from the seller the restoration of the purchase money. But should any person on the contrary, purchase a calf a year and a half or two years old, and should it appear afterwards that the calf so purchased grows up a cow which never bears a calf, or is unfit for generation, the purchaser is then obliged to keep the same, as no fraud whatever could have taken place in the sale thereof.

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Of the Sale of Children.

3. Where parents of this country neither are or never were slaves, yet sell their children when they are in needy circumstances, notwithstanding they are free people, such parents have a right to redeem their children when they are in better circumstances, for such prices as may be fixed upon by arbitrators; in which case the proprietor of slaves of the above description may not hinder or object to their being redeemed.

This is an ancient custom, which, according to my opinion, is grounded on reason; and I am also of opinion, that in case slaves of the above description can prove that they became slaves in the manner heretofore stated, they ought not in such case to be deprived of the above mentioned privilege, as the sale of free born natives has been positively prohibited in this country.

SECTION VIII.

Of Male and Female Slaves.*

1. Different classes of Slaves.
2. Marriages of Slaves.
3. Division of the property of Slaves dying without issue.
4. Division of property where there are children.
5. Duties of Married Slaves.
6. Sale of Slaves having lands, &c.
7. Mode of Emancipating Slaves.
8. Of succession to the property of an emancipated Slave.

Different Classes of Slaves.

1. The slaves of this country are divided into four castes, viz., *Cowias*, *Chiandos*, *Pallas*, and *Nalluas*. It would be a matter of great difficulty to find out that the two former castes were slaves from their origin, as it is supposed that some of them were sold in ancient times by their parents or friends to others; this supposition is entertained especially with respect to the Cowia caste, the greatest part of whom are slaves at present, and such as were not slaves caused themselves by some intrigue or other to be registered in ancient times in the church rolls and thombos, under the denomination of other castes; so that none of that denomination are free at present.

The slaves of the second caste, viz., the Chiandos, are but few in number, and such of this caste as were in slavery were not registered in the thombo as Chiandos, but under the denomination of Cowias; so that the remaining part of them are free, and perform government services

* Slavery abolished by Ord. No. 20 of 1844.

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in the same manner as the Bellales; and these Chiandos perform their ordinary *Oliam* or government-services during one day in every month, besides which they are obliged to provide the elephants of government n the stables of the province with food, together with the Pallas and Nallnas, and also to assist in carrying the palankeens and the baggage of the company's civil servants of rank. The two other castes are slaves from their origin, and remain so till the present time, unless any of their masters out of compassion happen to emancipate them, which very seldom takes place.

Marriages of Slaves.

2. When people of this description intend to enter into matrimony, during the time that they continue in slavery, they are obliged to inform their masters of their intentions and obtain their consent thereto; for which purpose they must state to their masters with whom they intend to marry, and when they have obtained the consent of their masters, they get a certificate from them to be produced to the schoolmaster of the church to which they belong; which certificate being produced, the marriage ceremony is performed.

The proprietors never give their consent to such marriages, except when their male slaves wish to marry with their own female slaves: yet if circumstances do not permit it, they then allow their slaves to enter into matrimony with female slaves of other persons; but government male slaves are prohibited from marrying with any other female slaves, and if they wish to marry, they must do so with the female slaves of government.

Division of the Property of Slaves Dying without Issue.

3. In case any of these slaves happen to depart this life without issue, then the deceased's master (should the deceased's brothers and sisters be slaves of other persons) appropriates to himself such inheritances and dowries as were brought by the deceased into the marriage, and also half of the property acquired during the deceased's marriage; yet in case the deceased's brothers and sisters are also the slaves of the deceased's master, they are then permitted to possess such property; unless the proprietor of the slaves himself is in an indigent situation, and has nothing to subsist upon.

Division of Property, where there are Children.

4. If it happens that such slaves procreate children together, the child may not inherit from his father at his death, when the father is a

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slave of another person; but should the mother happen to die, her master has the choice either to appropriate to himself half of the property which the deceased had brought into the marriage, and also a quarter part of the whole property acquired during her marriage, or to deliver to the female slave's children all the goods left behind by their mother at her death, because the children of slaves of different masters appertain to the proprietor of the female slaves. Formerly, the the masters of such male slaves as married with female slaves of other proprietors, had the right, when his slaves had procreated five or six children to appropriate to himself one of the boys; yet he had no right to take any when they were girls; but this right is enjoyed at present by no person whatever except government; that is to say, when the male slaves of government were married with female slaves of the inhabitants before the publication of the aforesaid order.

Duties of Married Slaves.

5. The male and female slaves of the above description live separately from their masters, and are obliged to earn their own livelihood in such manner as they think proper, the Pallas and Nallnas male slaves giving yearly to their masters four fanams in cash, as a token of their gratitude. And they are obliged to perform for their master's, government services, when they require the same, on which occasion the masters are obliged to maintain the slaves so employed; but should the slaves fail therein, and the *chiko* money be demanded from their masters on behalf of government, the slaves are then obliged to pay the chiko money for their masters, as such neglect is not to be attributed to the masters but to the slaves, because they have received maintenance for the time that they were to be employed, and have deceived their masters.

They must also be ready, when required by their masters, to repair the fences of their master's lands, provided that they receive maintenance during the time they are at work for their masters. When the boys among the children of the slaves, are able to be employed as herdsmen, the master then chooses such of them as he likes for that purpose, provided that he gives them food and raiment so long as he employs them.

When the female slaves of the above description happen to be delivered of a child, their masters are obliged to provide such female slaves with such articles as are required by women in childbed, to

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the amount of six fanams, viz., when their female slaves are Nalluas and Pallas. The master being unable to contribute the said six fanams, and the Nalluas and Pallas themselves having no means to defray the expense, are permitted to pawn either the child of which the female slave was delivered or another of her children, for the amount of six fanams, until such female slave is able to redeem the child so pawned; the proprieters of the Cowias slaves usually give them something more, but the slaves of the Cowias and Choindas caste are not permitted to pawn their children in any manner whatsoever, as that custom prevails only among the slaves of the Nalluas and Pallas caste.

Sale of Slaves having Lands, &c.

6. When any person intends to sell a male or female slave who possesses a piece of land, garden, or other thing, and wishes not to be deprived of the right which he has to the property of his male or female slaves, he is obliged to take possession of the property of such slaves, before he sells them, and to deal therewith as he may think it expedient. But should the seller, through negligence or otherwise, allow the slave so sold to possess his goods unmolested, the seller cannot in that case have the least claim to such property.

It sometimes occurs that wealthy inhabitants who have many slaves make a present of one of their slave girls to a poor widow, in order that she may get a husband for her daughter, by giving the slave girl to her daughter either as a gift or dowry; and as the person who makes a present to another of such a slave girl, losses the right which he had to her, so the parents of such a slave girl, should she happen to continue residing at their house, may give to their daughter nothing whatever from their goods as a dowry at her marriage; whereas all the property of such parents when they are slaves, appertains to their master, and their child having been made a present as above stated, to another, becomes the slave of another person, and, in consequence thereof has no share in her parent's goods, unless her former master consents thereto.

Mode of Emancipating Slaves.

7. When a man, whether married or not, has no child or children and intends to emancipate a male or female slave inherited by him, he is obliged to announce his intention to the school-master of the church to which such female or male slave belongs, and to request

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that he will publish in the church his intention on three successive sundays, in order that his community, but especially those wishing to oppose such intention, may get notice thereof in due time and be able to institute such claims as they think they have to such slave: and should any person come forward during the time that such publication takes place, both they, as well as the person wishing to emancipate the slave, must submit to the decision of such arbitrators as they choose to appoint thereto; yet, if a married man, having no child or children, wishes to emancipate a male or female slave appertaining to his wife's dowry, he must do so with his wife's consent, and such emancipation must further take place in the manner heretofore stated with respect to a single man; but husband and wife, having children, may emancipate one or more slaves according to their pleasure. When a person has a child by his own female slave, he may emancipate such child without consent of his heirs, and may also make a donation (though of no great consequence) to such child out of his hereditary property.

OF SUCCESSION TO THE PROPERTY OF AN EMANCIPATED SLAVE.

In case an emancipated male or female slave happens to die childless, leaving behind him brothers and sisters by his or her mother's side, and if among the deceased's brothers or sisters, only one should have been emancipated, the emancipated brother or sister of the deceased only inherits from the deceased: yet should *none* of the deceased's brothers or sisters by the mother's side have been emancipated, in that case the legitimate children of the deceased's father are the heirs, should there be any; but, in the contrary case, the goods left behind by a deceased person, of the above description, they devolve again upon the persons from whom such property was received by the deceased, and afterwards to their heirs.

It was an old custom during the time of the heathen, which still subsists among them on the coast of Coramandel, and also at some other places, that when the proprietor of a slave, on account of such slave's faithful services or from any other motives, emancipates one or more of his slaves, and such emancipated slaves after the lapse of some time, behave themselves improperly to their former masters or to their children, in that case, the emancipated slaves were reduced again into slavery. When I was occupied in composing and writing these country laws and customs, a great many of the principal inhabitants and modeliars expressed their sorrow to me, that the above cited ancient customs,

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not having been observed for a long time, had lost their force in that country; as no emancipated slaves (so far as they could recollect) were reduced into slavery for their improper behaviour to their masters, either under the Portuguese or under the Dutch Government the consequence whereof they said, was that emancipated slaves have been very impertinent to their masters and benefactors, on which account the aforesaid principal inhabitants and modeliars urgently requested me that I should propose the said ancient customs being again made a positive law; in order to restrain the impertinencies of any emancipated slaves; in compliance with their request I propose that the said customs be made a positive law.

SECTION IX.

Of Loans of Money upon Interest.

1. Of Loans for fixed terms.
2. Securities, how far liable for Debt.
3. Wife or children, how far liable for husband's debts.
4. Interest not to exceed the principal.
5. Of loans of Paddy.
6. Of exchanges of Paddy, &c.
7. What proportion of profits is to be paid, where any person sows the grounds of another without stipulating any fixed portion of the produce.

Of Loans for fixed terms.

1. When any person lends a sum of money upon interest to another, upon condition that the borrowed sum should be restored within the time fixed by the lender, with such interest as was usually paid to others at the time that the money was lent by him, should such conditions not be fulfilled by the debtor, the creditor in that case must cause the pawn to be sold, if he has had the prudence to take any lands or any other goods whatever in pawn; and in case the debtor does not consent to the said pawns being sold, the lender of such sums of money must prefer his complaint to government, and request from the same that such mortgaged goods be sold for his benefit.

Securities how far liable for Debt,

2. Should there be securities, and should the debtor or borrower abscond, or be in reduced circumstances and unable to discharge the debt contracted by him, the creditor may then demand the payment of such debts from the securities; who, in such case, are obliged to discharge the debts for which they become securities, and such securities reserve the right of instituting an action against the debtor, should the latter be improved in circumstances. If two persons jointly borrow a sum of money

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from another, and bind themselves generally* for the amount borrowed, the lender in that case may demand the payment of the amount so lent from such a debtor as he may happen to see first, provided that the following expressions are inserted in the *olay* or bond, viz., *moonendaan moon eurooca,* which signifies, he who is present or before me must pay the debt ; the consequence whereof then is, that the debtor who comes first before the creditor, when he intends to demand the money, must pay the whole debt ; but such a debtor, who pays the whole debt, has a right to demand the payment of half the amount paid by him from his fellow debtor, wherever he may find him.

Wife or Children, how far liable for Husband's Debts.

3. When a man has contracted debts in his life time, without the knowledge either of his wife, child or children, and happens to depart this life before he has discharged the sam ; his wife, child or children, are obliged to pay such debts, provided the same be duly proved.

When husband and wife jointly cause a piece of land or a garden to be registered, as a pawn for a sum of money borrowed by them, and do not deliver over such land or garden to the creditor, but keep the same in their own possession, and in consequence thereof give them afterwards to any of their daughters, as a dowry, without specifying in the deed of gift that such a piece of land or garden has been mortgaged to another ; if the debtors in the supposed case happen to depart this life without discharging a debt of the above nature; yet leaving behind some other goods, their creditors of the above description, who have neglected to prevent such mortgaged lands or garden from being given as a dowry, have a right to seize such other goods as might have been left behind by the debtors ; and the son or sons of such debtors are responsible for such debts, provided that the creditors (if such son or sons are unable to discharge the debt) do wait until they are in better circumstances.

Interest not to exceed the Principal.†

4. When a person lends money upon interest, and suffers the interest to exceed the principal, the debtor is not obliged to pay the interest exceeding such principal.

Of Loans of Paddy.

5. When a person lends money on condition to receive paddy on ac-

* See Colebrooke's Hindu Law, Vol 1, p. 110. Vanderlaiden, p. 219.

† What follows, shews that this is not intended to apply to a "Joint Bond," but to "joint and *Several* Bonds."

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count of interest, he loses the interest when the harvest fails; and in the event of a bad harvest, the interest is to be calculated and paid according to the profits of that harvest.

When any person is in want of paddy, either as seed corn or for any other purpose, and borrows paddy to pay interest in kind, the borrower must stipulate the quantity which he agrees to pay, because it is not known what quantity is customary to be paid on such occasions; on which account the creditors take from two to five parrahs upon a quantity of ten parrahs of paddy; and the mode to be observed in paying paddy on account of interest, is that just stated in the event of a bad harvest, or of no harvest having taken place.—In case the debtor has had a good harvest every year during the time that he keeps the borrowed money, and the creditor has neglected to come and demand his interest upon the harvest, the debtor is not obliged, in that case, to pay anything on account of interest exceeding the principal, but it is sufficient if he pays double the principal sum borrowed by him.

Of Exchanges of Paddy, &c.

6. In case any person wishes to exchange grain, the paddy* *scamie korackan, cooloe,*† *rice* and *cadjang,* must be exchanged for an equal quantity, because they bear the same price: but any person wishing to exchange paddy for warego, must give one-and-a-half parrah of warego for one parrah of paddy.

What Proportion of Profits is to be paid where any person sows the Grounds of another, without stipulating any fixed Portion of the Produce.

7. When any person sows the fields of another, without a previous agreement what quantity the sower shall give from the harvest to the proprietor of the fields; it is deemed sufficient if the sower pays to the proprietor the *terrewaram;* which signifies the ground duty, and is calculated to be one-third part of the profits, except the tenth part which is to be given to the proprietor previously. And when the sower has agreed to give a fixed quantity to the proprietor, and the crop happens to fail in the year for which the contract has been made, the sower need not pay to the proprietor the quantity agreed upon; but in case the other inhabitants of the village (in which such a sower resides) have all had a good harvest, then the sower of the above description is obliged

* This must be a mistake.

† An old Tamil Version has "Peas and Rice are exchanged for an equal quantity."

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to pay such a quantity to the proprietor as was agreed upon by him; because, in such an event, the failure of the crop of the field sown by him is attributed to his laziness and negligence; yet should it happen that he has had a tolerably good harvest, and the other inhabitants of his village a bad one, then the proprietor of the ground must be satisfied with the quantity produced by the field, and may not claim *any thing* more from the sower.

The above laws and customs of Jaffnapatam were composed by me, in consequence of my experience obtained by my long residence and intercourse at that place. I have written the above laws and customs after a strict enquiry into the same, by order of his Excellency the Governor and Doctor of Laws, Cornelis Joan Simons; and I hope my endeavours will satisfy his Excellency the Governor's intention; in the expectation whereof, I have the honour to be,

Honourable Sir,

Your Excellency's most obedient humble servant,

(Signed) CLAAS ISAAKSZ.

Jaffnapatam,
30th January, 1707.

TO THE HONOURABLE THE COMMANDEUR ADAM VAN DER DUYN.

SIR,

You are not ignorant that I have composed the Malabar laws and customs by order of his Excellency the Governor, which I have done so far as my knowledge of the same permitted me; yet, to prevent any future disputes concerning the same, I request that you will have the goodness to cause them to be translated into Malabar by the translator Jan Pirus, who is known to have a thorough knowledge of that language. And I also request that you will cause the Malabar translation to be attentively perused by twelve sensible Malabar modeliars, in order that they may state their objections in writing to my composition, should they have any, in which case, I request that you will appoint such persons as would be able to point out to you such mistakes, as might have been committed either by me or by the said twelve modeliars; and should such persons as are appointed by you decide in my favour, I request that you will desire them to sign the Malabar translation. I insist upon this mode of giving their assent to my composition, because I know that the Mala-

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bars are deceitful and variable; and therefore, when they have subscribed their names to the composition of their laws and customs, they will have no opportunity whatever to retract their assent given to the same. In the expectation that you will not refuse me this favour in your capacity of Commandeur of this place, I remain,

Honourable Sir,

Your most obedient humble servant,

(Signed) CLAAS ISAAKSZ.

Jaffnapatam,

5th April, 1707.

SIR,

Pursuant to the application made to me by the Dessave Mr. Claas Isaaksz, I have caused the composition of the Malabar laws and customs in use at this place to be translated; and I afterwards delivered the translation thereof to twelve sensible Modeliars, whose names are hereunder specified, in order to puruse and revise the same. They have been employed in that work a great length of time, and have now returned the same to me, with the following observations, viz.,

"We, the undersigned twelve Modliars, have received from the Commandeur the Malabar laws and customs, composed by the Dessave Mr. Claas Isaaksz. in order to be perused and revised by us, and afterwards to state our opinion whether or not the same agrees with such laws and customs as are in use at this place.

"We were also desired to confirm the translation of Malabar laws and customs with our signatures, should we agree to the correctness of the same.

"We declare by these presents, that the composition of the said Malabar laws and customs perfectly agrees with the usual customs prevailing at this place, and we therefore fully confirm the same. But we deem it our duty to state hereby, that according to the ancient customs which prevailed under the Portuguese government, and also at the commencement of the Dutch government, in case slaves happened to behave themselves disrespectfully to their masters, and disobey any of their orders, such masters had a right to give them correction, and by that means to make them mind their

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duties. But within the last eight or ten years, it very often happens that, as soon as masters punish their slaves for any faults, such slaves maliciously tear their own ears, and anoint their body, in order that they may have a pretence to complain of their master's ill-treatment : the consequence whereof is, that such slaves obtain some lascoreens from the magistrate, in order to bring their masters before the same. Such occurrences cannot but injure the characters of the masters, and at the same time render the slaves audacious.

"We must also observe that, when any slaves are conveyed to the fort to be put in chains for their misbehaviour, the proprietors are obliged to pay great expenses, and are unable to defray the same when they are in indigent circumstances, on which account the slaves very often disobey and vex their indigent masters: We, the conjunct Modliars, therefore request, that it may please His Excellency the Governor, to order that the payment of twenty-four stivers, which is at present received on such occasions from the masters, may be diminished.

"We Don Philip Willawaraja Modliar, Don Anthony Naraynen, Don Francisco Arcelambela Modliar, Don Joen Chanderasegra Mana Modliar, Don Martinho Manapoelie Modliar, Don Francisco Wanniarraaya Modliar, Don Joan Chiamboenadem Modliar, Don Joan Choodoogayela Chenaderaya Modliar, Don Louwys Poeder, Don Francisco Rajaratna Modliar, are the persons who have perused and revised the translation of the Malabar laws and customs, in consequence whereof we *Confirm* the same with our signatures."

In consequence of the above declaration, I conceive that your Excellency may rely upon the correctness of the Malabar laws and customs written by the Dessave, and I therefore hope that your Excellency will either entirely approve of the same, or make such alterations therein as you may deem necessary for the welfare of the inhabitants. In the mean time I remain with the highest respect.

Honorable Sir,

Your Excellency's most obedient, humble servant,

A true copy, (Signed) A. V. DER DUYN.

Jaffnapatam. (Signed) J. HUYSMAN,

Secretary.

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EXTRACT OF A LETTER DATED 4TH OF JUNE 1707, WRITTEN FROM COLOMBO BY HIS EXCELLENCY THE GOVERNOR AND DOCTOR OF LAWS CORNELIS JOAN SIMONS IN COUNCIL, TO THE COMMANDEUR IN COUNCIL OF JAFFNAPATAM, ADAM VAN DER DUYN.

The Malabar laws and customs composed by the Dessave Claas Issacksz are approved of by us, and, in consequence thereof, we desire that authenticated copies of the same should be sent to the court of justice, and the civil landraad for their guidance. And we also desire, that the said laws and customs should be entered in the records at the office of the Secretary to Government; and as we have read, in the composition of the Malabar laws and customs, an application to us for the necessary orders relative to the purchase and sale of lands, gardens and slaves, &c., &c., so we desire by these presents, that no title deeds whatever should be passed before the amount of purchase money has been duly discharged; and that, in case the property disposed of might have been mortgaged previously to any other person, we desire that the seller of such property should redeem the pawn; and that the purchaser, if he wishes to leave such property with the pawnee for the amount for which it has been mortgaged by the former proprietor, should grant a new bond to the pawnee in his own name, in order to avoid any future disputes.

As to the application made to us, to have the emancipated male and female slaves reduced again into slavery, according to the heathen customs, in case they behave themselves disrespectfully to their former masters, we think that a compliance with that application would be productive of very bad consequences; yet, in order to bridle any impertinences of emancipated slaves, we are of opinion that the punishment, directed for slaves in the twentieth article of the Statutes of Batavia, may be made use of, to correct the impertinences of such emancipated slaves.

We cannot also comply with the application made to us by the Modliars, respecting the orders for diminishing the expense of half a rix-dollar, which is usually incurred by such masters as are desirous to put their slaves in chains, because the masters would

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in that case have recourse too often to that punishment, on account of the cheapness of iron. A true copy.

J Huysman,

Compared with the original at Jaffnapatam Secretary.
the 16th December, 1707.

(Signed) J. Huysman.

Secretary.

SPECIAL LAWS CONCERNING THE MOORS OR MOHAMMEDANS.

TITLE I.

Relating to Matters of Succession, right of Inheritances, and other incidents occasioned by Death.

1. When either husband or wife dies, either leaving or not having children, the survivor shall in the first place separate, and take away from the estate, the dowry brought in marriage by him or her, the same not being in common.

2. If a husband dies, leaving a wife but no children or relations, the estate shall, after deducting the funeral charges and other legacies, be divided into four shares, viz :

One-fourth to the wife, and the other three-fourths to the poor.

3. If the husband dies, leaving a wife and one or more sons, then the estate is divided as follows, viz.

One-eighth part paid to the wife, and to the son or sons seven-eighth parts.

4. If the husband dies, leaving a wife and a daughter.

The wife is entitled to one-eighth part.

The daughter to the just half, and the poor to the remaining three-eighth parts.

5. If the husband dies, leaving his wife and two daughters, then, there are due,

To the wife one-eighth part,

Two-thirds to both the daughters, and five twenty-fourth parts to the poor.

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6. When the husband dies, leaving his wife and three daughters.

One-eighth part goes to the wife; three-fourths go to the three daughters, and one-eighth part to the poor : and should there even be more daughters, they shall not inherit more than three fourth parts.

7. If the husband dies, leaving his wife and a son and one daughter.

The wife is entitled to one-eighth part ;

The son to seven-twelfths ; and the daughter to seven twenty-fourth parts.

8. Should there be more than one son and one daughter, then the division is fixed as follows,

One-eighth part to the wife, and to

The son or sons twice as much as the daughters receive.

9. If the wife dies, leaving only her husband, he is entitled to the half, and the poor to the other half.

10. If the wife dies, leaving the husband and one son, the estate is divided as follows :

One-fourth part to the husband, and three fourth parts to the son : should there be even more sons, they will get no more than three-fourth parts.

11. If the wife dies, leaving a husband and one daughter,

The husband is entitled to one-fourth part of the estate,

The daughter to the just half, and the poor to one-fourth part.

12. If the wife dies, leaving a husband and two daughters,

The husband is entitled to one-fourth part ; the two daughters to two thirds ; and the poor to one-twelfth.

13. If the wife dies, leaving a husband and three daughters, the estate must be divided into thirty-three parts, viz :

Three-sixteenth parts to the husband ; three-fourth parts to the three daughters, and one-sixteenth part to the poor. And in this manner the estate shall be divided even if there are more daughters.

14. If the wife dies, leaving a husband, one son and one daughter, the estate shall be divided as follows, viz :

To the husband one-fourth part, to the son the just half, and to the daughter one-fourth part.

15. If the wife dies, leaving her husband one son and two daughters the following is allotted, viz :

One-fourth part to the husband, three-eighth parts to the son, and three-eighth parts to the daughters.

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This manner of dividing the estate shall take place even if there be more sons and daughters.

16. Should the husband or wife die, leaving a father and mother,

The father gets two-thirds, and the mother one-third.

17. If any one dies, leaving a father a mother and one son,

The father is entitled to one-sixth part ; the mother to one-sixth ; and the son to two-thirds.

18. If any person dies, leaving a father and mother, and one son and one daughter,

The father is entitled to one-sixth ; the mother to one sixth ; the son to four-ninths ; and the daughter to two ninth-parts.

19. If a person dies leaving a father and mother and one daughter,

The father is entitled to one-third ; the mother to one-sixth ; and the daughter to the just half.

20. If a person dies, leaving a father and mother, and two daughters.

The father gets one-sixth ; the mother, one-sixth ; and the two daughters two-thirds : and, although there be more daughters, they shall have no more than two-thirds.

21. If a man dies, leaving a daughter, and a son's daughter, or grand-daughter ; they are entitled to the following, viz :

The daughter to one-half of the estate ; the grand-daughter to one-sixth ; and the poor to one-third.

22. Should the husband also leave, beside his aforesaid daughter, two or more grand-daughters, their share shall, however, not surpass what is stated here above.

23. If a grand-father or grand-mother, and father or mother dies, and and a grand-daughter survives them, then one-half of the estate shall go to the grand-daughter, and the other half to the poor.

24. But in case two grand-daughters have been left; then two-thirds go to the grand-daughters, and one-third to the poor

25. If a person has only a grand-son, he succeeds to the whole property

26. If a person dies, leaving a grand-son and grand-daughter, the estate is divided as follows :

To the grand-son two-thirds, and to the grand-daughter, one-third ; and although there be more grand-sons and grand-daughters, the division shall take place in the same manner.

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27. Should any person die, leaving a daughter, and son's son or grand-son, one-third of the estate devolves to the daughter and two-thirds to the grand-son.

28. But in case two daughters, and one grand-son are left, each of them is entitled to an equal share of the estate.

29. But should there be a daughter, a grand-son, and a grand-daughter, the estate is then divided as follows :

The half to the daughter, one-third to the grand-son, and one-sixth to the grand-daughter.

30. Should there, however, be two daughters, one grand-son, and one grand-daughter, the estate shall be divided as follows :

To the two daughters, two thirds ; to the grand-son, two-ninths ; and to the grand-daughter, one-ninth.

31. Should there be one daughter, two grand-daughters, and one daughter's son, the estate is to be divided as follows, viz :

To the daughter one half ; to the two grand-daughters one-fourth, and to the grand-son one-fourth.

32. Should there be two daughters, two grand-daughters, and one daughter's son, or grand-son,

The two daughters are to have two-thirds ; the two grand-daughters three-eighteenths ; and the grand-son one-eighteenth.

33. Should any person die, leaving one daughter and a sister, although he and the sister be of two mothers and the same father, the half of the estate shall go to the daughter, and the other half to the sister.

34. Should the deceased leave one daughter and two sisters ; the daughter must have one half, and the two sisters the other half.

35. Should he have left two daughters and two sisters,

The two daughters shall have two-thirds, and the two sisters one-third ; the same division shall take place, even if there be more daughters and sisters.

36. The husband dying, leaving his wife with one daughter and a son's daughter, and leaving also a mother and one sister, the estate shall be divided as follows, viz :

The wife shall have one-eighth,

The daughter, one-half ;

The grand-daughter, one-sixth ;

The mother, one-sixth ; and the sister, one twenty-fourth part.

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37. But should the husband, (as in the above case), survive his wife, and remain with the above persons, then the estate is divided as follows:

To the husband, three-thirteenths; and to the daughter, six-thirteenths; to the grand-daughters, two-thirteenths; and to the mother, two-thirteenths; and the brothers and sisters, in this case, are not to share in the inheritance.

38. If the deceased leaves one brother and one step-brother from the side of another father or mother; the full brother is entitled to five-sixths, and the step-brother to one-sixth.

39. If a person dies, leaving two brothers or sisters of one mother and two fathers,

The two brothers or sisters are to have one-third, and the poor two-thirds.

40. If the deceased leaves two half-brothers or sisters of one mother and another father, and one full brother and one full sister, the estate is divided in the following manner, viz:

One-third goes to the two half-brothers or sisters, four-ninths to the full brother, and two-ninths to the full sister.

41. If the wife dies, leaving her husband and her grand-father, each of them are entitled to one-half of the estate.

42. If the husband dies, leaving his wife and his grand-father, one-fourth of the estate devolves to the wife, and three-fourths to the grand-father.

43. Should the deceased leave a daughter and grand-father, each of them shall be entitled to an equal share of the estate.

44. Should the deceased leave two daughters and a grand-father, each of them shall be entitled to one-third of the estate.

45. Should there be a grand-father, of the father or mother's side and a son and a daughter,

The grand-father shall be entitled to one-sixth; the son to five-ninths, and the daughter to five-eighteenth parts.

46. Should the wife die, leaving her husband, a grand-father or grand-mother, and a son,

The husband shall be entitled to one-fourth; the grand-father or grand-mother to one-sixth; the son to seven-twelfth parts.

47. Should there be two sons, then the husband is entitled to one-fourth; the grand-father or grand-mother to one-sixth; and the two sons to seven-twelfth parts.

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48. Should there be also a son and a daughter,

The husband is entitled to one-fourth; the son to seven-eighteenths; the grand-father or grand-mother to one-sixth; and the daughter to seven thirty-sixth parts.

49. Should the deceased leave a grand-father and grand-mother of the father's side,

The grand-father is entitled to five-sixths, and the grand-mother to one-sixth part.

50. Should the deceased have left a grand-father and grand-mother of the father's side, and a grand-mother of the mother's side, then the grand-father of the father's side is entitled to two-thirds; the grand-mother of the father's side, to one-sixth; and the grand-mother of the mother's side to one-sixth.

51. If a wife dies, leaving her husband, and father and a son then the husband is to have one-fourth;

The father one-sixth; and the son seven-twelfths.

52. If a husband dies, leaving a wife, his wife's mother and a daughter,

The wife is to have one-eighth; the mother one sixth;

The daughter one-half of the estate; and the poor five twenty-fourths.

53. If the husband dies leaving two wives and a son, then

The two wives are to have one-eighth; and the son seven-eighths; and should there be more wives, the division shall take place in the same manner.

54. If a grand-father or a grand-mother dies leaving a son's daughter or grand-daughter;

The grand-daughter is to have one-half of the estate, and the poor the other half.

55. If a person dies leaving two grand-daughters of his son's side, and a brother, each of them are entitled to one-third.

56. If the deceased has left a sister, she is entitled to the half, and the poor to the other half.

57. If the wife dies, leaving her husband and two sisters,

The husband is entitled to three-sevenths; and the two sisters, to four-sevenths.

58. If the wife has left two full sisters and an uncle of her father's side, then each of these persons shall be entitled to one-third part.

59. If an emancipated female slave dies, leaving her husband and one daughter, together with her late master or mistress, then

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The husband is entitled to one-fourth;

The daughter to one-half; and the master or mistress to the other one-fourth.

60. If an emancipated male slave dies, leaving his wife, daughter, and his master or mistress, then

The wife is entitled to one-eighth;

The daughter to one-half; and the master or mistress to three-eighths.

61. If an emancipated female slave dies, leaving her husband and two daughters, together with her late master or mistress, then the property is divided as follows, viz:

One-fourth to the husband; two-thirds to the two daughters; and one-twelfth to the late master or mistress.

62. If such an emancipated male slaves dies,

The wife will be entitled to one-eighth;

The two daughters to two-thirds; and the master or mistress to five twenty-fourth parts.

63. Lastly, agreeably to the same rule, all descendants are entitled to their respective shares of inheritances, according to the persons they represent in the same manner, as follows, viz:

A wife or her descendants, a full brother or his descendants, paternal uncle and full uncles and aunts, and their children, and their descendants, if there be no nearer kin; father's, brother's, and mother's sister's children are entitled to the same share as sons and daughters.

TITLE. II.

Concerning Matrimonial Affairs.

64. If a person wishes to marry, application must be made to the bride's father and mother, for their consent.

65. Should the parents of such bride be dead, the man must make his intention known to the relations of the bride, and endeavour to obtain their consent.

66. And, after consent has been obtained, it is customary that the bride and bridegroom interchange some presents, which, however, are reciprocally restored if the marriage does not take place.

67. The parents or nearest relations of the bride, shall then, with the knowledge of the bride, enter upon an agreement with the bridegroom, concerning the marriage gift, called *maskawien*.

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68. The matter being settled, the bridegroom is obliged to pay to the bride immediately what has been agreed upon.

69. But should the bridegroom not be able to pay such marriage gift immediately, it is with special consent of the bride, however, carried to a separate account.

70. The bridegroom is obliged to inform the commandant, or the headman under whose orders he stands, of his intended marriage.

71. The commandant will then by means of the native commissioners apply to His Excellency the Governor for his consent.

72. The *maskawien* or *magger* being paid, or remaining due, the priest or lebbe shall be informed thereof.

73. The priest and commandant are then obliged to record all such transactions, and to permit the marriage ceremonies to be performed.

74. Should it, however, be discovered before the consummation of the marriage, that the bridegroom laboured under any bad complaints, such as leprosy, insanity, or any other disorder so that he is unable to perform the matrimonial duties, in such case a divorce is permitted.

75. If the bride wishes to be divorced, she is obliged to inform the priest thereof; who, after having deliberated with the commandants on both sides, in the presence of the native commissioners, accedes to the divorce, which they are obliged to record. Should the parties, however, not wish to abide by the decision, they shall be at liberty, according to custom, to lay their case before the competent judge.

76. In such case the bride is obliged to restore to the bridegroom the *maskawien* or *magger*.

77. But should the disorder be discovered after the cohabitation, a divorce may take place, and the wife may in that case keep the *maskawien* or *magger*.

78. And although such complaint should be discovered by the bride, either before or after the consummation of the marriage, the husband is entitled to the *maskawien* or *magger*; if discovered *before* the cohabitation; but the wife is entitled to the same, if discovered *after* such cohabitation.

79. Married persons (whether they can allege any reasons or not) being with mutual consent divorced, the husband is obliged to allow his wife the *moettelaak*, or ready money proportioned to the marriage gift, for the support of the house.

80. Should the husband and wife disagree, and live in continued dissensions with one another, and wish to be divorced.

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81. In that case the priest and the commandants on both sides, are obliged to inquire into the matter, and endeavour, if possible, to reconcile the parties.

82. But should the wife oppose a reconciliation, and the husband be inclined to a divorce, in that case they shall be separately kept by their own relations.

83. After which, a meeting of the priests and the officers of the company shall be appointed.

84. And the matter in dispute shall be investigated a second time, and endeavours made to bring the parties (if possible) to a reconciliation.

85. And if the parties cannot come to a reconciliation before the said assembly, the matter in question must be brought before the sitting magistrate.

86. And if the wife should oppose the reconciliation, she shall be held to restore to the husband twice the value of the *maskawien*.

87. If the husband be desirous to divorce his wife, he shall be obliged to give her the *tollok* or letters of divorce, which is repeated a second time at the expiration of fourteen days; and, at the end of one month, she receives a third tollok, during which time the husband is obliged to maintain the wife and to furnish her with all necessaries.

88. Before the third tollok is issued, a reconciliation between the parties may take place, and it is not necessary that they should disclose to anybody the causes of their differences.

89. But should the third tollok have been issued, they must be divorced: and should the husband be determined to divorce his wife without any further consideration, it is the practice to issue three tolloks or letters of divorce at once. But in that case he is obliged to furnish the wife with a dwelling place for the space of three months, and she shall not be allowed to marry before she has three times had her menses.

90. The husband is held to give notice to the commandants, on both sides, of such divorce, which shall be recorded by them, and no other person shall intermeddle therewith.

91. No wife is obliged to receive from the husband any interest money for her maintenance; but such maintenance must, according to the Mohammedan law, be the product of some trade or manual work of the husband.

92. If a married man fall into poverty, so as to be unable to maintain his wife, such wife if she should be possessed of any wealth (which she is

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unwilling to share with her husband) may obtain a divorce, should she wish it, under the same provision as stated in section 76.

93. If the husband leave his wife, in order to repair to some place or other on business, he must, without giving occasion to divorce, provide for the maintenance of his wife in the presence of his relations.

94. A married woman disobeying her husband, shall suffer herself to be reprimanded by him, for the first time, with kindness, in order to bring her back to her duty.

95. Should the wife, however, fail in her due obedience for the second time, the husband is then permitted to inflict on her some gentle correction, but by no means to treat her in a rough manner, so as to occasion any marks either in her face or other parts of the body; much less is he permitted to beat her on any dangerous place of the body, so that blood appears.

96. A divorced wife, being pregnant, is entitled to be maintained, till she is delivered, by her husband; who is also obliged to pay the expense of her lying-in.

97. The wife, in the above case, is obliged to nourish her child during three days without being at liberty to ask or receive any thing.

98. But, after the expiration of that time the husband is obliged to fix a certain amount for the maintenance of the child, if the wife requires it.

99. Should the wife be unwilling to keep the child longer than three days, the husband is obliged to receive it.

100. According to the law of Mohammed, a man is permitted to marry four wives, that is to say, only such men as are uncommonly addicted to the fair sex, who have ability enough to acquit themselves of their duty, and who are possessed of wealth sufficient to maintain the same properly.

101. Such men are also permitted to keep under their protection, besides their lawful wives, as many concubines as they are able to maintain.

102. The husband and wife being divorced, (the third tollok having been issued), they are not permitted to become reconciled and live as husband and wife, unless the wife has been married to another husband, and has also obtained from him letters of divorce.

The shares, allotted to the poor by several of the foregoing articles, are not for the poor, but must go to the *asewatoekares*, *aroegamoede-*

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weigel, and persons on the father's and mother's side, who are entitled to the same.

Heirs, who claim such inheritances, make the same known to the headmen of the Moors, the arbitrators, and the priests; who then, at the entrance of the gate of the temple, inquire into and decide the case, and cause the shares to which each is entitled, to be given to them. And as, according to the Mohammedan custom, the women may not go out, it is therefore the custom to inquire into and settle their cases in an amicable manner; but if they are not contented therewith, both such cases and the criminal ones, are brought before the governor.

In this manner we, the marikair, arbitrators, priests and inhabitants, according to our knowledge, and having consulted with the learned high priests, have stated the foregoing articles as being agreeable to the laws and customs to be observed; and have confirmed the same with our signatures, at Colombo, the 1st of August, 1806.

(Signed) Mamoenyna Poele Slyma Lebbe Marikair
Segoe Ismael Lebbe Nyna Marikair
Oedoema Lebbe Meestriar Sekadie Marikair
Magellem Moegydien Lebbe
Segoe Mira Lebbe Oedoema Lebbe Marikair
Ibrahim Poelle Sinne Lebbe
Lebbe Marikair Saraay Lebbe Marikair
Agamadoe Lebbe Segoe Abdul Kader, Interpreter
Omeroenyna Poelle
Segoe Lebbe
Kasie Lebbe Mamoenyna Poella
Asen Miera Lebbe Moegammadoe Lebbe
Andekana Poelle Ossena Lebbe
Kasi Lebbe Segoe Mira Lebbe
Aydroes Lebbe Sultan Kandoe
Lebbe Marikair Oemero Lebbe Marikair
Lebbe Marikair Samsoe Lebbe Marikair
Segoe Mira Poelle Awoewekker Lebbe Alvers
Mira Lebbe Meestiriar Sekadie Marikair
Siyma Lebbe Jesboe Nayna.

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INHERITANCE CASES.

Wenageger Sadamberam and his wife Kaly......*Plaintiffs.*
Vs.
Sarrepulle wife of Armogan...... ... .*Defendant.*

9th Feb. 1803.

DUNKIN, Judge.

The donation ola produced is dated 5th of August 1789, respecting the land "Wannantarre" large Lands, and 30 Palmirah trees. The Gift is made by wife of Amblewanan to Paramanders, daughter Cannatte, sister of the 2nd Plaintiff.

Sons & grandsons succeed to their Father's or grand-fathers property in preference to daughters and grand-daughters.

Mr. Hopker's extract shews that the ground is the property of Plaintiff's Grand-father, so that Wedewelly cannot dispose of the same, and that the ground is written on the name of the Defendant's father. From further inquiry it appears that the Defendant's brother Cadergamer Murgasen, who died, had left a child by the name of Murgasen Sarrawanemuttu, who is to succeed to the ground.

The Court rejects the Plaintiff's claim, and decrees the land to Murgaser Sarrawanemuttu.*

No. 477.

Canthen Cospitchy, Chinny Wayrewy and Tegwy Pallan, *Pltfs.*
Vs.
Nagya Palla, woman...... ....*Dft.*

23rd Novr., 1805.

DUNKIN, Judge.

Both parties present.

The Court having inspected the Dutch Thombo, of which an authenticated Copy is filed of Record, marked A. It is decreed that the Plaintiff be confirmed in the possession of 4 Ls., and one-half of the land called Menda and "Pereapoolam," otherwise Perettelette, being the share of the Plaintiff's late father Cadiren, and their uncle Raman, who died without issue; pursuant to the said Dutch Thombo dated 178½; and costs of suit to be paid by the Defendant.

Nephews succeed to their uncles property if the latter die without issue.

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* The facts are not clearly stated, and cannot be gathered from the imperfect record.—It does not appear why the Defendant should not be entitled to a share as well as Defendant's brother's Sons. Why should the latter succeed to the whole?

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No. 128.

Weler Anandam...*Plaintiff.*

Vs.

Cadiry Vally ....*Defendant.*

TRANCHELL, Judge.

Parties attend under an Order of the 31st May last. The Plaintiff calls on Neeler Sellen and Seethewy Welen : and the Deft. calls on Pannian Cander and Kolanther Ramen, who are sworn, examined, and cross-examined by the parties and the Court.

Nephew succeeds to uncles property in default of children

It is decreed that the Plaintiff Waler Anenden is entitled to all the property and estate of which his late uncle Punnier Comaren died and possessed, and it is ordered that the Deft. Cadiry Wally do file in this Court, on or before the 20th, a true and faithful Inventory of all the moveable and immoveable property now in her possession, and that she, the Defendant, do pay the costs of suit.

Party in possession of intestates property, bound to file an Inventory.

No. 692.

Tannipaler Cander.................................*Plaintiff.*

Vs.

Madawer Casinader and others...........................*Defendants.*

TRANCHELL, Judge.

Parties attend under an Order of the 19th Instant.

The Plaintiff states that the property moveable and immoveable, which he claims as an inheritance, devolved to him from his late Grand-father is worth 250 Rds. which is valued by the first and second Defendants only to Rds. 60.

The Plaintiff calls on Venayeger Cadresen, Sembaygawarredisinge, Mudr. Sarimogam, Pagamarasinge Mudr. Moothalitamby, Mader Casinader Madewer Kadergamer and Komaren Mathawen ; and the defendant calls on Muttocomarer Swacooroonader Candapper Welaythen Carege Sondra Mudr. Wayrawenader and Payeinmannesinga Mudr. Moodalitamby who are sworn, examined, and cross-examined by the parties and the Court.

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The evidence having been closed, and the Defendants not being able to prove the Plaintiff's signature to the Ola of sale, exhibit A.—692; the Plaintiff besides being a minor of about years when that Ola of sale has been executed. It is decreed that the Plaintiff Tannepaler Cander and his brother Tannepaler Cadrewaler, and his two sisters Walleamma and Chennepulli or their representatives, are entitled to one-fourth part of the property moveable and immoveable of which their Grandfather Payamannesinge Mudr. died possessed in right of inheritance, descended to them from their late father Tannepaler one of the sons of Paggamannesinge Mudr., and that the Defendant do pay the costs of suit.

Contract by a minor invalid.

Grand-children succeed to the share their father would have been entitled to, had he survived.

No. 1,793.

Canny, wife of Carden ... ... *Plaintiff.*

Vs.

Ayen Murgen and others ... ... *Defendants.*

28th November, 1816.

J. Richardson, Judge.

It is decreed that the Bill of sale, dated 25th January 1815, for half of the land in question, lately the property of Ayatte, and situated in the Pettah of Jaffnapatam, be held valid, and that he do remain in possession of the same, and that Plaintiff is entitled as the daughter of Ayatte to inherit a share of the estate, she having been married out without dower, and that the costs of suit be compensated betwixt Plaintiff and 1st Defendant.

Undowried daughter succeeds to Parents property equally with the sons and unmarried daughters.

No. 7,280.

Nuler Moorger ... ... *Plaintiff.*

Vs.

Teywane of Condavil ... ... *Defendant.*

23d April, 1819.

St. Leger, Judge.

A's. mother's brother B. dies without issue. Held that A. and B's. widows entitled to equal shares of property, acquired by B. during marriage. The Judgment explains the facts.

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If Deed in husband's name, wife cannot claim exclusive right to property conveyed.

It appears to the Court that the Otty must be considered acquired property, inasmuch as the Bond is made out in the husband's favour; and the Defendant by having had the deed made out in her husband's name, must be considered to have forfeited her right to the Otty being exclusively her property. The Plaintiff has failed to prove that the debts recovered from Mootaer and Poodate were advanced by Defendant's husband, and as they were paid to Defendant, they must be presumed to have been due to her, there being no proof to the contrary.

It is decreed that the heirs of the late Mootaer Soopen are entitled to half the following property, or the value thereof being acquired by him during his marriage with Defendant, the other half to belong to Defendant, viz., the Otty amount 165 Rds., the household furniture remaining in the house of Mootaer Soopen at the time of his death, and the house itself; each party to pay their own costs.

No. 7,439.

22nd July, 1818.

Sedowie, widow of Comaravalen, of Valene ... *Plaintiff.*

Vs.

Vissovanader Ramanaden... ... ... *Defendant.*

Scott, Judge.

Maternal aunts property descends to nieces or grand-nieces exclusively; nephews and grand nephews have no right whatever.

A. and B. were brother and sister, their maternal grand-mother had two sisters D. and E.—D. died without issue; E. left a daughter. Held that B. and E's. daughter were entitled to the property left by D. in equal share, and that A., the brother, had no right to any portion of it.

No. 99.

Provincial Court, Jaffna.

1805.

Walliar Sidemberen, of Toonale......................*Plaintiff.*

Vs.

Weneditar Marodeynar and others................*Defendants.*

Dunkin, Judge.

Children succeeding to property bound to

Held that Plaintiff as one of the Grand-children of A. was entitled to a share of the property left by him, but that he

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(Plff.) was bound to pay a proportionate share of the debts contracted by his grand-father and father. The parties are allowed to swear in the temple, one by stepping over the body of his son, and the other over the body of his nephew, as to certain facts alleged by them.

pay their share of the debts.

No. 7,429.

Provincial Court.

Valayder and wife....................................*Plaintiffs.*

29th September, 1819.

Vs.

Oremmeal and others..................................*Defendants.*

SCOTT, Judge.

A. and B. were the only son and daughter of their parents. A. and B.'s mother, who survived her husband and their Father, died leaving property. Held that A.'s sons were entitled to the whole of the property left by them, and that B. having been married and dowried, had no share in it.

Dowried daughter no right to any share of the property left by parents.

No. 7,612.

Casinader Weeragetty, of Edecoorichy...... ....*Plaintiff.*

1819.

Vs.

Colesegra Modr., sister and two brothers.........*Defendants.*

SCOTT, Judge.

Of four brothers, one marries and leaves a son. Held that this son was entitled to an equal share with his uncles, to his paternal grand-father's property.

Grand-son succeeds to his fathers share of grand-fathers property.

No. 2,674.

Cander Sembie, of Tonnale, C. S. ....*Plaintiff.*

28th October, 1819.

Vs.

Sader Amblewanen.....................................*Defendant.*

SCOTT, Judge.

1st Plff's. Father twice married, Deft's. wife, daughter of the 1st marriage, namely, Poodonatchy, who left a son and a daughter, the daughter died.

The parties admit the heirs to be Deft's. son, Sarrawanamootto being the son of Rasasooria Modr's. daughter

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by his first wife, and which was the only child of his first marriage. The 1st Plaintiff being a daughter of Rosa Sooria Modliar, by his second marriage, and Wally and Colende the children of Sember Nallan a daughter by the second marriage; the Thasawalemme declares that the estate should be divided thus, half to the children by the first bed, and half to those of the second. The Inventory filed by the Maniager should, under all the circumstances, be preferred to the others filed. The division reported to have taken place by the School-master of Catavaly is deserving of no attention, for it has been clearly proved that the first Plaintiff and second Plaintiff's mother were minors, when they put out their marks to the Ola dated 1,796.

The property of deceased to be equally divided between the children of the 1st and 2nd beds.

Contract by minor invalid.

It is decreed that the estate of the late Rosa Sooria Modliar Cander, as appearing in the Inventory marked B.* be divided into equal shares, and that Sorrawannemootto, the defendant's son by his first wife, be quieted in possession of half; and that the plaintiff being the daughter of Rosa Sooria, and Waley and Colende being the children of the said Rosa Sooria's daughter Caderynatchy, by her husband Sader Seller, be quieted in possession of the other half and that parties bear their respective costs.

No. 7,145.

1818.

Cartigaser Casinader and another of Ebycoorichy..*Plaintiff.*

Vs.

Conaretna Modliar Cander ... ... *Defendant.*

SCOTT, Judge.

The Court having read the pleadings of Commissioners report connected with case No. 1,356. It is decreed, that Plaintiff's Libel be dismissed with costs.

COMMISSIONERS REPORT.

We, the undersigned Commissioners, after having investigated into the said, between the parties, beg leave to report to the Court as follows:—

*The Inventory does not distinguish the acquired or hereditary from the dowry, and the Judge ought therefore to have ascertained the particulars of the nature of the property left.

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That the Plaintiffs cannot satisfactorily prove their claim set forth in their Libel, it must therefore fall to the ground; and it appeared to us upon investigation, that the Defendant has concealed some part of the accumulation acquired during the life time of his late wife. It is therefore our opinion that the defendant do make oath in the most solemn, and bending moreover at the Temple of Chullewairewercoil at Pandisootan, by stepping over the body of his brother, stating that with the exception of the several properties mentioned in the decree passed in the suit, No. 1,356, he has not in any manner concealed any part of the accumulation or dowry properties, or that he in the least bears any knowledge whatever; in which case the Plaintiff must lose his claim with costs, to which parties have duly agreed.

Swearing by stepping over the body.

Thus is this report written, and given in on the 10th day of October, 1818.

Signed by three Commissioners.

No. 354.

Sitting Magistrate's Court, Chavagacherry.

1819.

Ayamperumal Canden ... ... *Plaintiff.*

Vs.

Soolay wife of Canden ... ... *Defendant.*

VANDERLINDEN, Judge.

A. married B., B. died leaving a son, A. then married C. B's sister, by whom he had three children.—Held that the latter were entitled to an equal share of the hereditary property of their late father, as the child of the first bed.

Children of the 2nd. bed succeed equally with those of the first.

No. 712.

Wallial Powenayam and others ... ... *Plaintiffs.*

21st. October 1819.

Vs.

Alwatte widow of Pooder and others ... ... *Defendants.*

SCOTT, Judge.

The Ola dated 15th June 1813, is examined, and as it is found deficient in stamps, it cannot be of any avail, consequently, it is decreed, that the Deed dated 20th April, 1810,

Died invalid for want of stamps.

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Grand-children succeed equally to grand-mother's property.

the Ola dated 5th June 1813, be cancelled, and that the Plaintiffs and first Defendant's children are entitled each to one third of the Lands in right of inheritance from their late grand-mother Sembela, wife of the late Illengorane Modliar, and that each party do bear their own costs.

With regard to the remaining one-third, the Court refrains for the present from entering upon the rights of the parties in this suit, as there is no proof whatever to establish the illgitimacy of Colende's child, Sithambrem; on the contrary, there is every room for this Court to believe that she is in every respect legitimate, particularly on perusal of the proceedings, and decree to be found in case 2,439. It is to be distinctly understood, that this question is open to further ligitation, as the present parties' objections to her legitimacy have not been heard or determined on, but at the same time it is also to be understood that it is the part of the parties to bring forward such objections, for, as the matter now stands, there is fair ground for belief of her legitimacy.

No. 7,546.

Adrian Necholan, of Chillale ... ... *Plaintiff.*

Vs.

His Father Philipo Adrian ... ... *Defendant.*

The Libel or Summary Petition of the Plaintiff sheweth.

That the Defendant is bound under the right and spirit of the Thasawalemme to account to the Plaintiff the just moiety of his late mother's dowry property, who departed this life in the year 1803, with one quarter part of the acquisition, whilst the like share reverts to the Plaintiff's other Brother, and since the Plaintiff having attained to his age of maturity is married, and notwithstanding no provision is made in the Country Law to divide and give up to the sons, of the Modisium and half of the acquisition, when a Father does not enter into a second marriage, still he is not at liberty under the Thasawalemme to encumber and squander away his modisium and acquisition unless in exigency, and needful occasion, but now the Plaintiff plainly perceive that the Defendant does in-

Father though not married for 2nd time not at liberty to encumber or squander away property.

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tend to encumber his properties and to bestow part of them in favor of his brothers.

The Plaintiff further begs leave to state that the Defendant has made a present to the Plaintiff when young married, and lived in his house, of 25 Pagodas earning, and to Plaintiff's wife joys worth about 35 Pagodas, and those joys remained with the Defendant's chest when Plaintiff and his wife left his house, and went to the house of his wife's parent, when she was about to bring to bed, as also a sum of 800 Rds. belonging to the Plaintiff's parents, being the acquisition. That on the Plaintift's frequent and amiable solicitation to divide and give up his lawful share, together with the cash and joys his exclusive properties aforesaid, the Defendant is unwilling to comply therewith.

Son compelling division of property by Father.

Therefore Plaintiff prays, that Process may issue to compel the Defendant to divide and give up to the Plaintiff the just moiety of the dowry property of his mother, together with the joys given to him and his wife and the acquisition as aforesaid worth Rds. 1,500 or thereabouts as per annexed List, and that Defendant be further directed to file in this Court a just and correct account of all and every of his *acquired* and *hereditary* properties, granting unto the Plaintiff an option to make his remarks, if any embezzlement therein shall be made, and that Defendant be condemned to pay costs of suit.

Filing Inventory.

Jaffnapatam, 1st October, 1818.

LAYARD, Judge.

April 26, 1820.

Sons no right to claim any share of widower's estate, as long as he remains unmarried for a 2nd time.

Court calls Segawagana wala Soopremania ayer and Wallewatharasa Mudr. who know custom, and declare the son has no right to claim a share of the Estate of a Widower as long as he remains unmarried.

The Court finds also the claim for the earrings not proved, and decreed Plaintiffs suit be dismissed with costs.

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No. 7,307

May 2, 1820.

Vinasy Canneweddy and his daughter Sidembretty of Calepooing ... ... *Plaintiffs.*

Vs.

Vinasy Amblewen, Caderen and Ramenaden of the same place ... ... *Defendants.*

Layard, Judge.

A B C D were brothers, their Father died having given them all some "jewellery joys," leaving the rest of the property in the possession and under the management of their mother who died also.

Value of jewels given to sons to be deducted from their share

Funeral expences to be borne by all the sons.

Sons obliged to redeem otty.

Evidence as to Custom.—Agemperamal Amblawanen sworn. Held that—if a parent has four children, and gives joys to either of them after his death, the amount of the same must be deducted from that Son's share of the Estate—The expenses of the Parents funeral should be borne by the Sons in general. The expenses of the parties mother's funeral need not exceed 5 or 6 Rupees.—If any Land is sold in otty by the parents, all are obliged to join and redeem it. No claim can be made by other heirs for an excess of property received by other exceeding his share. I only offer this as the country law prevailing at Caretivoe.

If jewels given exceed in value their share, excess cannot be claimed.

Paremer Casinader Maniagar of Caretivoe sworn. The value of jewels given to any son during the life of the parents must be deducted from their share of the general estate. The expenses of the Parents estate to be paid equally; should the value of joys received exceed the share of any heir, they cannot nevertheless be returned, nor can claim be made for the excess of value.*

* What is given here as the Judgment was not actually recorded as a part of the Decree, but it is the evidence as to custom which the court adopted, and upon which the Decree is founded.

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No. 400.

Sitting Magistrate, Point Pedro.

Anthonial Paulo Nalno of Ploly.................... *Plaintiff.*

1st November 1820.

Vs.

Alwan Canden...................................... *Defendant.*

KRICKENBECK, Judge.

The Magistrate proceeds to decide this case without further examining of the witnesses, but according to the Thasawalemme, by which Alwan Nallan is entitled to his parents share, after their death, and for any part of which his sister (the Dfts. mother's aunt) can have no claim* and as the Plffs. has duly proved his otty bond,

It is ordered, that Defts. do pay Plffs. Rds. 7½, the value of three years produce, for 24 Palmirah trees standing on the ⅜ in question, and costs incurred by Plffs.; and leave Plffs. in the quiet possession of the ⅜ shares in question until the lawful Heirs of the deceased's otty vendor redeems them, the said shares remain and be subject to any future claim which may be brought against them.

Sons entitled to parents otty property in preference to daughters.

No. 1,019.

Candomady, widow of Welen, and Children...... *Plaintiffs.*

15th December 1820.

Vs.

Canden Moorjen and others........................ *Defendants.*

LAYARD, Judge.

The Court considers Pltff. has proved herself the lawful wife of Weelen son of Canden and Conatte, and that Dfts. have totally failed in proving that she was previously married to Sevamenader Cadresen, as they asserted, to set this marriage aside,

That herself and her children are joint heirs to ⅔d. of the estate of Canden and Conatte, which however she cannot claim during the life of Conatte her mother-in-law, who nevertheless will be compelled to give an account of the estate of Canden that it may not be squandered, and it is further decreed Defts. do pay the costs of this suit.

Daughter-in-law cannot claim her deceased husbands share till his Parents die.

Judgment affirmed by the High Court of Appeal.

* The property being paternal, the sisters have no right, in case, I suppose, they receive dowry.

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No. 345.

1820.

Son and daughter succeed to equal shares of Parents property.

Pitchen..*Plaintiff.*

Vs.

Pattanial..*Defendant.*

LAYARD, Judge.

Rents and profits set off against debts paid.

A. and B. son and daughter of C. held entitled to equal shares of their Parents' property; and if B, the daughter, paid his debts, that she has been amply compensated for it by remaining in exclusive possession of the properties for several years.

No. 1,143.

31st August, 1820.

Sidowy wife of Perian and daughter Nagey......*Plaintiffs.*

Vs.

Canden Wallen..*Defendant.*

LAYARD, Judge.

Husband dies leaving no issue, the land in question was purchased by him with dowry money, and the transfer was in favor of his wife and himself; no mention however was made of the purchase with dowry money. The heirs of the husband who died without issue having claimed half.

Held,—Plaintiffs claim 2 pieces of Lands purchased by 2nd Plff's. late husband and herself, and with her dowry money, in support of which a Deed of renunciation in her favor executed by Defendant and his son, her deceased husband, is filed. Defendant wishes to prove the Lands were purchased with his son's property, and denies the Renunciation, Deed. Judgment—

Lands purchased with dowry money must go to widow, tho' no mention is made of it in the Deed itself.

It is evident the Plaintiffs are entitled, or rather 2nd Plff., to the lands claimed in her Libel, purchased with her dowry money, and it is decreed that she be put in possession thereof, that she recover 42 Rds. as profit thereof for two years, and that Defendant do pay the costs.

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No. 1,206.

1820.

Arouaselam Aromogam of Valvettiturre..........*Plaintiff.*

Vs.

Mogambery Caderra.............. ....*Defendant.*

A brother has no right to any property of his deceased brother as long as the child of the latter is living.

LAYARD, Judge.

A. and B. were brothers, A. died leaving a son.—Held that A's son was entitled to all the dowry hereditary and acquired property of A, and B had no share.

No. 804.

Sitting Magt. Pt. Pedro.

2nd. December, 1820.

Sidemberen Tavasiar..................................*Plaintiff.*

Vs.

Sidemberen Podate.................................*Defendant.*

KRICKENBECK, Judge.

A leaves 2 children, a boy and a girl.—Held the girl not being married, and dowried, her brother had an equal share in their mother's property.

Brother entitled equally with the undowried sister.

According to the Thasawalemme the parties are adjudged each to $\frac{1}{6}$ in the whole or each $\frac{1}{2}$ of the $\frac{1}{3}$ aforesaid of the House, as per Pattola filed by Plaintiff with the date of the Oppum 9th November, 1820, by virtue of which the *Pattola* was made and reported to the Collector that the Plaintiff is entitled to 1-6th of the House situated on the aforesaid land, which share the Plaintiff says is disputed, subject nevertheless to any claim that may arise, and defendant pay costs of suit.

No. 1,524.

15th. January, 1821.

Cadrasy widow of Waireven.........................*Plaintiff.*

Vs.

Comarevaler Coongen...............................*Defendant.*

LAYARD, Judge.

The Plaintiff's daughter married Defendant and died, leaving a child who also died 16 months after her.—Plaintiff had no other children, the jewels were those which were given in dower to Plaintiff's daughter, it does not appear

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that anything was allowed to Defendant for nursing the child.

Daughters property reverts to mother if the child of the former died when an infant.

The Court is of opinion that Plaintiff should recover the articles which belonged to her daughter and have not been returned, viz., a Tattomaine, Combimane and 4 Pair Earrings, total value 16 Pagodas at 5 Rds. per Pagoda 80 Rds., and costs of suit.

No. 1,665.

31st. Marh, 1821.

Sooper Silembynar ....*Plaintiff.*

Vs.

An uncle natural guardian of his sister's children.
He need not take out administration.

Valen Maylen and others............. ....*Defendants.*

FARRELL, judge.

A as Guardian of minor children of his deceased sister entitled to half her acquired property during marriage, and that A. need not obtain Letters of Administration.*

No. 1,160.

28th June, 1821.

Wannitamby Mothelitamby..............................*Plaintiff.*

Vs.

Sidembrepulle Sangarepulle.............. ....*Defendant.*

LAYARD, Judge.

Parties in Court agree to the valuation of the produce as set forth in the Commissioners report, the Defendant only stating that having lost his 500 Rds. he ought not to pay any part of the produce.

The Court is of opinion that he fraudulently obtained from the Plaintiff's mother and her minor children, amongst them, the Plaintiffs, a transfer of the property, which her husband in tolerance, possessed jointly with Defendant from their father.

Widow no authority to alienate her deceased husbands property.

Minors paternal property not

That she had no authority to do this as a widow, and Defendant must be satisfied with what he got by this fraudulent action the ola and possession so long as any right was acknowledged in the Plaintiff's mother, Plaintiff not being answerable for the money advanced when he was a minor.

* This would not be correct doctrine in the present day, for he must give security before he can be allowed to take charge of the property.

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That the Plaintiff now has claimed as his grand-father's heir, and is indisputably entitled to the possession of a half share of his deceased grand-father's property in right of his father, which descends to him direct, and not through his mother, who cannot be considered to have held it in right of property, such share to be according to the division ola of 1,790-10th July. And therefore Plaintiff is entitled to the amount awarded as produce from the 1st January, 1817, viz, Rds. 119, 9 fs. 1¼ and Costs.*

answerable for mother's debt.

Grand-father's property descends directly to Grand-son.

No. 2,309.

Soopremanien and wife Ponnammal ... ... *Plaintiffs.*

Vs

Ayasamy Admr. of Calatepulle Waytipulle ... *Defendant.*

1st July, 1822.

FARRELL, Judge.

Both parties admit that the object in dispute is the acquired property of Calatepulle Waytipulle deceased, and that he left a wife and a daughter, also four children by a concubine, and Plaintiff admits that Ammuniamma was Plaintiff in case 1,750, and was adjudged by the High Court of Appeal not to be the wife of Calatepulle Waytipulle, but his concubine, and admits that his own wife Ponnamma is the daughter of Calatepulle Waytipulle by the said Ammoniamma, both parties admit the Will filed by Plaintiff to be only made out and signed by the deceased. It therefore only remains for the Court to decide whether the Will filed by Plaintiff is to stand good, or whether being at variance with the established custom of the country is to be set aside, and the Court after duly weighing the evidence produced and being guided by the Thasawalemme, decides that the Will filed by Plaintiff is not valid.

Will at variance with the Thasawalamme set aside.

It is therefore decreed that in lieu of the donation made to Plaintiff's wife, by the Will of Calatepulle Waytipulle, that Plaintiff provided the value of the property willed to her by the deceased, amounting to one-tenth and one-twentieth

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* Appeal rejected by the High Court of Appeal, on the ground that the claim was under the amount appealable to that Court.

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of the whole, do receive that proportion from the Administrator, but should it not amount to that proportion, then Plaintiff is only to receive the amount willed to her by the deceased. Plaintiff to pay costs of suit.

1823.

No. 1,633.

Vally and others ... ... *Plaintiffs.*

Vs.

Taywane and others ... ... *Defendants.*

SCOTT, Judge.

Concubine and her children not entitled to inherit.

A. as widow of deceased, and her sons, are entitled to the whole of her deceased husband's modisium property, and that deceased's concubine and children have no right to any portion.

1823.

No. 1,711.

Walliamme wife of Maylwagenam of Manipay .. *Plaintiff.*

Vs.

Maylwagenam, her husband, and another . . . *Defendants.*

FARRELL, Judge.

Widower of a daughter of the 1st bed entitled to claim on behalf of his minor children all his deceased wife's share, from her father all the dowry of the 1st wife, half the property acquired up to the date of the 2nd marriage. Half the hereditary and all the property acquired during 2nd marriage should go to children of that marriage.

A. married B., B died leaving a daughter, and A. married the second time C., B's. daughter married D., and died leaving an infant child. Held that D. as guardian of the infant child was entitled to have all the dowry property of B., first wife of A., and half of the acquired property up to the date of A's second marriage, and that D. would be entitled to the other half of the acquired property on behalf of his minor child, should that child survive its grand-father, and one half of his hereditary property upon his death, the other half of the hereditary property and all the acquired property during second marriage go to the second wife and her children. Held also that the children cannot claim any part of the hereditary property during the lifetime of the father.

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In the Provincial Court of Jaffnapatam.

No. 1,711.

The undersigned Commissioners beg leave to submit the following several answers to the questions put to us by this Court with respect to the usuage of this district.

1. Q.—Can the children born out of wedlock be entitled to succeed to the estate of their parents, agreeable to the Gentoo Laws of Jaffnapatam, in case of their being lawfully married afterwards.

A.—The children of those Malabars whose names stand entered in the Church roll are entitled to succeed to the Estate from the day of the due enregistration of their parents marriage, but the children born in cohabitation of the Malabar, whose names are not so enrolled, can neither be entitled to inherit the estate, nor can such parents lawfully enter into the state of conjugality afterwards.

Illegitimate children cannot succeed to parents property.

2. Q.—If it is the case, whether such children become heirs to the acquired property of their parents from the time of their cohabitation, or from such time in which they were considered as legitimate by the marriage of their parents.

A.—Any accumulation previous to the marriage should go to th · common stock of the parents of those parties living in cohabitation, but that which may have been acquired since the legal marriage is only to be inherited by such children.

3. Q. If a father enters into a second bed without making any provision with regard to the accumulation during his first marriage, among the children of that bed, is it not that the whole of the acquisition of that marriage should be divided amongst them, share and share alike.

Children of the 1st bed entitled to a division of the whole of the acquired property during 1st marriage.

A. Yes, the children of the first bed are to divide it amongst themselves in equal proportions.

4. Q. If a father who has either a son or daughter by his first marriage, enters into the second afterwards with his concubine, without making a division of the accumulation before such second marriage, will not the children of the first bed be entitled to succeed to all the dowry property, together with the acquisition up to the second marriage.

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Children of the 1st bed entitled to the whole of the Dowry property.

A. . . . . . . Yes, all the property acquired till such time as the marriage with the concubine is duly enregistered should go to the children of his first bed, unquestionably.

5. Q. Are they not besides to succeed to inherit to all the half of the acquired property carried by their father with him on his second marriage, as well as to half of his modisium at his death.

The other half of the property acquired during 1st marriage goes also to the children of that marriage after death of father.

A. Yes, half of the accumulation during the first bed carried by the father with him when he married for the second time, as well as half his modisium, should devolve on his children of the first wife, and the other moiety of his modisium together with the whole of his acquisition, since the due enregistration of the second marriage, on the 2nd wife and her children. It is, we think, necessary to explain how a marriage is considered duly registered during the Government of this Island by the Dutch East India Company previous to 1795; all such marriages of the Gentoos of Jaffna whose names stand registered in the Church Rolls, and whose marriages were not solemnized by the Protestant Padrees, were looked upon as living in concubinage, and neither such concubines nor their children ever inherited the estate of their nominal father, but afterwards those which were celebrated by Gentoo Priests are held valid.

How marriage duly registered.

Thus is this Report written and signed on the 29th October, 1821.

(Signed) Ramelinga Modr. Teager,
(do) Poovinallamapana Modliar,
(do) Vissovanada Ayer Sanmoga Ayer.

No. 2,243.

1823.

Cadrasie Morogasen of Nurvely.......................*Plaintiff.*

Vs.

Teywane, wife of Winssy...........................*Defendant.*

Scott, Judge.

Held that a bastard child cannot claim the property of her

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mother who was legitimately married subsequently to another, and died without issue.*

Bastard child cannot claim mother's property.

No. 2,677.

Provincial Court.

Wayrevy, daughter of Cadergamen and others...*Plaintiffs.*

17th September, 1823.

Vs.

Soopen Morogen of Mancopan and others...... *Defendants.*

FARRELL, Judge.

2nd Paragraph of the answer.

The Defts. beg to observe to the Court how the Lands belong to the parties, namely, the Defts. Grand-father Ramen Cadiren married twice, the first marriage children are the Plffs. mother Koepepulle and Sidewy ; the 2nd marriage children are the Defts. mother Madate. This Land and all other Lands of the said Ramen Caderen, according to thombo in his name, were equally divided between the said 1st and 2nd marriage children, and they possessed the same according to division, and after their death the said Lands devolved to their children, namely, the Plffs. and Defts. and they possessed the same accordingly.

Judgment.

It is the opinion of the Court that the Land Soote-coodil at Mancopan belonged to Cadergamer Ramen. That he was married twice, first to mother of Plff's. mother and two sons, and secondly to mother of Deft's. mother (who was the only child by that marriage). That Plff's mother was only entitled to ¼ share of the Land, and that Deft's. mother was entitled to ½ share of the Land, that Deft's. mother died in 1812, when Dfts. were children, and that though Plffs. may have enjoyed the produce of ¾ of the Land (including Dfts. mother's share of ½) for upwards of ten years, that Plffs. have not enjoyed the said ¾ for ten years after Defts. came to years of discretion. It is therefore decreed that Plffs. are entitled only to ¼ of the Land in right of their mother, and the Defts. are entitled to ½ of the Land in right of their mother. Plaintiff to pay costs.

Prescription to commence to run from the date of majority.

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* Not law I think.

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No. 2,789.

19th June, 1823.

Comarasingam Soopremanier and others.........*Plaintiffs.*

Vs.

Tisseweerasinga Modr. and wife Sinnepulle of Mattowil. *Dfts.*

FARRELL, Judge.

Facts from Mr. Farrell's.

1st. Deft. is father of 2nd Plff. (by his 1st wife, deceased), who is wife of 1st Plff. and 2nd Deft., is 2nd wife of 1st Deft, Plffs. claim certain Lands from Defts. as being property acquired by 1st Deft. through the profits of his first wife's dowry.—1st Deft's. first wife died 3 years after marriage, leaving an only child, 2nd Plff., Plffs. say 1st Deft. kept his wife's dowry property until 1820, when Plffs. got it, and Plffs. now sue for the profits of such property from time of 1st Deft's. marriage with 2nd Plffs' mother until 1820, 1st Deft. says, that on the death of his first wife he gave over the child he had by her (being 2nd Plff.) together with all her dowry property to Teager Cadergamer his 1st wife's Brother, that there was no dowry ola executed on his marriage with his first wife, that all his 1st wife's property is comprehended in a receipt granted to him by Teager Cadergamer which is filed in this case, that 12 or 13 years ago the said property was given over to 2nd Plff. on her marriage with 1st Plff. by Teager Cadergamer, but 1st Deft. knows nothing as to 2nd Plff. having only received her mother's dowry property two years ago from 1st Deft., and it was not in his keeping—1st Deft's first wife died 28 or 29 years ago.

Father bound to give up his child with all its deceased mother's dowry, &c., to the relations of the latter, if not he should account for profits, &c.

It appears to the Court that the only Lands belonging to 2nd Plff's mother are . . . . . . and they are now in Plff's possession, 1st Deft. having held them only for one year after his 1st wife's death, and that 1st Deft. is only to account for that one year's produce of those Lands which contain 62 Latchams of cultivated Paddy Land, and 100 Palmirah trees. It is therefore decreed that 1st Deft. is indebted to Plff. in Rds. 71, being estimated produce of 2nd Plff's mother's Land, held by 1st Deft. for one year, with costs of suit.

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No. 2,646.

22nd March, 1824.

Walliamme, widow of Walasoopremanien of Vannarponne.. ....Plaintiff.

Vs.

Cadrasy, daughter of Sinnatamby and others...*Defendants.*

FARRELL, Judge.

The case for decision is as follows:—Palaniappa Chetty, Coast man, resided at Jaffna, died in 1813, leaving a Brother and a concubine (1st Deft.), and child, the Brother's name was Soopremanien Chettiar, who married two wives, *i.e.* Plff.'s mother Mangalom and Parpathom (2nd Deft). In 1815, 2nd Deft. obtains Letters of Administration to the Estate of Paleniappa Chettiar, but until this day has given no account of her administration. In August, 1820, 2nd Deft. through her attorney, the 3rd, transferred two pieces of Lands belonging to the deceased, to his concubine (the 1st Deft.) for 600 Rds. being the same Land half of which is now claimed by Plff., Plff. now comes forward for the first time since Paleniappa Chettiar's death, to claim on behalf of his Estate as daughter of the said persons brother Soopremanien, by his wife Mangalam, and wishes the transfers of Lands by 2nd Deft. to 1st Deft. to be set aside. Soopremanien Chettiar and his two wives were natives of Sangendy near Combaconam, on the Coast, and always lived there. Plff., who is daughter of one of the wives, was married to a man of Jaffna, and resided at Jaffna with her husband during his life; but on his death, which occurred about 20 years ago, returned to her native country, and remained there until 1822, when she again visited Jaffna, for the purpose of claiming her mother's share of Palaniappa's estate.

Nephew succeeds to uncle's property, in preference to nieces.

2nd Defendant is second wife of Soopremanien (Paleniappa's Brother) and has three children by him, a boy called Selvenayagam, and two girls called Viodum and Meenatchie, and the Court is of opinion that 2nd Deft's son Selvenayagam is heir of his uncle Palaniappa, and that Plaintiff has no claim on that person's Estate. Plff. to pay costs of suit.

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No. 3,074.

10th May, 1824. Pitchatta, widow of Nadonayegam, and others......*Plaintiffs.*

Vs.

Illengenader Cadrawaloe of Pongodotivoe, and others.* *Defts.*

FARRELL, Judge.

Children entitled to equal share.

It is plain that the three Lands belonged originally to Poner Illengenader, father of 1st, 2nd and 3rd Plffs., and of 4th Plff.'s late father, and also of 1st Deft., but it is not clear, how those Lands have been held since his death. It is therefore decreed that Plffs. and 1st Deft. are each entitled to 15-share of the following Lands: at Pougutivo formerly belonging to Pooner Illegenaden, viz., Tetkoe, Mankadoe, Calativoe and Canapoe. The parties each to pay their own costs.

No. 3,123.

1824. Caderen Sinnewen of Marodenkeny............... *Plaintiff.*

Vs.

Wally, wife of Caderen..............................*Defendant.*

FARRELL, Judge.

Son of 1st bed entitled to ½ of all property left by his father, and 2nd wife and her children to the other half.

The Court is of opinion, that Plff. as son of Casie Cadergamen, deceased, by his first marriage, is entitled to one half of the moveable and immoveable property left by that person at his death, and Deft. and her sons the other half. That Plff. has not yet had any portion of his late father's Estate, and that Defendant is now in possession of the whole of that estate. It is therefore decreed, that Plaintiff is entitled to a half of the estate of Casie Cadergamer, deceased, moveable and immoveable, and to one half of the produce of the Lands of the said deceased for two years, all which is to be recovered from Defendant. Defendant being the second wife of Plff.'s deceased father.

Defendant to pay Costs.

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* The 2nd and 3rd Defts. are the Maniagar and Olear of Pongodotive.

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No. 2,959. 1825.

Alwate, wife of Naranen of Aneletivoe ....*Plaintiff.*

Vs.

Plff's father Natconisegra Modr. Cander.........*Defendant.*

FORBES, Judge.

Held. A, the daughter of the first bed, entitled to half her mother's acquired property during her second marriage, there being no children of the second bed.

Property acquired during 2nd marriage.

No. 3,249. 1825.

Amblewer Weeler and wife Candiar of Elale...*Plaintiffs.*

Vs.

Sidowy, widow of Moorger, and others, of Edecooritchy. ... ... *Defendants.*

FORBES, Judge.

A. died leaving two sons, of whom one died leaving a daughter. Held that the daughter was entitled to an equal share of her grand-mother's property with her uncle.

Uncle and Niece succeed to grand-mother's property equally.

No. 3,483. 1825.

Rasagoon Modliar, Lawrence, and wife Lusiapulle, of Serrowolan... ... ... *Plaintiffs.*

Vs.

Amerecoolasooria Modr., and others ... ... *Defendants.*

FORBES, Judge.

I see no reason for annulling the Fiscal's sale of 2nd October, 1823, the Lands then sold "being the property of Joanatal, and liable for the debt due to 3rd Defendant by her;" the said sale is declared *valid* accordingly. 2nd Plff. is, however, entitled to ⅓ of Joanatal's property, "after the settlement of her debts;" and 2nd Defendant, as only daughter of Jo anatal, is entitled to the remaining *two-thirds,* the former by dowry and the latter by inheritance.

Debts to be first paid.

Plaintiffs claim (Plaintiffs' waving their evidence) is dismissed with costs of suit.

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1825

No. 3,546.

Ayenger Pooder and wife Natchipulle of Codigama . *Plffs.*

Vs.

Mannier Welen and Conneweddiar Covinder ... ...*Dfts.*

Forbes, Judge.

2nd marriage and succession to Property.

Debts, during marriage, how and by whom paid.

A. dies, leaving a daughter B., and her husband, who married a second time. B. marries and dies without issue. Held that A's. brother's daughter C. was entitled to all A's. dowry property, all her joys, and half her acquired property; and that of her husband's up to his second marriage, and also that C. was entitled to all B's. dowry property, half her joys, and ¼ of her acquired property during her marriage; but that C. was liable to pay half of the lawful debts of A. during her marriage, and of A's. husband up to his second marriage, and also that she was bound to pay ¼ of B's. and B's. husband's debt during their marriage.—The other ¾ of B's. acquired property was to be divided in the following manner:—½ was to go to A's. husband as the father of B., and the other ½ to the husband of B.

1825.

No. 3,586.

Sinnepulle, widow of Coonjer, daughter of Wissowenaden, of Awerankal ... ... *Plaintiff.*

Vs.

Wissowenader Winageger ... ... *Defendant.*

Plaintiff and Defendant are brother and sister.

Forbes, Judge.

If Son improved the property, the daughter who inherits equally with him, should bear in proportion the expenses.

It is accordingly decreed, on reference to the evidence, &c., in this case, that, as Plaintiff was *never married,* the several Lands in the Libel, with the exception of the Land Podoogally *totam*, (the dowry property of parties' late mother Omratty, wife of Sakrayden Wissowenader) be equally divided between the parties.—Plaintiff's half share of the said Land Podoogally totam having been transferred to Defendant's wife Cadrasy, on transfer of the 28th July 1823; and it is further decreed, that Plaintiff is to defray half of the expenses of

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building the house on the Land *Kamblean Seema*, Rds. 25, or to be ascertained on a *valuation*, if parties be dissatisfied: costs of this suit to be paid by Plaintiff.

No. 3,743.

16th August 1825.

Sinnetambear Somenaden of Puttoor ... ... *Plaintiff.*

Vs.

Ramenader Comarevalen and five others ... *Defendants.*

FORBES, Judge.

Niece's property how divided.

Plaintiff claims Rds. 950, being the value of $\frac{1}{3}$ of all the property left by his niece Wallinatch, deceased, who was the daughter of Plaintiff's sister Siwegamy, and first wife of first Defendant, which Siwegamy died 17 or 18 years ago. Plaintiff adds he had two brothers, Moorgen and Aromogam, the former of whom left two Sons, *i.e.*, the 3rd and 4th Defendants and two daughters, 5th Defendant Natchipulle, the former dead, and the latter left one daughter, the 5th Defendart, from which Plaintiff appears entitled to the said $\frac{1}{3}$ of his said Niece's property by inheritance, Wallinatchy got all her property from her mother, whose dowry it was, (that is the mother's) and died unmarried.—1st Defendant admits that Plaintiff is only entitled to $\frac{1}{3}$ of the five following Lands, and to $\frac{1}{3}$ of the otty Lands on Plaintiff's paying $\frac{1}{3}$d of the otty amounts, also to $\frac{1}{3}$ of joys, which 1st Defendant states to have been already given to Plaintiff.

Settled amicably, and case withdrawn.

No. 3,936.

1826.

Poedinachen, widow of Wissowen of Puttoor ... *Plaintiff.*

Vs.

Cadergamer Caylayen and his wife Walliar... *Defendants.*

WRIGHT, Judge.

Bachelor son's Property reverts to mother.

A, a bachelor, dies leaving an otty Bond in his favor leaving a mother without brothers or sisters. Held that the mother as sole Heiress, was entitled to have possession of the otty Land, and to recover the otty money, if possession was objected.

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1826.

No. 4,094.

Canageretna Modr. of Navelcodoe for and on behalf of his three Grand-children.... ... *Plaintiffs.*

Vs.

Warathe, widow of Cadergamen, and others ... *Defendants.*

WRIGHT, Judge.

Married daughters succeed in preference to sons.

A. dies without issue, leaving property, and without Brother or Sister, or Mother. A.'s father does not interfere with the property. A's mother had two sisters who were also dead at the time of the death of A.—One sister left two Sons and a daughter all married, and the other sister left two daughters. Held that the daughter of the one sister was entitled to the half share of the property, exclusive of the sons, and that the two daughters of the other sister were entitled to the other half, each to an equal one-fourth.

1826.

No. 4,365.

Moorger Sidemborepulle of Vannarponne and two Sons ... ... *Plaintiffs.*

Vs.

Vessower Welayden ... ... *Defendant.*

WRIGHT, Judge.

Two Sisters Succession to Property.

A. and B. were two Sisters, B. and her child died.—Held that A was entitled to the whole of the dowry and half of the acquired property.

1827.

No. 4,795.

Sidemberie Nitsinger and wife Amodalle of Carremben ... ... *Plaintiff.*

Vs.

Caderemalle, widow of Cadergamen and her three children ... ... *Defendants.*

BROWNRIGG, Judge.

Held that the 2nd Plaintiff, as a sister, has only a "joint claim in common" with the other sisters of the deceased, and the children of one sister, also deceased.

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No. 4,938. 1828.

Moorger Sidemberepulle and children of Vannarponne..*Plffs.*

Vs.

Vessower Walen and another.................................*Dfts.*

Brownrigg, Judge.

A., marries B. and dies without issue—B. transfers over all his Credits and his Lands in favour of C. after the death of his wife. Held A.'s brother and his children were entitled to half the acquired property of A. and B., and that the transaction was fraudulent.

No. 5,005. 1828.

Anal, widow of Marks, for and on behalf of her children..*Plff.*

Vs.

Francisko Necholan of Chillah and others.................*Dfts.*

Brownrigg, Judge.

Fraudulent transfer.

A. marries, gets a son B. and daughter C., then A. marries the 2nd time and gets a daughter D , then A dies leaving her second husband, and B. dies leaving a widow and children, C. dies without issue. Held that D., the daughter of the second bed, was entitled to C.'s dowry property in preference to the full Brother or his heirs.

Judgment.

Daughter of the 2nd bed succeds to dowry property of her half sister in preference to full brothers.

On reference to Thasawalamme, it does not appear that there is any provision generally applicable to the Case in question. The Court, however, is of opinion, that according to the spirit of the Malabar Law, as laid down in the 7th cl. 1st sec. Thasawalamme, the dowry property of the mother ought to go to the half sister, in preference and to the exclusion of the full Brother, who can only be entitled to the property of his Father. It is admitted by both parties, that all the Lands claimed in the Libel are the dowry property of the mother of 1st Plaintiff's husband and 2nd Defendant, with the exception of the last named one, which appears to be her acquisition during her second marriage.

It is therefore decreed that Plaintiff's claim be dismissed-

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1828.

No 5,337.

Sadomadewer Cartigaser Brahamin, residing at Canderode..*Plaintiff.*

Vs.

Sadomadewer Kitner and 2 others.....................*Defendants.*

Point raised.

A. B. C. D. were brothers. A. acquired certain property, Monies and Lands, when he was unmarried, and under his Parents. One of the Brothers claim an equal share in the property.

Point not decided, Case struck off.

9th June, 1829.

No. 5,614.

Mariamootto, wife of Santiago* ....*Plaintiff.*

Vs.

Cadrasipulle widow and others.......................*Defendants.*

BROWNRIGG, Judge.

A. was the son, and B. the daughter of C., both were married, but received no marriage portions. C. made a donation of some† property to her son A. B. the daughter brought the action, stating, that she had no right to give any, as she was entitled to the whole of her property on her death.

Mother's right to give away dowry property.

Held that the Country Law does not give her a title to the whole of her mother's property, but only to an equal share with her Brother, to whatever property the mother may die possessed of.

No. 5,816.

Waler Bronen of Janmakeny ... ... *Plaintiff.*

Vs.

Nagey, wife of Caderan and her Sister Sellay daughter of Maden... ... ... *Defendants.*

PRICE, Judge.

A. was paternal cousin of B., C. was maternal Cousin of B., B. died without issue. Held, A. entitled to B.'s property in-

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* The husband does not join in the action.

† Must have been out of dowry and half of acquired, to which the mother was absolutely entitled.

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herited from his Father, and C. entitled to B's. property inherited from his mother.*

Paternal and Maternal cousins.

No. 5,866.

8th August, 1831.

Gaspar Waytie ... ... *Plaintiff.*

Vs.

Ayate, widow of Philipen, residing at Vannarponne ... *Dft.*

Price, Judge.

Two brothers and widow of one. How property divided.

A. and B. were Brothers. A. died without issue. Held that B. was entitled to all A.'s hereditary property, half his acquired property during marriage, but not to any portion of the *dowry* property of his wife. Held also that he was bound to pay his proportion of debts.

No. 6,746.

1831.

Canden Nagen—Meesale ... ... *Plaintiff.*

Vs.

Canden Cadiren and his wife ... ... *Defendants.*

Price, Judge.

Plaintiff states he is 40 or 41 years of age, his mother died before he was of an age to know her, that the property mentioned in the Libel has been in possession of the Defendants for the last 40 years, having been committed to their charge by the Plaintiff's Father, soon after the death of Plaintiff's mother, together with an Inventory of the property.

Maternal grandmother, natural Guardian.

Defendants deny this statement of Plaintiff, and states that at the time of Plaintiff's mother's death, Plaintiff's maternal Grand-mother was alive, and that she was the proper person to take charge of the property of the Plaintiff, agreeable to the Country Law.

Prescription

The Court being of opinion, that Plaintiff should have brought this suit forward many years ago, and in consequence of the great lapse of time since he became of age, his claim is dismissed with costs.

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* Doubtful. It should be borne in mind that the Judgments in those days were not carefully worded, and we are obliged to gather the points in the case from the Pleadings, Evidence and the Decision.

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1832
January 28rd.

No. 4,676.

Coornader Mottocomaroe and children, of Batticotta. *Plff.*

Vs.

Sidemberam, widow of Aromogam and others... *Defendants.*

PRICE, Judge.

Are A. and B., daughters of C. by her first bed, and D. daughter of C. by her second bed, entitled to an equal share of C.'s property.—Not decided.

1832.

No. 5,691.

Walliamone, widow of Tandaven and daughter Candy. ... ... *Plaintiffs.*

Vs.

Amblewen Caderen and others ... ... *Defendants.*

PRICE, Judge.

A. and B., husband and wife, died leaving sons and daughters—one Son was married during the life time of the Parents, and died, leaving a child.

Widow of a deceased Son.

Held that the widow on behalf of the minor was entitled to an equal share with the unmarried sons and daughters.

16th Jan. 1833.

No. 7,730.

Mottocarpen Chetty Coporton and Chittiappa Chetty of Vannarponne ... *Plaintiffs.*

Vs

Alemclamma or Atchiecooty, widow of Muttoramen, and Maylwaygenam Sadonader Purpatiagar of Vannarponne ... ... *Defendants.*

PRICE, Judge.

Second wife can have no claim to acquired property of husband during 1st marriage.

It appears from the evidence, that the Lands in question, Wannantotam and Sondenadentarre, were the purchased property of 1st Defendant's late husband, during his marriage with his 1st wife, 1st Defendant can therefore have no claim to any part of them. This being the case Wengattaramen* (his brother having died without issue) is entitled

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* Son by the first wife.

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to the whole of them. It is therefore decreed, that they be sold in satisfaction of Plff's. claim against the said Wengettaramen, subject, however, to the claim of Cowale Chetty Tirromale, on half of these Lands as per Bond dated 15th August, 1829, and filed at the Fiscal's sale under Writ, in favor of Plaintiff. *Defendants* to pay the costs.

No. 5,964.

December 18, 1833.

D. C., Mallagam.

Poennen Chinneweer of Sangane ... ... *Plaintiff.*

Vs.

Patty, widow of Perian, and others ... ... *Defendants.*

BURLEIGH, Judge.

Widow entitled to half acquired property.

The case is so clear a one, that the District Judge does not consider it at all necessary to enter into the defence. It appears that the Land consisted of 13½ Ls., and was the acquired property of 1st Dft. and her deceased husband Perian, by the Country Laws (Thasawalemme) first Deft. is entitled to the half of all acquired property, and it appears that her husband purchased the Land after his marriage. The 2nd Deft. has filed a Purchase Deed, by which it appears that he purchased from the 1st Deft., in 1827, 6¾ Ls. from the Land Alaydie. The District Judge considers that the Plff.'s claim should be dismissed with costs.

The Assessors are of this opinion also.

It is decreed that Plaintiff's claim be dismissed with costs.

No. 7,873.

19th December, 1833.

D. C. Islands.

Transmitted from the Provincial Court to the District Court of the Islands.

Ramanader Soopremanier, and wife Parpaddy, of Calepoomy ... ... *Plaintiffs.*

Vs.

Casinader Sinnatamby Sedembren Canden, Aromogam Ramanaden, Sinnatamby Amblewanen Odear and another ... ... *Defendants.*

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LAVALLIERE, Judge.

It has been substantiated that the Land in dispute was actually the original property of the 2nd Plff.'s late Father Soopremanien, and given by him in dowry to his daughter Abirami, the late wife of the 1st Deft., as per Document Ld. A. under date 15th May, 1802, after whose death it devolved upon the 2nd Plff., her sister; according to the Common Law of the Country, her sister having died without issue, and which she again dowried to her own daughter Siwegamy on her marriage with the 3rd Deft, and she having also died, it descended to her only daughter Natchypulle (a girl of about eight years old) on whose behalf the Plaintiffs now claim the Land.

The witnesses adduced by the Defts. contradict most grossly with regard to the time and possession of Veler Soopen, the individual from whom the 2nd Deft. states he purchased the Land, and the 2nd Deft. has not produced any document, or at least witnesses to prove the sale, on which point alone the decision of this case chiefly depends, for unless his right and purchase be first satisfactorily substantiated, the other sales subsequently taken place, that is, upon the Documents filed by 1st Deft., Lrs. B. and C. cannot be valid. The Court is not a little surprised that the 3rd Deft., who is the father of the minor (Siwegamy's daughter) should act so unnaturally against her interest, losing sight of those feelings which ought to have dictated him to the contrary.

Odear. Schedule. Publication.

The 4th Deft., as Odear, is also to be highly blamed for not having been more particular in his enquiries, previous to his granting the Schedule, in order to enable the 1st Deft. to transfer the Land to the wife of the 5th. for had the necessary publication taken place for three weeks according to the prevailing custom, which does not appear to have been done, it would instantly have been opposed and the question settled previous to the execution of the Bill of sale, and such flagrant abuses constantly occur,—either this is the neglect or wilful connivance of the Headmen.

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Under all these circumstances, and with the concurrence of the Assessors, It is decreed that Plaintiffs, as Guardians of their Grand-daughter Natchpulle, be put in possession of the Land now in dispute. The Deeds filed by 1st Defendant, under date 4th February 1829, and 19th June 1832, be cancelled, and the four first Defendants to pay the costs.

No. 6,109.

3rd Jan. 1834.

Sangerepulle Sanmogam and his brother, by his Guardian. ... ... *Plaintiffs.*

Vs.

Sinnecootty, widow of Sangrepulle of Colombotorre ... *Dft.*

PRICE, Judge.

Plaintiffs were the children of A., who married, for the 2nd time, the Defendant, and predeceased her. A. lost a child, also by the Defendant. On reading the report of the Commissioners with regard to the first 8 pieces of Lands, they appear to be held by the parties jointly as hereditary property of the deceased Sanmogam Sangrepulle. The Court does not think it necessary to interfere with regard to the other property. Plaintiffs are entitled by the Country Law to half the hereditary and the whole of the acquired property during the 1st marriage. The Land No. 9 appears to have been purchased with money, hereditary property of the deceased, during the 1st marriage, and that he built a House on it. The Land No. 10 the Commissioners state, appears to have been purchased during the 1st marriage, and 50 or 75 Rds. was paid in part of the purchase out of the hereditary property of the deceased, and the balance, Rds. 375, appears to have been the acquired property of the 1st marriage. With regard to the items mentioned in the Commissioners report, viz. Rds. 100, and Rds. 20 and 25, the Commissioners are of opinion to have been the acquired property of the 1st marriage, and recovered by the deceased after his 2nd marriage.

Property acquired during 1st marriage.

The Court is of opinion that Plaintiffs are entitled to ½ of the Land No. 9 which appears to have been purchased with the hereditary money of the deceased. The House I con-

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ceive has been built with acquired money of the 1st marriage, and should therefore exclusively belong to the Plaintiffs; in the division of this Land, care should be taken to let the part on which the House stands, go to the Plaintiffs. The Land No. 10 appears to have been purchased during the 1st marriage, and 50 or 75 Rds. paid out of the hereditary money, and the balance, Rds 375, out of the acquired property of the 1st marriage. It is therefore decreed that this Land do go to the Plaintiffs, on their paying to Defendant Rds. 37 6., her share of the Rds. 75, hereditary money paid on account of this Land.

It is further decreed, that Defendant do pay to Plaintiffs the whole of the two items Rds. 100 and Rds. 25, which sums appear to be the acquired property of the 1st marriage, and received by the deceased during his 2nd marriage, (the Defendant not accounting for the disposal of these sums.)

Defendant to pay costs.—Assessors agree.

Decreed accordingly.

Affirmed in appeal by Sir Chs. Marshall, 9th July, 1834.

14th May, 1834.

No. 1,448.

District Court, Islands.

Sawondery Amma wife of Kneesayer ... ... *Plaintiff.*

Vs.

Adinarana Kneesayer Anendasopayer Sangarapulle Welayden and Sarravannemotto Tilliambalam. ... ... *Defendants.*

Lavalliere, Judge.

This case is to recover from 1st Defendant the several portions of Lands as mentioned in the Libel, as also to cancel a Bill of Sale under date 8th October 1832, upon which the said Defendant grounds his claim to the said Lands, which Plaintiff pleads as illegal, and executed contrary to the Law of the Country; the late Kamatchiamma, who sold the Lands to 1st Defendant and his late Brother, having had no right to

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do so without the consent of her heirs, she being at the time it was executed, a widow, and without any issue, as also in an impaired state of mind. Plaintiff now claims as her sister and sole heiress.

Transfer without consent of Heirs.

The District Judge having carefully perused the documents and pleadings in this Case, is of opinion that since the Plaintiff admits the execution of the Bill of Sale bearing date 8th October, 1832, upon which the 1st Defendant grounds his right, the questions now required to be considered are, first, whether the late Kammatchiamma had a right to dispose of those lands; secondly, whether she was in a sound state of mind when doing so; and, thirdly, whether her funeral ceremonies were performed by 1st Defendant, as specified in the Deed.

Donations.

The District Judge on reference to the Thassawalemme, finds that by the 3rd Clause of the Section relating to gifts and donations, the deceased had a perfect right to dispose of her property of the nature now in dispute, without the knowledge or consent of her heirs, who are not entitled to any compensation for it, and hence it follows that the Bill of Sale in question cannot be set aside.

From the evidence of the three first witnesses for Defendants, it has been most satisfactorily proved, that the late Kammatchiamma was perfectly sensible about the person, when the document in question was executed; and indeed, from the conversation that is said by the Defendants, 2nd and 3rd witnesses, to have taken place between herself and her brother shortly before her death, the District Judge cannot admit of any doubt on that point. As for the case produced by the Plaintiff, in his evidence to prove to the contrary, the District Judge is too well aware of the facility with which such reports can at all times be obtained from Headmen, to allow it to have any weight in the present instance.

It has also been proved, that the funeral ceremonies were performed by the 1st Defendant, which, from the evidence, it appears, can be separately done by relations, as in the present instance.

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Under all the circumstances of the case, the District Judge is of opinion that Plaintiff's claim ought to be dismissed. The Assessors concurring in it, it is decreed accordingly. Plaintiff to bear costs

M.
8th July, 1834.

JUDGMENT OF THE SUPREME COURT.

It is ordered that the Proceedings in this case be referred back to the District Court of the Islands, to take the evidence of such of the Defendants witnesses as have not already been heard, the proceedings will then be returned to the Supreme Court.

8th August, 1834.

Further evidence heard and proceedings forwarded to the Supreme Court.

2nd Judgment of the Supreme Court.

6th September, 1834.

On reading the Evidence adduced in this case, in pursuance of the order of this Court, made at Jaffna on the eighth day of July last, and the same having been explained to the Assessors, together with the former proceedings. It is considered and adjudged, that the decree of the District Court of the Islands, of the thirteenth of May last, be set aside. That the Deed of Sale from Kammatchiamma, deceased, to the first Defendant and his brother, be cancelled, and that the Estate of the said deceased be divided among the parties legally entitled to the same as if such deed had never been executed.

From the first moment that these proceedings were sent up in Appeal, this Court could not avoid entertaining strong suspicions of the validity of this instrument, principally on two grounds; First, with reference to the state of the deceased's mind at the time when she executed it, and second, with reference to the considertion, either of which grounds, either the absence of a sound mind, or of a good and sufficient consideration, would, of itself, still more the two together, make it incumbent on the Court to annul this instrument.

With respect to the first point, the state of mind of the deceased, the Evidence of the Witnesses is conflicting, and not very satisfactory on either side. For as the question of

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insanity, except in very decided cases, is a matter of mere opinion ; the naked expression of such opinion is not entitled to any great weight on the one side or the other, unless it be followed by an explanation of those facts or circumstances on which it is founded. But the piece of Evidence on this part of the case, which has most weight with this Court, is the report which was lately made to the Provincial Court of Jaffna, in answer to a summons at the suit of Mr. Toussaint, that Kammatchiamma was insane. There may be but too much truth in the observation of the District Judge, as to the facility with which such reports can be obtained, and if the question now before the Court was, whether Kammatchiamma should or should not be compelled to answer to the claim of Mr Toussaint, this Court would agree in looking at such an excuse with the greatest distrust, and would require it to be substantiated by the most conclusive evidence, before it should be received as such. But it must be recollected, that at the time when this return was made by the Fiscal, Kammatchiamma was residing at the house of the first Defendant, and under his care. It is impossible, therefore, to suppose, that it was made without his knowledge, and if he know of it, he must have assented to, and approved of it. For otherwise it was his duty to have opposed an act by which a fraud was about to be committed on Mr. Toussaint, and at the same time, the character and privileges of a reasonable being were to be withdrawn from his stepmother, (if such she may be called) ; how then is it possible to reconcile this knowledge and consent necessarily presumed on the part of the first Defendant, with the assertion which he now finds it necessary, to make that she never had been out of her mind. The report of her insanity was returned by the Fiscal, on the 16th day of August, 1832, she died on the fourteenth of October following, and yet the first Defendant asserts and undertakes to prove that she never was insane in her life. It is to be regretted that enquiry was not made as to the source from which the Fiscal's officer drew his information of her insanity. But if he did not obtain it through the medium of the first Defendant, nothing

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would have been more easy then for this person who heard the stress laid upon this point, when the case was before the Supreme Court at Jaffna, to have called upon the Officer to give up his authority.

No such attempt having been made, common sense points out the first Defendant as having sanctioned, if not created this excuse for his relatives, not appearing to admit or deny Mr. Toussaint's Bond either, therefore, the first Defendant knew that Kammatchiamma was insane on the 16th August, less than eight weeks before she executed the supposed Deed of Sale in his own favor, or else he has lent himself to a fraud too base and wicked to entitle him to credit in any other transaction of life.

Then with respect to the consideration on this point, the contradictions, inconsistencies, and improbabilities are extremely numerous.

The Deed itself expresses it to be for £37 10s, in order "they (the Purchasers) defray my "funeral expences as well "as the expenses which would be incurred, after my death, "of a ceremony called 'Caremady.'" The plain interpretation of this passage certainly is, that the sum of £37 10s. was to go to defray the funeral expences and those of the ceremony, and not that the first Defendant had paid or was to pay that sum, and also to defray those expenses; and this is the construction put upon the original instrument both by the Interpreter at Jaffna, and by another Interpreter consulted by this Court at Colombo. The answer of the first Defendant is at variance with this construction, for he avers that "the said amount of £37 10s. was applied by the said "Kammatchiamma in discharging the debts due by her to several of her creditors and other necessaries." The second Defendant, the Odear, answers by saying "that Kammatchiamma, *to defray her* funeral expences," applied to him (as Odear) for "a schedule to dispose of the lands," and accordingly he published, three weeks in the village, and granted the schedule. The third Defendant (the Notary) answers that according to the schedule granted by the Odear he executed a Deed for the lands in favor of the first Defendant, *for the sum of*

£37 10s." These two last answers are not unmaterial in the consideration of the case.

At the late Session at Jaffna, this Court was about to reverse the decision of the Court below on these grounds, as they then appeared on the proceedings, and also from the total absence of any proof that the money had actually been received by the deceased, or paid to others for their use. For though such payment would not be very consistent with the language of the Deed of Sale, still, if it had been established by clear and satisfactory proof, the language of the Deed might perhaps have been ascribed to error ; or to ignorance of the fact, on the part of the Notary. On the assurance, therefore, of the first Defendant, that he had been prepared at the trial with witnesses to establish this fact, which assurance was confirmed by the belief of the District Judge, the case was referred back to the District Court, in order to give him an opportunity of having all his witnesses examined, who had not already been heard. This has been done, and the case now comes up to this Court, for final decision. But the fresh evidence which has been adduced is very far indeed from removing the doubts entertained by this Court ; as to a *bona-fide* consideration having ever been given for these lands. Five witnesses have been examined on this second hearing. The first says he was present at the execution of the Deed, and that Kammatchiamma acknowledged having received the amount. The second is to another point. The third was present at the execution of the Deed, and heard the deceased say she had received the amount, Rds. 350 of which were to pay a debt she owed to Shroff. The fourth witness proves nothing, the fifth states with great particularity the payment to this Shroff of the Rds. 350. But there are so many improbabilities in this story, and so many inconsistencies with the rest of the evidence which it is impossible to reconcile, that this Court is compelled to express its disbelief of it. The Shroff himself is stated to be dead, but it is very unlikely that he should have allowed this woman to remain so largely indebted to him, without any instrument as a Security, and equally improbable that the first Defendant

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should have advanced the money for the payment without requiring the delivery of that instrument as a Voucher in his own favor. Two other persons, now residing at Jaffna, are also stated to have been present. Why were they not called, after the intimation given by this Court? Again, if it be true, as stated by the first of these five witnesses, the servant of the Notary, that she acknowledged the receipt of the money at the time of executing the Deed, it is scarcely credible that the Notary should have omitted all mention of this acknowledgment of the supposed purchase money in the Bill of Sale; or that the third Defendant, and indeed the first Defendant himself, should not have alluded to it in their answer. Then Kammatchiamma is made to account for the remaining Rds. 150, by saying that she had previously received that sum, and expended it in medicines and maintenance. This is at variance with the evidence of the first witness originally examined, the Medical man, who says, he was paid by the first Defendant, and besides, if true, would leave nothing for the expenses of the funeral and subsequent ceremony.

Lastly, it is stated by the second Defendant, the Odear, in his answer, and by the second of the new witnesses, the Paria man, that publication of the sale of the land was made for three successive weeks in the village, and that no objection being made, the Odear granted a schedule; and on the strength of which schedule, and consequently not till after it had been granted by the Odear, the Notary alleges that he executed the Deed. Now, from the evidence of the fifth of the new witnesses, the first Defendant's Cousin, it appears that, on the day when the Shroff came to ask the deceased for the debt she owed him, she told the first Defendant "that she "had already expended the Rds. 150, borrowed from them in "medicines and maintenance, and, if they would therefore pay "the Shroff the debt she owed him of 300 and odd Rds., she "would then transfer the Land to them." It further appears from the same witness, that the Shroff returned *the next day*, when the Rds. 850 were paid to him, and that the Deed was executed *four or five days afterwards*. There is nothing in the language of the deceased, on the day of the Shroff's first

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call, to shew that she had previously contemplated the transfer of the lands to the first Defendant; on the contrary, the natural import of the words is, that the transfer was then proposed for the first time. The execution of the deed took place at most, six days after this proposal. And yet, if the Odear and his Agent, the Paria, are to be believed; publication of the intended sale had been made three successive weeks before the schedule was granted; till the receipt of which, the Notary did not consider himself justified in executing the Deed. If this be so, the first publication of sale must have been made, at the very least, a week or ten days before the idea of transfer ever appears to have entered Kammatchiamma's mind. Instead of this unseemly haste and eagerness to get this Deed executed, it was the bounded duty of the first Defendant, knowing as he must have done the doubts (at least) which were entertained of this woman's state of mind, to have used the utmost caution and publicity in every step he took in the transaction and above all he ought to have called upon the sister of the deceased, the Plaintiff, either to return from Kandy or to send some person in her stead, to bear witness to the fairness and legality of the transfer. On a mature and deliberate view of the whole case, this Court feels compelled to declare that the instrument does not appear to have been fairly and honestly obtained, and therefore that it must be set aside as void.

Witness, &c., at Colombo, the 6th September, one thousand eight hundred and thirty-four.

No. 226.

District Court, Waligamo.

Sinnatamby Cartigasen and brother of Alewetty.. *Plaintiffs.*

Vs.

Yanemooty Cadresin and others... ... ... *Defendants.*

LIBEL.

The Plaintiffs being minors, their mother departed this life, that after her death, the Plaintiff's father, the 3rd Defendant, being unable to protect the Plaintiffs and manage their property, delivered the Plaintiffs and all their mothesr'

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dowry property consisting of Lands, Gold joys and Household Furniture, to the care and guardianship of the first Defendant. That in 1831, when Plaintiffs on their puberty, demanded from the first Defendant their mother's said estate, Defendants in conjuction were unwilling to deliver up the property; the Plaintiff prosecuted the first and secondDefendants in the Provincial Court of Jaffna, in *Forma Pauperis* for the recovery of their mother's estate, when the first and second Defendants having combined with the third Defendant, concealed the dowry ola of the Plaintiffs' mother, to prevent Plaintiffs in the possession of their dwelling land, situated under Alawelly called Pallenpoelam, house and ground, together with the household furniture and gold joys, and in liquidation of which, requested the Plaintiffs to possess the land, but Plaintiffs were unwilling to accept of the same. The dowry property of the Plaintiffs' mother, including household furnitures and gold joys, are worth in all £5.

Wherefore, the Plaintiffs humbly pray the Court will be pleased to send for the Defendants, and after a minute enquiry decree the Plaintiffs in the possession of their mother's dowry property, household furnitures, and gold joys, agreeably to their mother's dowry ola, with costs of suit.

16th January, 1834.

BURLEIGH.

28th May, 1834.

I am of opinion, that a Decree should pass for the Plaintiffs. It appears most probable that the first and second Defendants have kept the property of their mother together with the Dowry Deed. There can be no dispute with regard to the jewels. It appears evident also, that a quarter of the land dowried to the mother of the Plaintiffs, the third Defendant. should not have been summoned as one.—Assessors agree.

It is Decreed that the first Defendant do pay to Plaintiffs the sum of £2. 14s., the value of jewels, and that Plaintiffs be put into possession of a quarter of the land Pallenpoolam, on the south side, with a share of the House, (the Court considers the first Defendant is only answerable for the value of

the jewels), the first and second Defendants to pay costs, third Defendants costs by Plaintiffs.

Appeal Decision.

SIR C. MARSHALL, Chief Justice.

Judgment set aside, and case referred back to take evidence of the Defendants' witnesses.

BURLEIGH.

6th Novr. 1834.

The further evidence taken in this case, has made it much clearer than it was before. It appears evident that the first and second Defendants wish to deprive the Plaintiffs of their mother's property. It has been clearly proved that a quarter of the land and a quarter of the house was dowried to the mother of the Plaintiffs. The custom of the country is, that the father ought to manage the minor children and their property, if he do not marry a second time, but this is not always observed (as in this case for instance), the uncles sometimes undertake to do so. It appears to me that the third Defendant, whilst Plaintiffs were children, completely deserted them; they are now of a competent age to manage their own property, and considering the evident fraud which has been attempted by those the Plaintiffs looked up to as their natural protectors, I consider that the property can only be considered safe, if in the hands of the Plaintiffs. The country customs say, that the father shall manage the property of the children, provided he do not marry a second time, but surely this must be only during *the minority of the children.* I have known cases when the father has made away with all his children's property. I am of opinion that the former decree should stand good. I feel very much inclined to give a decree for *all* the dowry property, to prevent future disputes, but as only a part is claimed, and Plaintiffs have received a Notarial Deed for the rest, I do not think myself justified in so doing. The same Assessors agree fully in opinion.

Father should manage property of minor children.

Father to manage only during minority of his children.

It is therefore Decreed that the former decree do hold good.

I have a strong suspicion that the Dowry Deed filed by the first Defendant is a forged one, he did not present it when the case was first heard.

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26th August 1834.

No. 662.

Nagen Chinny and others of Meesaley ... ... *Plaintiffs.*

Vs.

Varier Murgen, and others ... . *Defendants.*

SPELDEWINDE, Judge.

The Judge and the Assessors are of unanimous opinion, that the witnesses produced by the Plaintiffs this day in this case, although in indigent and low circumstances, are more respectable in appearance than those adduced by the Defendants, who seem to be persons of rather a suspicious disposition, apt to undertake anything, to swear with severity, and therefore the evidence of the former in the eyes of the Court are more trustworthy and creditable, while the latter may be easily corrupted. It is not only in the present case that these Defendants have tried means to oppress their neighbours, the Plaintiffs, by similar fraudulent conduct to alienate other peoples Lands, but in two former cases, have likewise been involved separately in such unreasonable acts, viz., in one of them which was decided against his party, the first Defendant, it transpired in evidence, granted a false schedule, which even went so far as the Supreme Court in Appeal, and he was in consequence made to suffer by that Tribunal in adjudging the costs of suit against himself. In the second case, upon a similar unlawful schedule, granted by the first witness of the Defendants, Supermanier, late Odear to the Fiscal's Office of Jaffna, as another Stranger's Land, as the property of the second Defendant and purchased by the fourth Defendant in this case through a combination, the said sale was set aside by this Court; such being now the case, the Court has not the least hesitation in believing that the same deception had crept also in this case, to the utmost prejudice of the Plaintiff, and to the great loss and deprivation of his property. The Court cannot avoid remarking that the Defendant's said first witness Soopremanier deposed, that the second Defendant after redeeming the said Lands from otty, possessed it only for a space of four years, who likewise said that the same had been ottied by the second Defendant's late Grandfather Vinasy to one Sidembrenatha Odear, whereas the Defendant

Granting false schedule how punished

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last witness says that it was the second and third Defendants themselves who otted it to that individual and which had been redeemed 12 years ago and possessed by them on the other hand, she the third Defendant in her defence made this day Viva voce in open Court, says she has no pretention whatever to those Lands. The Court still has further to observe that should these Lands had been actually dowried to the second Defendant's late mother, it ought to have been registered in the new Thombo of the year 1790 up to 1793 in her name which is not appearing on the Exhibit B. while the first Defendant has the barefacedness to say in his defence, that as these Lands appeared inserted in the said dowry Deed exhibit B. it induced him to have granted the schedule to the second Defendant for the disposal of the same to the first Defendant.

Therefore it is decreed that Plaintiffs be confirmed in the peaceable enjoyment of the two Lands one registered in the Thombo on the name of first and second Plaintiff's late Great Grand-father Caviar Madendear and the other on the name of Coonger Andy brother to the former Thombo holder, in right of inheritance from their late parents, and that the Defendants do not in the least molest Paintiffs therein. The entry of the aforesaid Lands in the Notarial Transfer Deed, dated 15th July, 1833, in favor of the fourth Defendant, as granted by the second and third Defendants, be annulled to all intents and purposes, first and second Defendants to pay Plaintiff's costs, and those of the third and fourth Defendants, reserving however, a right to the fourth Defendant to recover the value of the lands from the second Defendant, if he choose it.

No. 104.

Wademorachy.

20th October, 1834.

Cadergamer Canneweddy of Ploly... ... ... *Plaintiff.*

Vs.

Omeatta, widow of Alwar and others... ... ...*Defendants.*

Toussaint, Judge.

Son Heir to his Father's Estate.

By the copy of the marriage Registry and proof produced by the Defendants, there appears to be no doubt that Plain-

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tiff's brother Sooper, was married to Moothanachy, and that Venacitamby is the son of the said Soopen, and a heir to his Estate. The Court is of opinion, that the donation is not true, and Plaintiff's claim as such is incredible, that Plaintiff's claim must therefore be dismissed. The Assessors who have heard the whole, say that they concur in opinion with the Court.

It is decreed that Plaintiff's claim be dismissed, and that Plaintiff do pay the Defendant's costs of this suit. The intervenient is directed to bring regular claim for the otty as it cannot be attended to in the present claim. The intervenient's costs must be borne by himself.

Judgment affirmed in Appeal
30th January, 2835.

18th September, 1834.

No. 141.

Tenmerachy.

Cander Sidemberen of Tavale Eyetale... ... ... *Plaintiff.*

Vs.

Mady, wife of Canneweddy... ... ... *Defendant.*

SPELDEWIND, Judge.

Dowry of deceased Sister devolves on the surviving married Sister.

The Judge is of opinion that agreeable to the * seventh Article or Paragraph of Thasawalemme, that daughters of Parents who have been lawfully married, having first obtained their regular dower, one of these dying without issue according to the Defendant's statement, the dowry property of such deceased devolves to the other sisters or their children, but in this instance, she produced no dowry Deed to establish her claim in the name of her late Sister's marriage with the Plaintiff (to throw some light into the matter) who entirely denies having been ever married to her. In the second instance, the Plaintiff failed to file his wife Cadery's dowry Deed, yet whether he was regularly married to her or not it matters not, for the above minors are nevertheless proved to be the offsprings of the said Cadery, and therefore in the eye of the Law, are the real persons entitled to the just one-half share of the land in dispute in right of their

* 5th Paragraph in the present Edition of Thasawalemme.

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mother's inheritance, as all the other brothers and sister died without issue. Assessors agree in opinion.

It is decreed that the Plaintiffs be confirmed in the peaceable enjoyment for and on behalf of the minors Cadresen and Teywane of a half share of the land Plaewaykalpoolam in right of inheritance from their late mother Cadry. Defendants to pay Plaintiff's costs.

No. 7,832.

12th May, 1835.

Provincial Court Case.

Transferred to the District Court, Chavagacherry.

Minachiar, widow of Wenayegepatter of Welevely *Plaintiff.*

Vs.

Kritner Comarevaler and others... ... ... *Defendants.*

Speldewind, Judge.

Widow entitled to half acquired property.

It is decreed and adjudged that the Plaintiff is the lawful wedded wife of her late husband Kritner Wenayegapatter and consequently that she is thereby entitled to a just half share of all the acquired property by them during their marriage, both moveable and immoveable property, and that for the present she is entitled to an equal share with the Defendants to such of the lands enumerated in the list delivered in this case exhibit A. agreeable to the tenor and spirit of the Thasawalemme, as her own and legal property absolutely, and without any manner of condition, from which she had been with-held by the Defendant who had solely appropriated the same to themselves in an unlawful manner so prejudicial to the Plaintiff's interest. However, at all events, the Court reserves a right to Plaintiff to recover from the Defendants hereafter in a fresh action, the several moveable property and money acquired by herself and her said late husband during the time of their intermarriage, which consists in Gold and Silver jewels, Brass articles and Cattle, by prefixing to them their respective intrinsic value, weight or the description thereof after properly ascertaining the same to be delivered in a written accurate account thereof. Defendants to pay costs jointly and severally.

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24th July, 1835

No. 109.

Wademorachy.

Sidemberen Ayenken and others... ... ...*Plaintiffs.*

Vs.

Tandawer Cadiren and Cadiren Weeren... ... *Defendants.*

Toussaint, Judge.

Undowried daughter can only claim an equal share with the other children.

With regard to the claim of Plaintiffs, it appears that it is not supported that she has got the lands in dower namely, the whole of the lands as claimed by her, and her dowry Deed appears to have been found in the case, No. 2,991, to be a suspicious Voucher, and ordered to be set aside accordingly that by evidence as the Court considers that no more can be allowed to second Plaintiff than an equal share with the second Defendant's mother, and orders second Defendant to pay produce of her half share in the lands, &c., which appears to have been objected and taken by him since the last two years. The Assessors say they fully concur in opinion with the Court.

It is decreed that the second Defendant and the children of the second Defendant's mother deceased, are entitled each to half share in the land, and to one fourth share in the land, and that second Plaintiff do recover from second Defendant a damage of produce of the first mentioned land one Pound and seven Shillings, and that parties and the intervenients do bear their own costs of suit.

16th September, 1835.

No. 2611

Wademorachy.

Tamar Tilliambelam of Point Pedro... ... ... *Plaintiff*

Vs.

Waireven Amear... ... ... *Defendant.*

Toussaint, Judge.

Sons and daughters succeed equally.

The Court is of opinion that the property in question devolved from the widow of Nagen Wairaven should be divided between three sons and three daughters of Nagen Wairaven, or their respective heirs, namely, the debtor, the 1, 3, 4 and 5 objectors (the third objector should have two shares as he is married to two sisters) there being

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no proof, that they, namely, the daughters received dower, and as to the share of the first objector's wife, it is evident enough by the decree No. 1,111. The Assessors agree in opinion with the Court. It is decreed that only one-sixth share of the property in question be sold in satisfaction of this writ as the share of the debtor, and that the creditor do pay the objector's cost of this suit.

No. 1,261.

19th December, 1831.

Chavagacherry.

Muttopulle, wife of Ramalingam and others... ... *Plaintiffs.*

Vs.

Natchipulle, widow of Maylen and others... ... *Defendants.*

MOOTAGALE, Judge.

Claim on deed set a-side for want of Stamps, and claim by inheritance up-held.

The present Plaintiffs with their otheir brothers and sisters (who are not parties in this case) appear to have claimed the land in question before the late Provincial Court as having been given to them by the Defendant in lieu of another which was the joint property of the parties, and which the Defendant sold away as her sole property, without the consent of the Plaintiffs, and their said claim to have been dismissed as contrary to Stamp Regulation of Government to maintain it without a Deed on Stamp agreeable to that Regulation, but their present suit is quite in a different light from it, because they claim a quarter share of the land in question in right of inheritance from the parties father deceased, and in considering the evidence on both sides, it appears to me, that the Plaintiffs have fully established their right to one-fourth of the Land, as children and heirs of Pooderpermal as well as their other full brother and Sister by his second bed, and that the Defendant should be condemned in the costs incurred by Plaintiffs. The Assessors join with me in that opinion.

It is therefore decreed, that the Plaintiff and their other full brother and sister be quieted in the possession of one-fourth share of the Land Nurisanadiromovalawoe, situated at Chavagacherry and registered in the Thombo, in the name of Tandien Mudelegen as the children and joint heirs with the

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Defendant of Pooder Ayemperemal deceased, and that the Defendant do pay the costs incurred by Defendants.
Judgment affirmed in Appeal, 18th February, 1836.

No. 749.

22nd February, 1836.

Point Pedro.

Cander Mootatamby and brother Venasitamby of Ploly ... ... *Plaintiffs.*

Vs.

Wally, widow of Welen ... ... *Defendant.*

TOUSSAINT, Judge.

TwoSisters and Succession to maternal grandfathers Property.

The land in question appaers to have originally belonged to the parties' mother's father, who had two daughters, namely, the parties mother, and another who is still alive, but not come as a witness in this case, no proof is adduced that this Land is the dowry property of the parties' mother, nor is it proved that it is in dower to Defendant.

The Court is therefore of opinion, should this land be redeemed from otty, it should devolve to parties' mother half of her father's share, from that half share Plaintiffs and their Brother should have half, and the other half to Defendant, as they are children of one mother. The Assessors agree in opinion with the Court.

It is decreed that out of the share of parties maternal Grand-father in the Land in question, parties be entitled to half, namely, Plaintiffs and their brothers one-fourth, and Defendant one-fourth, in right of inheritance, and that Defendant do pay Plaintiffs costs of suit.

No. 700.

10th March, 1836.

Point Pedro.

Wariar Waier of Tonnale ... ... *Plaintiff.*

Vs.

Wariar Conden and Wariar Murger ... *Defendants.*

TOUSSAINT, Judge.

Sisters—and dowry Property.

The Assessors agree in opinion with the Court, that it is unnecessary to examine witnesses on the part of the Defendants or intervenients, for it is not proved that the parties

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Sisters have obtained dowry and deducting those, that the rest have been divided between the Sons for their possession or disposal; the relationship of Naraner Sooper to the Plaintiff is such that what he stated in his evidence cannot be sufficiently relied upon. The estate therefore, should be divided amongst the children, share and share alike, under the foregoing circumstances, the Assessors further agree in opinion with the Court that Plaintiff's claim must be dismissed. It is decreed that Plaintiff's claim] be dismissed, and that he do pay the Defendants' and intervenients' costs of suit.

No. 981.

Point Pedro.

Helenal, daughter of Anal of Carrewetty ... ... *Plaintiff.*

Vs.

Anthony Seman, wife Sevanal, and Elenal, daughter of Swany ... ... *Defendants.*

Toussaint, Judge.

The second and third Defendants say that their Father died while they were infants, and after his death that Helenal never came to the village, which by the age of the second and third Defendants must be a long time, and not less than ten or twelve years. If Helenal is dead and left no issue, according to Country Law the property must devolve to Plaintiff being the sister's daughter, and not to the second and third Defendants who are her brother's children; there appears to be no proof that the property is left in charge of the second and third Defendant's father under any agreement, consequently the Court under the circumstances consider that Plaintiff has a better right to possess and enjoy the produce of the Lands than the second and third Defendants. The Assessors agree in opinion.

Sister's children succeed in preference to Brother.

It is decreed that Plaintiff is entitled to possess her Aunt Helenal's share in the Lands—but not at liberty to dispose of any part of them until she shall more satisfactorily prove to the Court that her said Aunt is actually dead and left no issue—Defendants to pay Plaintiff's costs of suit.

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17th June, 1836

No. 932.

DISTRICT COURT,

Point Pedro.

Mapananod, and Sooper of Ploly ... ... *Plaintiffs.*

Vs.

Modelitche, daughter of Caderen and others ... *Defendants.*

TOUSSAINT, Judge.

Sister & sisters children succeed in preference to brothers.

It is decreed that the otty Deed be set-aside that Plaintiff's claim be dismissed. Plaintiff to pay first and second Defendants' costs. The admission of the third Defendant can be of no benefit to the Plaintiff, for allowing the Land belongs to the Sellers, the third Defendant cannot be considered a Heir to Sinnie as the said Sinnie left sisters and sister's children, who according to the Country Law, are the Heirs, and not the mother.

6th Octr., 1836.

No. 1,165.

DISTRICT COURT,

Jaffna.

Cander Vissowenaden, of Cokkoril ... ... *Plaintiff.*

Vs.

Mangaenasy, widow of Canden ... ... *Defendant.*

PRICE, Judge.

Widower after second marriage no right to late wife's property.

Defendant's Proctor states it is impossible for him now to defend the case, because he has been deprived of the means of filing an answer and citing witnesses to disprove the statement now made by the Plaintiff in explanation of the Libel, in which it was stated that the Land in question belonged to Plaintiff, when it appears by his own statement, that he, (Plaintiff) is married for the second time and has a son now in Kandy, of the age of 36, who appears to be entitled at least to the share that his mother inherited from Sidowy deceased, agreeably to the Country Law.

The Court and Assessors are of opinion that the present Libel should be dismissed with costs, allowing Plaintiff to bring another suit jointly with his son, or a separate suit claiming any part of the Land that he solely may be entitled to.

Ordered accordingly.

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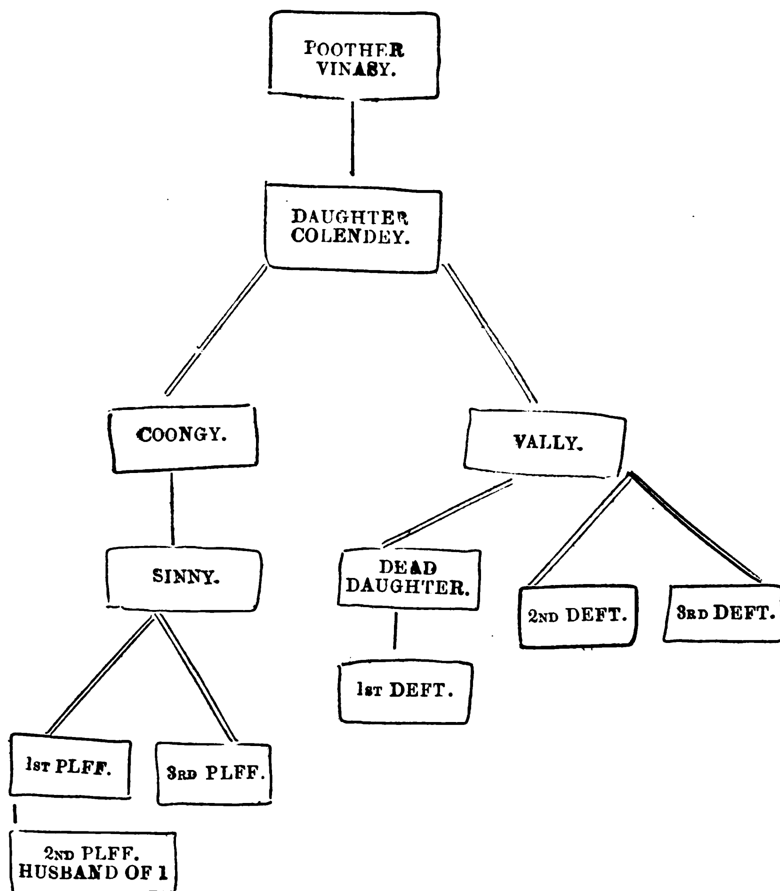
No. 2,936. 1837.

Mandy, wife of Cadiren of Copay, and 2 others......*Pltffs.*

Vs.

Waytrewy, wife of Saden, and 2 others..........*Defendants.*

Atherton, Judge.



Two sister and children & grand-children.

There is in this case no evidence of possession. The descent I took some trouble in arranging, as the pleadings do not appear to agree. I am of opinion that the Parties have each a joint share in each of the three Lands by descent. The Defendant's answer is explained away by the second De-

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fendants examination. Costs must go against the first Plaintiff for bringing a claim to more than she was entitled to, Assessors a gree.

It is decreed that Plaintiff's claim for the whole of th Land Cottowala be dismissed, that she be confirmed in her possession of half the Lands, and further, that she do pay all the costs.

No. 949.

9th June, 1837.

Vadamorachy Veeregettiar Cander... ... *Plaintiff*.

Vs.

Cander Sooper ... ... *Defendant*.

TOUSSAINT, Judge.

Grand-children succeed to Grand-fathers property.

The Court is of opinion that the Defendant did not make any thing better to-day, after a new trial on an amended Libel, than what was before, he has only by one of his witnesses made it appear more clearly that the Plaintiffs are the only heirs of their Grand-father, the said Sittampalam Wilayden, so that the decree must be the same as it wasbefore. The Assessors say that they are of the same opinion.

It is decreed that Plaintiff, as the heir of Sittampalam Welayden, is entitled to receive from Defendant the principal sum of £6, former cost £4 6s., 7½d. with the costs of this suit which is to be recovered by Execution against property and not against person.

Judgment Affirmed in Appeal, 25th July, 1837.

No. 2,107.

3rd July, 1838.

District Court, Chavagacherry.

Welayder Moorger, wife Poodial, and others of Carrewetty ... ... *Plaintiffs*.

Vs.

Cadergamer Velayder of Mandovil ... ... *Defendant*.

SPELDEWINDE, Judge.

The Assessors say they are of opinion, and do conceive that the Plaintiffs have duly proved by the help of the Thombo,

Title by [illegible]mbo.

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the registry of the Land in dispute upon the names of the relatives of the third absent Plaintiff. That although the Plaintiff's first witness, the Thombo Odear Morgaser, who pointed out to the Court those facts in his said Thombo, he yet deposed in favor of the Defendant for his possession of the said Lands for a space of eight years, whereas the Defendant's witnesses spoke to the same circumstances with rather a confused state in their testimony, viz., with no fixed given period of the possession, and even the last witness said that it was for a term of only three years, so that all these variations create many doubts in their minds. At all events, Assessors say, from the simple and unbiassed manner the Plaintiff's witnesses proved their otty possession of the same Lands, as having obtained such from the relations of the Plaintiffs—and which were afterwards redeemed from the same by Plaintiff's themselves, they have not the least hesitation in supporting the interest of the third Plaintiff to those Lands, in which opinion the Judge also agreeing, the more as the Defendant could not prove by the Church Roll that he is the real descendant of Warypatten, whilst, in fact, the Plaintiffs now present here established by their witnesses the exact relationship, the said Thombo holders were in proximity to their Son-in-law, the absent third Plaintiff. Therefore it is decreed, that the third Plaintiff as the lawful heir of the late Wariar Patten Chinner Cadery, and partners, on whose name in the Thombo of meesale in page 352, the Lands in dispute stand registered, be confirmed in the uninterrupted possession of the foregoing lands in right of inheritance from his said late Grand Uncle Patten and his maternal Grand-mother Anendory, and that the Defendant do not in the least disturb him therein. It is further decreed that Defendant do pay Plaintiff's costs incurred in this case.

Supreme Court Judgment.

J. Jeremie, Acting Chief Justice.

2nd Augt 1838.

The proceedings in this case are read and explained by the Court to the Assessors; the property in dispute being claimed as old family property, it appears to the Supreme

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Court, that the evidence has not been sufficiently sifted. The case is in consequence referred back to the District Court, with directions that the parties be called upon to establish their respective Pedigrees, and to produce any dowry olas or other documents they have in theirpossession.

Each party will then be at liberty to adduce further oral evidence, and the Court will record its opinion on such further proceedings, for the information of the Supreme Court.

Second Trial and Judgment of the District Court.

The Court begs to observe, that by the above additional evidence, collected for the Defendant in this case, nothing could be elucidated in regard to the respective Pedigrees of the parties, except the testimony of the witnesses that one of the Thombo holders, Chinnaven Cadery, to be the late maternal Grand-mother of the third Plaintiff; for the rest, the depositions are too contradictory to be admitted of any credit, save as to the possession of the Defendants to the Lands in dispute; the names of the aforesaid witnesses Defendant did not give at first, in his former List filed in the case, had he considered their evidence lending to his interest in the first onset of the examination already had on the 3rd July last.

Therefore ordered that this day's proceedings be annexed to the case book, and forwarded for the information of the Honorable the Supreme Court.

Second Judgment of the Supreme Court.

JEREMIE, Acting Chief Justice.

24th Octr. 1838

The proceedings in this case are read and explained by the Court to the Assessors.

The further evidence only goes to shew that the third Plaintiff is actually descended from one of the original Thombo Holders, so far as regards to pedigree.

And with respect to possession, the proof is much too unsatisfactory to do away with Plaintiffs established prima-facie right by inheritance.

The original decree is therefore affirmed.

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No. 2,635.

13th Sept. 1838

Chavagacherry.

Kirotner Wayrewen, of Vadekocoorichy ... *Plaintiff.*

Vs.

Kritner Cadergamer ... ... *Defendant.*

SPELDEWINDE, Judge.

Property acquired whilst under paternal roof and before marriage.

The Land and Cattle in question were bought with money acquired by the Plaintiff, his brother Defendant, and their late brother (who died without issue), and sister, whilst under the Paternal roof and before marriage.

The Judge and the Assessors referring to the Thesawalemme Book, under the head of acquisition at the commencement or heading of it. Description beginning at the words "having pointed out," "the Sons as long," and ending by the words "given them by their parents," are of opinion from the evident manner the Plaintiff has proved this case as to the properties set forth in theLibel,with regard only to the Land and Cattle, that he is entitled to recover from his brother the Defendant the one-third share of their value as claimed by him, but is to have nothing for the rest of the articles therein specified, the former property being considered as bought by the acquired common money,

Therefore it is decreed that Defendant do pay to Plaintiff the sum of nineteen Rds. and four fanams, being for one-third share of a piece of Land lying at Carrekoorily, called Klampoon, and, of right, black Cattle his acquired property, together with costs of suit.

No. 1,428.

14th Nov. 1838

Chavagacherry.

Wally, widow of Vinayeger of Periapolle... ... *Plaintiff.*

Vs.

Walliar, widow of Sidembrer and others ... ... *Defendants.*

SPELDEWINDE, Judge.

The Judge and the Assessors * are of unanimous opinion,

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* Property in question, hereditary property of the Father of the Plaintiff, who was married a second time to first Defendant, and left a daughter, the third Defendant, the second being her husband.

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that the Plaintiff is entitled to just a half-share of all the inherited property left behind by her late father Chinnewer Sidemberen, and now in possession of the Defendant.

It is decreed that the Plaintiff is entitled to just a half-share of the several assets, and property both moveable and immoveable, left behind by her late Father Chinnewer Sidemberen, and now in possession of the Defendants. It is further decreed, that Defendants do pay the Plaintiff's cost in the class in which the property of the said deceased has been appraised, viz., only as far as it regards the landed property for half its valuation.

15th April, 1839.

No. 2,741.

District Court, Islands.

Ramasy, widow of Soopremanien, and son Sinnatamby of Delft... ... ...*Plaintiffs.*

Vs.

Ayatta, widow of Ayenporomal and son Sinnatamby..*Dfts.*

MOOTAYAH, Judge.

The Plaintiffs are the mother and brother of the second Defendant's late wife.

Brother succeeds to sister's property if she die without issue, in preference to husband

I am of opinion that the Plaintiffs have fully established their claim respecting two of the gold ornaments out of three mentioned in the Libel, which is admitted by the Defendants likewise in their answer, which, however, they say to have been donated to the second Defendant; even allowing this statement, still, according to the prevailing custom of this place, they are to go to the Plaintiffs, the second Defendant's late wife having died, leaving no issue.

The Assessors agree.

Decreed* that Plaintiffs do recover from the Defendants the gold Necklace and three Pairs of gold earrings, in kind, and that in failure of returning them in kind, to pay the value thereof, with costs of suit.

Judgment affirmed in appeal, 27th July, 1839.

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* Judgment ought to have been given only in favor of the 1st Plaintiff.

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No. 3,228.

29th December, 1841.

Pt. Pedro.

Wedate, widow of Perian and son Veeragetty of Tondamanaar... ... ... *Plaintiffs.*

Vs.

Ramer Cadiren and Walliamme, widow of Cadiren....*Dfts.*

TOUSSAINT, Judge.

Children succeed equally.

Any property left by parents should be divided between the children per capita, the Plaintiff's husband having died, her children were entitled to the share of the Father.

The court does not think it necessary to enter into evidence on the part of the Intervenient, as the Court does not believe the Defendant's purchase Deed for half of the land, as this Deed is very poorly proved, and there is no proof of his possession. The Court is of opinion that that Deed must be set aside, and deducting the half dowried to the two daughters, that the remainder half of the Land must be divided amongst the three sons or their heirs, and that Defendant must pay the damage of the Plaintiff's house and hedge.

The Assessors agree in opinion.

It is decreed that, in the Land Tiagarawalawoe, deducting half for the female children of Cadugamer Ramer, that the remainder half be possessed by his three sons or the heirs, share and share alike, that Defendant is to pay 1st Plaintiff a damage of fifteen shillings for the house, and hedge, with the costs defrayed, but the Intervenient's costs must be paid by the Plaintiff.

Judgment affirmed in Appeal, 30th July, 1842.

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4th April, 1842.

No. 4644.

Waligammo Comaravaler Amblewy, Father and Guardian of his children... ... ... *Plaintiff.*

Vs.

Candiar, widow of Modelitamby... ... ... *Defendant.*

Burleigh, Judge.

Property acquired during 2nd marriage.

The Plaintiff having failed to prove a dower, this case must be decided according to the Thasawalamme, which directs that the property acquired during the second marriage must go to the children of that marriage, see Section 1, cl. 11. It is proved that the Land in question was acquired after the marriage of first Defendant with the late Oleger Modelitamby, she was married in 1809, and the Deed is dated 1816. Assessors agree.

Grandmother legal guardian.

It is decreed that Plaintiff's claim be dismissed with costs. I now perceive that the action is improperly brought, the first Plaintiff is not the legal guardian of the minors, but their Grand-mother, he having married again, see Thassawalemme, see also section 1, clause 11.

Judgment affirmed in Appeal, 29th July, 1842.

No 5,104.

1842.

Waligammo.

Seedawy, Widow of Covierdeer of Sangane.......*Plaintiff.*

Vs.

Maden Vaytner, and his wife and another.......*Defendants.*

Burleigh, Judge.

Plaintiff examined by the Court. My late brother died about 15 years ago, he was married to the second Defendant, who has since married; the Lands mentioned in the Libel belonged to him. Second Defendant examined by the Court.—the Lands in question were the property of my late husband, who was Brother of the Plaintiff. Plaintiff had only one Brother and no Sisters. I have no children alive by Plaintiff's Brother, I had a son, who died in January last, I must keep the Lands during my lifetime.

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The Court and Assessors consider it quite unnecessary to enter into any evidence in this Case. On the 21st ultimo, the second Defendant stated, that these Lands were her dowry property, but she now appears to tell the truth, by the Thassawalemme the Plaintiff is entitled to these Lands.

Brother entitled in preference to widow.

It is decreed, that the Lands claimed by the Plaintiff in the Libel are her property—second Defendant to pay the costs, should there be any collusion the fact will soon appear.

No. 7,437.

30th March, 1843.

District Court of Jaffna.

Nachipulle, widow of Seneretna Modr., and Son Morgasen of Oromberay ....*Plaintiff.*

Vs.

Tamoderen Periatamby and others..............*Defendants.*

BURLEIGH, Judge.

The only point now to be decided is, whether first Plaintiff is to get the property, or her daughter, the second Defendant, it being admitted that the late Nagamootto was not lawfully married, the Court will decide the case to-morrow.

31st March.

By the Thassawalemme, the property of a deceased *married* sister dying without issue goes to her *married* sister or sisters. The late Nagamootto not having been married, the Court conceives, that the property in question should revert to her mother, the first Plaintiff; who, it is presumed, from the fact of her having been permitted without dispute to sue as a Pauper, is not possessed of property, and therefore would need that in question, to support her in her old age. The Assessors agree in opinion.

Married Sister's property goes to her married Sisters.

It is decreed that the Land claimed in the Libel are the property of the first Plaintiff, the Sale of the Land Pangoran in favor of the fourth Defendant, being cancelled and set aside, the first and second Defendants being adjudged to pay all the costs of this suit.

Unmarried Sisters property reverts to mother.

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13th June, 1843.

No. 3,823.

District Court Islands.

Ramanaden Coornaden, and wife.................. *Plaintiffs.*

Vs.

Welayder Sidenbrenaden, and Son of Carembeu. *Defendants.*

AMBALAWANAN, Judge.

Sisters property how divided.

The Court is of opinion that the second Plaintiff should only get one-half of the Land in dispute, as she is only entitled to one-half of the property of her late sister Siwegamy, who died issueless. It appears upon the admission of the Plaintiffs, that they have already given one-half of the Land in dower to their daughter Nagamoottoo, who is now 26 or 27 years old; if any objebtion was made to that half, their daughter is the proper person to bring an action against the Defendants. The Plaintiffs also failed even to prove that Defendants objected.

It is now clearly proved by the Plaintiff's witnesses, that the late Sawonderypulle, also was one of the sisters of the late Siwegamy, according to Country Law, the Intervenients, who are the legal heirs of the late Sawonderypulle are also entitled to one-half of the Land Cotchatty. Assessors agree in opinion.

It is decreed that the Intervenients be confirmed in the peaceable possession of half of the Land; the Plaintiff's claim is dismissed with costs, to be paid by them to the Intervenients and the Defendants.

4th June, 1844.

No. 3,916.

District Court, Islands.

Savondaripulle, widow of Cooromonty, and Son Sidembrenaden of Velene.................... *Plaintiffs.*

Vs.

Muttopulle, widow of Winayeger and others...*Defendants.*

AMBALAWANAN, Judge.

Daughter of the first Bed, and her stepmother.

It appears that the Land in question belonged to Seedawy, mother of the first Defendant, and one Coromoorty, who was the late husband of the first, and Father of the second Plaintiff. It is satisfactorily proved that the Coroo-

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moorty married the second Intervenients mother, Muttopulle for the first time, and after her death he married the present first Plaintiff. Plaintiffs and the Intervenients are the legal heirs of the said Corooмoorty, who was entitled to half from ten-half Lands of the Land; which half should be divided between the second Intervenient, who is Coromoorty's daughter by the first bed, and the first Plaintiff who is his second wife. If the first Defendant had received this Land in donation, she ought to have received it from her mother upon a regular written Deed, according to the Law of this Country. Assessors agree in opinion.

Decreed that first Plaintiff as guardian of the children of the late Coromoorty and the second Intervenient be confirmed in possession of ½ share of the land in question,—Plaintiffs and Defendats to pay the costs of interests, and the first and second Defendants to pay Plaintiff's costs.

No. 5,463. 1844.

Waligamo Parwadam, widow of Elear and others *Plaintiffs.*

Vs.

Ayemperomal Sinne Tamby and others ... *Defendants.*

Burleigh, Judge.

Thombo title.

Ayatey was the father of the first and second Defendants, and her brother Eleyar husband of the first Plaintiff. and father of the second and fourth Plaintiffs. It is admitted by the second Defendant, that the land in question stands registered in the Thombo on the joint names of Ayatey and Elear, therefore before the children of the latter second and fourth Plaintiffs can be deprived of their legal title to half of the land, it must be clearly shewn that Eleyar disposed of his title thereto: it is easy to bring forward a few witnesses to prove what may suit the party calling them, but in a case of this nature, it is absolutely necessary to prove some act of renunciation, or no Thombo title to land would

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be secure. On the 31st of October last, the second Defendant stated, that his father was entitled to the land by right of purchase and inheritance, *i. e.*, half by purchase and half by inheritance, he tells the Court to-day, that his father got Elear's share in exchange for other lands, there is a glaring contradiction in these statements, and it is almost always so when a fraudulent suitor attempts to state things which are not founded on fact; there is no attempt to prove these allegations, but a most improbable story is got up, that as Mootanachy was cookmaid to Ayatey, she managed *all* his property, and after his death continued doing so on behalf of the first Defendant; here also a glaring contradiction occurs, some of the witnesses say she acted thus on behalf of the first Defendant, others say on behalf of the second Defendant. Mootanachie's possession of half the Land is clearly made out, and as to her having possessed all the other Lands it is positively contradicted as regards one of them, by the only witness for the defence, the fourth, whom the Court believes, the third witness attempts to prove that his Land is bounded on the West and South by Ayatte, the fourth witness and one Sitter mootar, this also is positively denied by the fourth witness, the third witness's Deed states, West and South Ayatte, and other, *i. e.*, another, doubtless, Ayatte and his brother Eleyar, if there had been more than two, others would have appeared, the fact is, the Defts. knew that Mootanachie's possession could not be denied, and they have made up this story to account for it; in my long practice in this Province, I do not remember a similar circumstance.

The Court and Assessors are of opinion, that a Decree should pass for the Plaintiffs, as the whole of the evidence, the Assessors say, is in favor of the Plaintiffs.

It is decreed that the first Plaintiff is entitled to half from 33½ Ls. of the Land, the second Defendant to pay all costs.

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No. 5,611.

1844.

Waligamo Podonachy, widow of Casinader,
and another ... ... *Plaintiffs.*

Vs.

Cander Sangerapulle... ... ...*Defendant.*

BURLEIGH, Judge.

Widows of sons.

A. B. C. D. were brothers. A. B. left widows with children ; the mother of A. B. C. D. died after the death of her husband, and A. and B.—Held that A. and B's widows had an undoubted right, according to the custom of the country, to possess their share from the date of the death of their mother.

No. 365-5,732.

10th May, 1845.

Wedenayegam, widow of Soopen, and another...*Plaintiffs*

Vs.

Sadonader Valoe, and wife Sinnetangam... ...*Defendants.*

PRICE, Judge.

The second Plaintiff and second Defendant were sisters. Held.

Dowry verbally conveyed.

The Assessors state we are of opinion that it is not proved, that there was any Dowry Deed in favor of second Deft., we are further of opinion that it is proved, that second Defendant possessed four pieces of Lands during her father's life time, and separate and distinct from her father, and in the absence of other proof we are of opinion, that these four Lands were given to her as Dowry property verbally conveyed.

We are further of opinion that the property now claimed, should be divided between the daughters, share and share alike. Defendants paying the costs.

The Court agrees in the opinion of the Assessors.

It is therefore decreed that the Lands claimed in the Libel, be equally divided between the first Plff. and second Deft, Defendants paying the costs.

Appeal Decision.

2nd September, 1845.

That the Decree of the District Court of Jaffna, of the 10th day of May, 1845, be *reversed.*

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13th June, 1846.

No. 774.

District Court Islands.

Wissower Walen of Batticotta... ... ...*Plaintiff.*

Vs.

Wally, widow of Vissower and others ... *Defendants.*

PRICE, Judge.

Undowried sisters succeeed equally with brothers.

The Court and Assessors are of opinion, that Plaintiff has no claim upon the whole of the trees in question. He has two sisters, who have an equal claim with himself (the Court and Assessors disbelieving that dower was given to his eldest sister.)

Defendants absolved from the instance with costs.

30th October, 1847.

No. 1,793.

District Court Islands.

Cander Moorger of Batticotta... ... ... *Plaintiff.*

Vs.

Colendear, widow of Moorger, and Morger Marimottoe..*Dfts.*

PRICE, Judge.

By the Court to the Plaintiff.

Prescription.

My mother joined in signing the Deed to the effect that she consented to the Land being sold by her children. I am going to prove possession by myself for two months, and possession by my parents before that. I do not plead possession by my parents, but it was in their possession. The Thombo holder was my Father, the Court cannot admit evidence of the Plaintiff's parents' possession as it is nowhere pleaded.

Title by Descent.

The Court is of opinion, that the Defendants should be absolved from the instance, Plaintiff paying all costs.

The title by descent of the sellers to Plaintiff, is not properly pleaded, and until it is shewn that the sellers inherited from their parents, evidence of the parents' possession cannot be taken.

The Assessors agree in the opinion of the Court.

Defendants absolved from the instance with costs.

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No. 2,337. — 8th March 1850.

District Court Islands.

Sinerepulle, daughter of Somer... ... ...*Plaintiff.*

Vs.

Sadonather Velayther, and others... ... ...*Defendants.*

Title by Inheritance.

It is nowhere denied that the Lands in question originally belonged to Plaintiff's Ancestors. Defendant admits the purchase of two thirds of them from Plaintiff's parents and Plaintiff's mother's sister, Wallipulle, and claim the remaining one third by right of prescription. The Court does not believe the evidence of the Plaintiff to prove the otty to Kotty Wayrawen, but considers that there is enough admitted, viz., that the Land was the property of Plaintiff's Ancestors to make it necessary for Defendants—to prove that title by prescription to one third of the Land. The Court is, therefore of opinion, that judgment should go in favor of Plaintiff for one third share of the Land in question, each party paying their own costs.

The Court is of opinion that Defendants are entitled to two third shares of the Lands in right of purchase as per Deed, dated 15th February, 1804, the Court considers the mistake in the year to have originated in the School Master.

Judgment of the Supreme Court. — 25th January 1851.

That the Decree of the District Court of Jaffna, of the 8th day of March, 1850, be affirmed as to the two thirds of the Lands in question decreed in favor of the Defendants, but, that the same be set aside as to the one third adjudged to the Plaintiff, and the case be remanded to the District Court, to receive evidence of prescription set up by the Defendants, with liberty to the Plaintiff to adduce evidence of her title which does not clearly appear to be admitted by the Defendants independantly of her alleged prescriptive title. The costs of appeal to stand over.

Second Judgment of the District Court. — 22nd August 1851.

Price, Judge.

Two of the Assessors believe the evidence of Kotty

Wayrawen, to prove that Plaintiff is the Grand-daughter of Siverepulle the Thombo holder.

The Court also believes this evidence; all the Assessors are of opinion that Kotty Wayrawen did possess the Lands for the time stated by him.

The Court agrees in this opinion.

The relationship of Plaintiff to the Thombo holder Sinnepulle, is not denied by the Defendant's answer, first Defendant in his examination to-day, admits that the Lands in question are registered in the Thombo in the name of Sinnepulle.

Plaintiff in her examination says, she never held the Lands, but tries to prove her possession through Kotty Wayrawen, who is stated to have held the Lands in otty, his otty was not believed by the Court and Assessors, when the former decision was made, and it is the only proof of possession of Plaintiff—Defendant claims the the one-third share of the Land by a prescritive right, and two witnessses are called to prove possession, it is evident by their (the witnesses) own shewing that there was better proof of possession, than they themselves could afford, namely, the evidence of the Palla men who collected the produce for Defendants, three of whom are stated to be alive—first Defendant states, the produce was collected by his own slaves, and people not one of whom is called, he also states he had paddy by the receipts not one of them is produced.

The Court is therefore of opinion, believing as it does, that it is proved that Plaintiff is the Grand-daughter of Sinnepulle, and that Kotty Wayrawen possessed the Lands as stated by him, for twenty-five or thirty years, and which he says he did in otty from Cadrasy and Sinnepulle, and that libel is proved, and that judgment should go in favor of Plaintiff for ⅓ share of the two lands in question, each party to bear their own costs, incurred up to the former decision. The costs incurred since the

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case was returned by the Supreme Court to be paid by Defendants.

The Assessors agree in the opinion of the Court.

Decreed accordingly.

No. 2,530.

22nd May, 1850

District Court, Islands.

Sidembram widow of Vayrawanaden ... ... *Plaintiff.*

Vs.

F. A. Toussaint and A Modr. Santiagopulle ... *Defendants.*

PRICE, Judge.

Undowried Daughter and Son entitled equally.

In this case the Assessors were of opinion, that if a daughter and son survive their father, they were entitled to equal shares, if the daughter has not received dowry. The Court, however, decided the case on a question of possession without entering into the question of law.

Affirmed in Appeal.

24th, January, 1851.

No. 2,563.

12th August, 1851.

Court of Requests, Chavagacherry.

Canden Nagen... ... ...*Plaintiff.*

Vs.

NageMutter ... ...*Defendant.*

JUMEAUX, Judge.

Father entitled to daughter's property.

Plaintiff examined, states, the money I claim in this case was lent by my daughter Wayrewy, who died in January last, she was married to NageMutter, but he is not entitled to any property left by her, which, by the custom of the Country, should devolve on the parents.

The Defendant admits the facts stated by the Plaintiff to be true, that any property left by a wife, who leaves no issue, devolves to his parents, and not to her husband.

From the examination of the parties, it would appear, that the money claimed by the Plaintiff, was property of his daughter, who died in January last, without issue, in which case, the parents are entitled to her property. The Defendant having admitted that he had borrowed the amount claimed by the Plaintiff, from his daughter, who died without issue.

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It is decreed that Plaintiff do recover from the Defendant, the sum of seven shillings and six pence and costs, the Plaintiff having waived his claim to interest.

20th November 1851.

No. 5,624.

Sidembrepulle Caylayer, and wife, and her sister...*Plaintiffs.*

Vs.

Pooden Canagasabe, and another... ... ...*Defendants.*

PRICE, Judge.

Acquired property how divided.

The Court and Assessors are of opinion that Plaintiffs' pedigree is proved, viz., that they are the daughters of Nene and Teywee, whose mother was Cadery, Aunt of Camatchy, that the Land claimed by Plaintiffs was the acquisition of first Defendant and his late wife Camatchy, that on Camatchy's death half the Land would go to first Defendant, and the other half to Camatchy's parents, so Camatchy's Father would be entitled to one-fourth of the whole Land, and Selly, her mother, (Camatchy's), to one-fourth. The Plaintiffs therefore claiming under Camatchy, can only be entitled to one-fourth of the whole Land, and not to one-half as claimed by the Libel.

The Court and Assessors are further of opinion that Plaintiffs should be put in possession of one-fourth of the whole Land, which they are entitled to in right of inheritance. Each party paying their own costs.

Judgment accordingly, for second and third Plaintiffs.

6th July, 1852.

No. 5,401.

Vineditaar Wayrewenaden, Father and natural Guardian of his two minor children ... *Plaintiffs.*

Vs.

Maden Vinasy of Nirvaly, Administrator of Vinasy Cannewedy, deceased ... *Defendants.*

PRICE, Judge.

The Assessors are of opinion that the Libel is proved, and that Judgment should go in favor of Plaintiffs against the Defendant, as claimed by the Libel, with costs.

7th July, 1852.

The Assessors further say, they come to this opinion from

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the fact of the Grand-mother of the deceased, Cannewedy, having conveyed to the deceased, the property without receiving any consideration, and that it appears by the Deed that the property had been given to deceased, Cannewedy's mother, as dower, upon verbal promise; the property should therefore go to Cannewedy's heirs on his Father's side. The Court is of opinion, Plaintiffs, as heirs of the late Winasy Cannewedy on the mother's side, are entitled to one-half of the property claimed by the Libel, and that the other half is the property of Defendant by right of his Son, Winasy Cannewedy, and that, so Judgment should pass, each party paying their own costs.

Decreed accordingly. Plaintiff appealed, stating that the Judge was in error as to the Country Laws.

Supreme Court order, 9th April, 1853.

It is ordered that the proceedings be remanded to the District Court of Jaffna, that the District Judge may record the reasons, and any authority he may have for his Judgment.

Letter of the District Judge to the Registrar of the Supreme Court.

21st April, 1853. Thasawalemme incomplete.

SIR,—In acknowledging the receipt of the case No. 3,401, together with the order made therein of the Supreme Court, of date the 9th April, 1853. I beg leave to state for the information of the Hon'ble the Judges, that there are many points not provided for by the written Laws of the Country, (Thasawalemme), and that the point decided in this case, is one. The Court gave its judgment upon what it considered and believed a custom of the Country. I therefore, beg the permission of the Judges, before complying with the said order, to allow me to call upon the parties to adduce evidence to prove the custom, or that the Court with the consent of the parties, may be allowed to call in Assessors conversant with the Laws of the Country, in order to take their opinion on the point.

Judgment of the Supreme Court, 23rd May, 1853.

District Judge of Jaffna, of the 21st April, 1853, It is ordered that the decree of the District Court of the 7th day of July 1852, be set aside, and the Case remanded back to hear

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such further evidence as the parties may wish to adduce in respect of the custom in question, and to give Judgment *de novo* thereon.

Second Trial, 12th August, 1853.

Plaintiffs witnesses.

12th August, 1853.

PRICE, Judge.

Tissaweerasinga Modliar, sworn, states. "I am Thombo Holder in the Jaffna Cutcherry. I am 77 years of age. I know the custom of the Country with regard to the Rules that regulate the succession of property amongst the natives."

When no regular Deed.

Plaintiffs' Proctor puts the following case to the witness "A woman named Cadrasy had two daughters, Cidawy and Sinnepulle, Cidawy died leaving a son named Cannewedy, who died without issue, Sinnepulle had a daughter named Sadoepulle who is now dead, leaving two children—(the minor Plaintiffs)—said Cannewedy died possessed of the Lands mentioned in the Libel, these Lands it appears, he got from his said Grand-mother Cadrasy, on a Deed dated 16th August, 1839, by this Deed it appears that the Lands conveyed by the said Deed, had been given in Dowry to his late mother Cidawy, verbally, and that she possessed them during her life time."

The answer of the witness after reading the Deed. "The property by the Deed appears to be the Dowry property of Cannewedy's mother, being dowry property of his mother it must devolve on his mother's sister Sinnepulle, her children and Grand-children; it is the custom of the Country, when a regular Dowry Deed is not granted to a daughter, and in case of her death before such Deed is granted, such a Deed as that now shewn me is granted to said daughter's children."

"I have heard of this custom, and might have seen it. I cannot mention any one instance in which such Deeds have been executed. I was not consulted in this case by the Plaintiffs' Proctor, or any one else, before I was cited as a witness. I have heard of children having lost their Dowry property for want of Deeds, and for want of possession of Court."

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"I presume, from the Deed shewn me, that the property had been given by verbal agreement to Cannewedy's mother — all property given to Cannewedy must be supposed to go to him in right of his mother."

Welayden Cannewedy, affirmed, states "I am Maniagar of Waligamo west. I know some of the customs of the Country as to the succession of natives to property." The case put to the last witness is read to the witness before the Court, witness states, "what I find by the Deed shewn me is, that Cadrasy gave dower to her daughter Cidawey, verbally; according to the custom of the Country the property must go to the heirs of Canneweddy's mother, because Cadrasy says she gave it in dower to her daughter."

"I have heard of this custom, and it is done by all; there are many such cases, but I cannot now recollect one in particular, Children have lost their dower from want of possession and Deed. Although Cannewedy's mother's sister received no Dowry, still she will be entitled to get this property if she was married. I only heard what the case was about when I came to this Court this morning. I heard it from Tessewarasinga Modliar, and Welayden Cander. The former did not tell me that he had heard about the case, but he stated the facts of the case to me and asked my opinion."

Welayden Cander, affirmed, states. "I have already given my opinion in this case, as an Assessor. I know that it is the custom of the Country, when regular Deeds are not given to mothers for lands given to them in Dowry, Deeds are made out in favor of their children, for the same property; property so given to children, is subject to the same rules, with respect to succession, as those given to the mothers."

"The opinion I gave as an Assessor in this case, was a correct opinion where Dowry Deeds have not been granted to the mother. Deeds which we call Dowry, are granted in favor of the children. The Notaries who execute such Deeds call them Transfer Donation or Deed of ownership; this has been the custom of the Country, but I cannot recollect any one instance, but *I might have seen* about ten such Deeds—but I cannot say who the parties were. I recollect one such Deed

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in favor of Walen Wayraven of Manipay, executed about three or four years ago: after I came to the Court to-day, we consulted about this case. I mean by we, Tessewarasinga Modliar, the Maniagar, and myself."

Wasierkoon Modliar Sittamblam, affirmed, states, "I have been employed from the time of Mr. Richardson, in acting as Umpire and Arbitrator in Civil Cases. I am well acquainted with regard to the custom of the country, with regard to Succession of property."

The same case is put to this witness as was put to the third, and the Deed read to him, Witness states, "It (the property) having been obtained in Dowry, such property must go to the female side. The Deed read, appears to be a Deed of ownership, but the property is set forth as Dowry property. Deeds of this kind are not executed to any extent; only a few, I think."

"I never saw such a Deed before, there may be a few, I think."

Sigywagane Oyer Walasoopremania Oyer, affirmed states, "I am 65 or 66 years of age, I acted a considerable time as Proctor of this Court, I am conversant with the customs of the Country, relating to the succession of property amongst natives."

The case, as put to the third witness, is put to this witness, "According to the Deed it appears, that the property was the Dowry property of Cannewedy's mother, given verbally, and according to her possession, the Deed of ownership was given to the Son; under these circumstances, in terms of the Country Law, the property should revert to Cannewedy's mother's sister, or her heirs in that line."

"If Cannewedy's mother held no Dowry Deed, or had not possessed the property for 10 years, she could not have established her claim against her mother. I cannot recollect any one instance in which such succession of property took place. I have ceased practising as a Procter for 10 or 12 years."

By Plaintiffs' Proctor.

"It is only stated, that verbal Dowry was given, verbal dowry not being sufficient, a Deed is granted."

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15th August, 1853.

By the Court.

"What I mean is, that the Deed shewn me was granted, the verbal dowry not being considered sufficient; property given under verbal Dower, is liable to be sold for the debt due by the mother."

PRICE, Judge.

The Libel sets forth, that the mother of the late Winasy Cannewedy, named Sedawy, and Sinnepulle, mother of the plaintiff's late wife Sedoepulle, who was also the mother of plaintiff's minor children, were sisters, said Winasy Canneweddy was the only child of said Sidowy, and plaintiff's late wife Sedoepulle was the only daughter of said Sinnepulle, That said Cannewedy died unmarried, and a Bachelor, in 1845, when Plaintiff's children became entitled to all the property of said Cannewedy, which he *inherited* from his late *mother* according to the Country Law.

Further, that Deft. obtained Administration of the estate of the said Cannewedy, and took charge of all the property belonging to the estate (here are enumerated several Lands half of which are claimed by Plaintiff and his minor children).

Defendant, by his Answer, denies the matters and things set forth in the Libel, and says the Lands alluded to, were the property of Defendant's late Son, Winasy Cannewedy, being his *acquired property* as a Bachelor, and he possessed the same up to his death in 1846, that Defendant succeeded to the possession, and still possesses the same.

The Reply denies that the Lands in question were the *acquired* property of said Cannewedy, but that the same devolved upon him in right of *inheritance* from his mother.

Successor to Dowry property

See fifth clause of the first section of the Thasawalemme, provides for the succession to *dowry* property, where one or more of the daughters die without issue, and it is evidently this clause that guided the witnesses in the evidence given on Friday last, as to Custom; but this is not the point at issue between the parties here; there is no dowry Deed or evidence of possession by said Cannewedy's mother, in right of dower, it is denied that it was her Dowry property, and alleged to be the acquisition of Cannewedy.

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The Court considers, that what has guided the witnesses in their statements of custom, is the wording of theDeed of the 16th August, 1839, which, although called by the Donor the Dowry purchase, and possessing Lands in another clause of the said Deed, the lands are said to have been given to her daughter *on verbal promise*, by the granting of the said Deed the Court must believe, that the Donor considered that said Cannewedy's mother had no title in right of Dower, and she therefore donates it after the death of her daughter, to her Grand-son Cannewedy. The Court therefore, considers that the property must be considered in the light of acquisition.

Presents to Sons.

By the fourth section, fifth clause, of the Thasawalemme, presents made by relatives to sons, must be left by said sons to the common estate of their parents, when they *marry*, but this does not include presents made by relations, which must remain to the person by whom it was given. Here, the party to whom it was given, dies a Bachelor, and acting strictly on this clause, the whole of the property should go to the Defendant, the father of Cannewedy.

The Court considered the decision passed on the 7th July, 1852,was quite equitable between the parties, and Defendant's Proctor states his client was quite satisfied with the decision. There is no Dowry Deed in favor of Cannewedy's mother. There is no evidence of her possession in right of dower, in the absence of which this Court considers the property as donated to Cannewedy, thereby becoming his acquisition. It is a case for which there is no precedent in Court, and the witnesses speak of a custom, but cannot give any one instance of such custom.

It is therefore, decreed, that Plaintiff's minor children, Morgasen and Cannewedy, are entitled, in right of inheritance from Winasy Cannewedy, to one-half share of the following Lands, viz., Modeliarwalewoe andPannangayenwalewoe in extent one-three-eighth Lachams with house, &c. Iddeyenealletts in extent five Lachams and Patteawalle, in extent six Lachams W. C., all said Lands being situated at Nirvaly, and that they be put in possession thereof, accordingly.

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It is further decreed, that Defendant do pay to the said minor children half the value of the Lands Wellemokendam and Pallandenwally, which have been sold by said Defendant as Administrator of the Estate of the said Wenasy Canneweddy, viz., £19 8s. 4½d., reserving a right to the Defendant to recover, if he sees grounds, the share of the expences in obtaining Administration. Each party to pay their own costs.

Judgment affirmed in Appeal, 19th July, 1854.

No. 4,503.

20th October, 1852.

Sinnatamby Ramenaden, of Calapoomy ... ... *Plaintiff.*

Vs.

Soopen Casy, and others ... ... *Defendants.*

Price, Judge.

The Court is of opinion, that Plaintiff is entitled to one-ninth share of the Land Ellendaycoolywayel, in extent 9½ Lachams, lying at Tangoda, (but how registered in the Thombo, the Court is unable to decide, there being no proof in right of inheritance from his late mother, whose dowry property it was, and for which a translation of a Dowry Deed is filed—the original being produced—dated 25th May, 1805.) Plaintiff's claim upon the other 9½ Lachams of Land, of the same name, is not proved, it is alleged that it was purchased with dowry money of Plaintiff's late mother, but of this there is only vague oral evidence, by which it appears that the money with which the Land was purchased was realized by sale of one of Plaintiff's late mother's Dowry Lands, viz., Warriantanny; but of this sale there is no direct evidence, neither is there any direct evidence of the purchase of the second Land mentioned in the Libel by sixth Defendant, or by sixth Defendant and his late wife.

The Court is therefore of opinion, that the Bill of Sale filed by Defendants, dated 19th August, 1831, should be set aside as far as Plaintiff's one-ninth share is concerned, viz., his one-ninth share of the nine and half Lachams, which was the dowry property of his late mother, but to this extent only.

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The Assessors are of opinion that the Deed in favor of the five first Defendants, or their father, should remain in full force, and the Headmen who were the cause of depriving Plaintiff of his share, should be ordered to pay all damages.

On hearing the opinion of the Court, the Assessors say that they agree in the opinion.

The first Assessor says he still adheres to his first opinion, and adds, damages should be recovered from the sixth, seventh, and eighth Defendants. The two other Assessors agree in the opinion of the Court. The second and third Assessors are of opinion that as Plaintiff has withdrawn his claim for produce, Defendants must pay the costs; third Assessor now states that his wishes are that each party should pay their own costs, and that this is now his opinion.

The first Assessor is of opinion that the sixth, seventh, and eighth Defendants should pay costs to Plaintiff, first and third Assessors say that costs of the five first Defendants should be paid by Plaintiff.

The second Assessor is of opinion that the costs of the five first Defendants should be paid by the sixth, seventh, and eighth Defendants.

Plaintiff withdraws his claim for produce, which amounts to nearly half his claim, £4, and only gets a decision for half the extent of the Land claimed. It appears by the answer filed in the late District Court of the Islands, by the Father of five first Defendants, that he was aware that Plaintiff's late mother was entitled to a portion of the Land in right of dower, the Court is therefore of opinion that each party should bear their own costs, save those of the Plaintiff, which should be paid by the sixth, seventh, and eighth Defendants.

It is therefore decreed, that the Bill of Sale dated 19th August, 1831, in favor of Ramen Soopen, the late father of the five first Defendants, be set aside as far as one ninth share of nine and a half Lachams of the Land Ellendaycoolywagel, situated at Tangoday, alone, is concerned; said nine and half Lachams having been proved to be the dowry property of Plaintiff's late mother, (Dowry Deed, dated 25th

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May, 1805), sixth, seventh, and eighth Defendants to pay their own costs, and those of the Plaintiff, the costs of the five first Defendants to be borne by themselves.

No. 6,429.

22nd May, 1854.

Tilleyn Wissower, Natural Guardian of Winayegam, his daughter... ... ...*Plaintiff.*

Vs.

Sangary Candappen of Churatoon... ... ...*Defendant.*

PRICE, Judge.

Life interest

Plaintiff's Proctor moves that the case be decided upon the pleadings, as it is admitted by Defendant that the whole of the Land, of which half is now in question, was originally the acquired property of Plaintiff's Grand-parents after marriage, and it is also admitted, that Plaintiff is at present sole Heiress of her Grand-parents; it is also admitted, by Defendant, that Plaintiff's Grand-father died before his wife, and that the half belonging to him devolved (on his death) to Plaintiff—and Plaintiff had a vested right in it, although her Grand-mother, according to the Country Law, was entitled to the produce of the Land; the Plaintiff having acquired a right to the half share of her Grand-father as above stated, has acquired a right to the other half share belonging to the Grand-mother by right of Dower, as per Dowry Deed in her favor, filed and dated 27th July, 1848, (marked B), which Deed is admitted by Defendant, and in which Deed it is clearly set forth that the one half share of the Land which she made over by that Deed to Plaintiff was her own share.

Defendant's Proctor argues that the case cannot be disposed of without evidence, because it is admitted by Plaintiff that the Land originally belonged to Plaintiff's grandparents, not only by right of purchase, but by prescription also, by which it appears that the grand-mother had a full right to one-half of the Land. Defendant does not admit that the half which was given in dower to Plaintiff, was the half which solely belonged to the grand-mother, there is nothing in the Deed to shew that it was the grand-

mother's share that was given in dower, so that Deft. if not entitled to one-half would be entitled to one-fourth of the Land. Defendant will be able to prove, by the witnesses to the Dowry Deed, and other witnesses, that the share given in dower to Plaintiff was the share of the grand-father and not the share of the grand-mother.

The Court is of opinion, on reference to the admitted Dowry Deed, that the portion conveyed was the portion Plaintiff's grand-mother was entitled to, for the Deed runs thus, "One-half, according to Title Deed, dated 16th October, "1828, being *my* property in right of purchase, inheritance, "and long possession." The Court considers this too explicit to admit evidence to explain its meaning.

The Court considering that it was the grand-mother's share so dowri ed, the grand-mother only having a life interest in her deceased husband's share, which belonged to his Heirs, had no power to convey it in donation to Defendant.*

† The Court is of opinion that Judgment should go in favor of Plaintiff for the half share of the Land claimed, which she is entitled to in right of inheritance from her late grand-father Comarawalen, and that the Donation Deed, dated 2nd August, 1852, in favor of Deft., should be set aside, as far as it conveys the Land in question.

It is therefore decreed that Plaintiff on behalf of his minor daughter, Winayegam, be put in possession of one-half of the Land Madippan-colatu wayalukukilakilpoolram, in extent 7-$\frac{7}{8}$ Lachams Warrago Culture, registered on the thombo in the name of Sinny wife of Wyrewen, which she is entitled to in right of inheritance from her late grand-father Comarawalen, (Plff's. said daughter being in possession of the other half, in right of dower as admitted by Deft.)

Parties to pay their own Costs.

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* Plaintiff's grand-mother Omeatta, the donor, was the maternal Aunt of Defendant.

† Before giving Judgment, the Defendant adduced evidence to shew that Plaintiff "was aware of the donation Deed in favor of Deft. being executed, as it was executed after due publication and with his knowledge." Should this be proved, Deft's. Proctor considers his client will be entitled to his costs, as the Plff. raised no objection.)

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No. 1,943.

11th July, 1854.

Court Requests, Point Pedro.

Vallinachy, widow of Valliar, of Ploly... ... ... *Plaintiff.*

Vs.

Nagatey, widow of Alwar, and others... ... ...*Defendants.*

Land Tenure.

The Land in dispute is undivided, the Plaintiff claims 1-16 by Deed and 1-16 by thombo, the first Deft. denies the latter, but admits the first, 1-16 is now in dispute, and Plaintiff cannot say seeing the Land is undivided, from which sixteenth she is ejected, but goes to proof of possession, and the first Deft. called counter evidence. It would have been satisfactory if Plff. could clearly have traced her inheritance from the person under whom she claims in the thombo; but this is difficult, the parties are relatives, and the Defts. appear as unable to clear up their alleged descent from the same person. There is collateral evidence in this case, which, considering the nature of Land tenure here, is important, Plff. is admitted to have inherited equal shares with her brother-in-Law, the dispute is what that share amounted to. If therefore it can be ascertained what her brother-in-law inherited, light will be thrown on what she inherited. He is dead, but his heirs are present, fourth and sixth Defts., they produce Dowry Deeds dated 1850, (and the date of their execution is not denied), giving to each of those heirs one-sixteenth, which together is one eighth; the Odear testifies that he duly published their claims, and gave schedules to the knowledge of all concerned, and their claim was not disputed. It may then be inferred that Plff. had also a right to *one-eighth.* The Odear further testifies, that at that time the Defendant only claimed $\frac{5}{8}$ instead of 6-8, and, that that portion of $\frac{5}{8}$ has been given in dower to seventh Defendant's wife: The first Defendant adduces in evidence a case for the identical portion, lately decided in this Court by Mr. Toussaint, between first Deft. as Plff., and second and third Plffs., and others, as Defts., in favor of the former; the first Plff. in the present suit was not, however, a party in that case, and the Court does

not consider that Judgment a bar to this action, all the Defts., except first and seventh, admit first Plaintiff's claim.*

It would, perhaps, have been better if first Plff. remained silent until execution had issued, and thus opposed the putting of the Plff. in case 1874, in possession, and proceeded thereupon, but the Court does not consider that there is any thing to prevent her having proceeded as she has done, seeing, moreover, she was not joined as a party to the first suit.

It is adjudged that first Plff. be restored to the possession of one-sixteenth share of the Land Koleveryvyel. First Deft. do pay Plff's. costs.

Judgment affirmed in Appeal, 5th June, 1855.

6th January, 1855.

No. 2,197.

Point Pedro.

Perianatchy, widow of Sidemberan, and three others, of Tonnale ... ... *Plaintiffs.*

Vs.

Vedanasagam, widow of Vyrawenaden, and two others ... ... *Defendants.*

LEISCHING, Judge.

Man or woman dying childless.

The Thasawalemme is clear on this point, and by it the Court must be guided; the deceased having died childless, his property which he had by inheritance, reverts to his nearest relatives, and his wife, or her relatives, have no claim or interest therein, and when a wife dies childless all her dowry property, or whatever she obtained from her family, reverts to her own relatives, and her husband has nothing to say to it. To leave either survivor a life interest in the property of the deceased, is a mere act of grace on their part, and cannot be deemed as a right; with regard to property acquired after marriage, the case is different, but the money claimed now, is the proceeds of a sale of Land, which the Defendants do not allege was acquired.

At this stage, for the first time, Valliar Vyrawenaden comes forward and denies that Plaintiffs are heirs. The Court

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* Second and third Plaintiffs are first Plff's. children, and they have a right after the death of their mother.

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will take no notice of an objection raised at such a time. He would be intervenient, and may substantiate his claim if he sees fit, in a separate action.

It is adjudged that Plaintiffs recover from the Defendants the sum of £3. 10s. 9d., and costs, on giving security for the principal amount, in case any action be maintained and gained by any other persons hereafter, who may claim to be heirs of the deceased, adverse to the Plaintiffs.

Judgment of the Supreme Court, 11th December, 1855. Affirmed.

No. 7,713.

21 st January, 1856.

District Court, Islands.

Saverimootto Bastianpulle, and his wife Anapulle, of Carember ... ... *Plaintiffs.*

Vs.

MarkopulleBastianpulle, and his wife Anapulle,...*Defendants.*

and Anal daughter of Bastianpulle ... ... *Intervt.*

PRICE, Judge.

Mr. Advocate H. Mutukistna, for Intervenient, moves that the Plaintiffs' claim may be dismissed with costs, upon the following grounds:—

1. Although the second Plaintiff is admitted to be the Sister of the deceased, it is denied that she is the sole Heir—she being an undowried Sister, and having two Brothers, who are equally entitled with herself. For aught we know to the contrary, there may be more Heirs.

Administration.

2. Her (second Plaintiff's) right being denied, and the existence of other Heirs being ascertained, she must take out administration to the Estate of the deceased Sister, before she can turn out a party in possession.

Donation.

3. The Donation is clearly contrary to the spirit of the Thassawalemme, and therefore as far as the Intervenient is concerned, invalid, (quotes Section 4, clause 2nd,) although this clause does not provide for a case exactly like the present, the intention is manifest, namely, not to allow parties to donate their property to the prejudice of their nearest relations; if Parents, who have no children, cannot donate

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property to their Nephew and Nieces without the consent of the relations, how much less can they do so when they have children.

4. On general principles of equity too, and having the spirit of the Thassawalemme in view, it would be unsafe to sanction such Donations, to the prejudice of minor children.

Mr. Advocate P. Mutukistna for Plaintiffs, contends.

1. That administration is not necessary, as second plaintiff claims immediately under his deceased Sister, whose dowry property it was, in right of inheritance as long as second plaintiff is alive; quotes decision in case 2,412 of the Supreme Court, where the Supreme Court has decided that administration is not necessary; deceased had no other sister but second Plaintiff.

2. The donation is good and valid to all intents and purposes, and is not contrary to the Thasawalemme, but is in conformity with the third clause, section first, and Plaintiffs right to the Land is not denied by the pleadings, assuming that the donation is good.

Intervenient's Advocate, in reply. The arguments used are quite irrelevant to the question at issue, which is, whether a party (Second Plaintiff) can without administration maintain this action; the case quoted, in which there is the Supreme Court decision, is not in point, having reference to a case prosecuted by the Father.

Secondly. The validity of the Donation is clearly denied by Intervenient's Libel, and it is maintained that nothing has been shewn out of the Thasawalemme contrary to the second clause of the fourth section, to the prejudice of near relations, much less to that of children; the case of a posthumous child, and cancellation of a Will in consequence, will apply to the present case by analogy. I therefore move that Plaintiff's claim may be dismissed, or that second Plaintiff may be called upon to take Administration.

Judgment.

The Court is of opinion that Administration in this case is not necessary, as the Thasawalemme, as the Court

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understands it points out who the next heir to the deceased is, viz., her sister the second Plaintiff. The Dowry property of Sisters, descends to Sisters in the first instance, failing Sisters, the Brothers would be entitled.

The Court is further of opinion, that the Donation Deed in question is not opposed to the Country law. The wife's property can be donated, in conjunction with the Husband, as in this case, both Defendants, the Parents of Intervenient, having granted the deed.

At the time of the donation, the children of the Defendants were minors, (the Intervenient is now evidently a minor,) and the consent required by the Country law should have been taken from their Parents. The Court is therefore of opinion, that Intervenient's claim should be set aside, with costs.

First Defendant in his *viva voce* Examination, on the 7th December, admits the granting of the Dowry Deed, jointly with his wife, to second Plaintiff's late sister, and also admits that he and his wife assist Intervenient in carrying on this Suit.

Intervention set aside with costs.

Here Plaintiffs called one witness, and proved the objection by Defendants, and the value of produce.

The Court is of opinion that the Libel is proved, and that judgment should go as claimed, with costs.

It is therefore decreed, that second Plaintiff is entitled in right of inheritance from her late sister Maria, who was entitled in right of Dower, as per Deed, dated 6th November, 1851, to the Land Maritoeparotony, in extent 15 Lachams W. C., situated at Caremben, and registered in the Thombo in the name of Alengarem, wife of Swampulle, and that she be put in possession accordingly. It is further decreed, that first Defendant do pay second Plaintiff damages at fifteen shillings per annum, with costs.

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14th April, 1856.

No. 7,500.

Sooper Annamalle and Sooper Candappen, of Point Pedro... ... ... *Plaintiffs.*

Vs.

Ayatte, widow of Sooper, Administrator of the late Morger Sooper ... ... *Defendant.*

PRICE, Judge.

Plaintiffs, by their Libel, pray to be allowed to draw a sum of £21. 15s., and Loan Board interest £17. 13s. 11½d., which they allege has been realized by a sale of half shares of certain Lands, which their late father had acquired by purchase, during his marriage with their late mother "Teywane," daughter of Cander, and to which they are entitled in right of inheritance from their said mother.

The answer admits that the property was Plaintiffs' late father's, but by right of prescription denies the Copy bill of sale in favor of Plaintiffs' late father, filed and dated 7th March, 1818. (Note.)—The Original of this Deed is put in by Plaintiffs' first witness. There being nothing suspicious attached to the appearance of this Deed, it was unnecessary to prove it, it being upwards of thirty years old.

By the Fiscal's Bill of Sale, of the 11th October, 1837, it appears, that half of the Lands were sold on the 5th October, 1837, to Nagatte, wife of Murger, (mother of Plainiffs' second witness), for £22 13s.

It is alleged in the Libel, and not denied, that Plaintiffs' mother died in 1821, and that Plaintiffs' father married again in 1823. The Writ of Execution on which the above Sale took place, is dated 9*th August*, 1836, the inference therefore, is, as there is nothing to prove to the contrary, (and it is not denied that Plaintiffs' late father married for the second time in 1823), that the said debt was contracted during Plaintiff's late father's second marriage.

Debt contracted and property acquired during second marriage.

The Court is of opinion, that the Lands by the sale of which the sum in deposit was realized, were the acqired property of Plaintiffs' late father, during his first

marriage, by purchase and possession. That Plaintiffs' late mother's Estate was entitled, agreeably to the Country law, to one half of said acquisition, and that the Plaintiffs, as her Heirs, are entitled to the amount now in deposit as claimed; the other half of said lands having been sold to satisfy a debt incurred by Plaintiffs' late father during his second marriage.—Defendant to pay all costs.

Judgment in favor of Plaintiffs' against Defendant, for £21 15s., with Loan Board interest up to this day, (said sum of £21 15s. and part of the Loan Board interest being in deposit in this Court.) Defendant to pay all costs.

No. 9,637.

Tuesday the 19th July, 1859

District Court, Jaffna.

Nichola Pulle Alwinoe, Admr. of the late Pedro Santiago, and wife, Anasey ... ... *Plaintiff.*

Vs.

Nicholapulle Francisko, and wife Eskolatte, of Chillaly ... ... *Defendant.*

The Judgment explains the Facts.

MUTUKISTNA, Judge.

The facts of the Case are these :—

1. Pedro Santiago and his wife Anasey, were the Original proprietors of the lands mentioned in the Libel.

2. That Anasey died in 1812, her husband in 1855, and their only son Santiago Pedro, in 1846, leaving a daughter, who survived her Father and Grand-father—she died in 1856, leaving minor children, whose interest the Plaintiff apparently seeks to support.

3. That during the lifetime of Santiago Pedro, the Defendants obtained a judgment against him, in cases, Nos. 1,043, 5.747, and sequestered certain properties as the property of the Execution debtor, which gave rise to the suit No. 5,157.

Life Interest.

4. In 5,157, the Father of the Execution debtor, being Plaintiff, and the present defendants being Defendants, it was held that the properties were not liable, as long as the Father remained unmarried for the second time—he having, according to the Thesawalemme, a life interest in them.

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5. That the lands—Kireantotom, Muttettotenkadu, Nagataveuwayel, and Poomanatan, are the Dowry property of the deceased Anasey, the Mother of the Execution Debtor, and the Lands Payladywalewo and Vandawatty, are the heriditary property of the Father of the Execution debtor, named Pedro Santiago

6. The father having died, and the usufruct having expired, the execution creditors, viz., the Plaintiffs in 1,043, 5,747, and Defendants, in 5,157, again sought to recover their debt, by seizing the Properties in question, and hence the present action.

Upon these facts, which are admitted on both sides, the only question for the Court to decide is, a question of Country law, viz., Are the Lands liable to be sold, and if so, what Lands?

Dowry property

Sec. Voet Lib. VII Tit I. S. 13 and Vand. Page 138.

See Burge, 3 Vol. Page 9 and 40.

See Voet Lib. VII. Tit I. Sec 20, and Burge 3 Vol. Page 156

I am of opinion, that the *Dowry* lands of Anasey are liable for the debt of her son, the Execution debtor, the Dowry property having vested in him the moment his mother died. He *then* became the Proprietor, and his Father a mere usufructuary, or what may be called Tenant by courtesy. It is of no consequence, that he predeceased his Father, the usufructuary, for the right of property was ever since his mother's death in him, and was transmissible to his heirs, executors, &c., but it is urged that the Father possessed the Lands after the death of the mother for upwards of 20 years, and had therefore acquired a Prescriptive right. His possession however, was not an *adverse* possession, and was prefectly consistent with the proprietary right of his son, and therefore he could have acquired no title by Prescription. Indeed, it was quite competent for the execution creditors to have sold the Dowry lands under their Writ, reserving only the life interest of the Execution debtor's father, but not having done so, they have certainly not forfeited their right to recover the debt by the sale of the lands now.

If the execution debtor could have sold, it follows that the execution Creditor could have done the same.

See Thesawalemme 11 S. P. 14.

(The Father on his second marriage is obliged to give to his chil-

The Case, however, is different with respect to the *heriditary* property of the Execution debtor's Father; the latter had absolute right to that property, and might have alienated or disposed of it in any way he chose—it never

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vested in his son, he having predeceased his father, and never formed a part of his Estate, and therefore, cannot be held liable for his debt; it descended directly from the father of the execution debtor, to his Grand-daughter, the mother of the minor. One other question might suggest itself as to whether half of the hereditary property, upon the death of the mother, did not vest in her Heirs according to the Dutch law, but this is clearly opposed to the spirit of the Thessawalemme, which does not recognize community in respect to Dowry and hereditary properties, the *Dowry* always *exclusively* descending to the Heirs of the wife, and the *hereditary* properties always *exclusively* descending to the Heirs of the husband. It will not be pretended for a moment, that the husband upon the death of the wife, is entitled to any portion of the Dowry property, nor will it be pretended on the other hand, that the wife or her Heirs, through *her*, are entitled to any portion of the hereditary property. It is true there is no special provision in the Thessawalemme to meet exactly the present case, but there is enough to guide one in forming the conclusion at which I have arrived, and to indicate the principles upon which my opinion is founded. The Dutch authorities, too, quoted above, entirely support my view of the case.

dren only one-half the acquired & the whole of the Dowry property, retaining the heriditary Property, for which he is not obliged to account.
See No. 3,204 D. C. Waligammo and connected Case No. 2083 D. C. Waligammo.

Heriditary property.

See No. 4,603 D C. Tenmorachy

I am further of opinion, considering all the circumstances, and bearing in mind that the parties might have entertained reasonable doubts about an intricate point of Country law, as is involved in this case, and that Plaintiffs and Defendants have each succeeded, to a certain extent, that this is a fair case for division of costs.

It is therefore decreed, that the Lands Kiriantotam, in extent five Lachoms W.C., Muttettotenkadu Nagentavenwayel in extent 12¼ Lachams P.C., and Poomanatan in extent eight Lachams W. C., and twelve Lachams P. C., all registered in the Thombo in the name of Solomey, wife of Sawary daughter of Diago, and situated at Chillale, be held liable for the debt of Santiago Pedro, and that they be sold under Writs, Nos. 1,043, 5,747, and that the Lands Poyladdywalewo in extent 3½ Lachams W. C., (Thombo registry de-

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cayed,) and Vandawattey in extent 1¼ Lachams and 1½ Cullies W. C., registered in the Thombo in the name of Alasopulle Antham, and partner, also situated at Chillale, be held not liable for his debt, and that they be forthwith released from Sequestration. It is further decreed that the parties do bear their own costs.

4th Augt. 1850.

No. 465.

Court of Requests, Jaffna.

Ayempulle Cannewedy, of Chiviatorre ... *Plaintiff.*

Vs.

Parpady, widow of Cadergamen, and four others ... ... *Defendants.*

MUTUKISTNA, Judge.

The facts of the case are these :—

1.—Plaintiff's and first, third, and fifth Pefendant's Parents die, leaving four children, another child of theirs, Ayempulle Murgesen having predeceased them, leaving issue. It is admitted, on both sides, or at all events proved, that one at least of the children of the son, who predeceased the Parents, Ayempulle Murgesen, survived both his Grand-father and Grand-mother.

2.—The son Ayempulle Murgesen, who predeceased his Parents, being in debt, and judgment having been entered against him, in case No. 1,241, District Court, Jaffna, the Plaintiff asserts that the Parents' property is liable for this debt of the son, and the Defendants say that he having predeceased his Parents, the property devolves upon the surviving children, and is not liable for his debt.

I am of opinion upon the grounds that I have already stated in a similar case, No. 9,637, District Court, Jaffna, that the Parents' property is not liable for the debt of the son, who had predeceased them.

Debt of Father payable by son.

The only other question that occurs in this case is, whether the son of Ayempulle Murgesen, having survived his Grand-father and Grand-mother, and having succeeded to a portion of their property, was not liable to pay the debt of his Father, according to the Thesawalemme. I am of opinion

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that the son not having inherited anything from his Father, and the share of the property of the Grand-parents having directly descended to him, that he was not liable under the circumstances to pay his Father's debts.

This doctrine had been held in cases No. 1,531, District Court, Wademoratchy, and No. 2,861, Court of Requests, Point Pedro, and it is perfectly consistent with equity, the Dutch Law, and the Hindoo Law as it prevails in India, though it contradicts the letter of the Thesawalemme; but the Decisions of the Supreme Court alluded to, must be considered to have superseded the singular provision of the Thesawalemme, which it is admitted is harsh and inequitable.

I am, therefore, of opinion, that Ayempulle Murgesen's child's or children's share of the estate, devolves on Plaintiff and Defendants, who are his Heirs, he having died young and unmarried, and that one-fourth share of the estate was properly seized under the Writ as belonging to the Plaintiff.

It is therefore decreed, that Plaintiff's claim be dismissed, and that the parties do pay their own costs.

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DOWRY CASES.

Provincial Court, Wednesday, the 26th January, 1803.

Present.

DUNKIN, Judge.

Absent.

FARREL, Junior Judge.

Kadiren Walen Malleagam of Puttor... ... ...*Plaintiff.*

Vs.

Moothalynar Cartigasen and others... ... *Defendants.*

The Plaintiff produces a petition, together with a Notarial Debt Bond granted by the said Cadrasy and her sons Walliar and Sinnewen, and claims the sum of One hundred Rix Dollars, with interest at three-quarters per cent. per mensem, from the 3rd October, 1790.

The Defendants, Moothalynar Kartigasen, Walliar Cornather and Chinnepulle Aromogam, in company with his Aunt and Natural Guardian Maylatte, admit the debt.

The Defendant Mothaleynar Kartigasen says, that all the Mortgage lands were given as a Dowry to his wife, the second Defendant, Colendeynachie.

It appears in the said Notarial Mortgage Bond, that the late Cadaratte had two sons, named Walliar and Sinnewen. On enquiry, it further appears, that the Defendant Cothleneynachy and Walliar Korunader are the children of Walliar, and that the Defendant Sinnepulle Aromogam is the son of Sinnewen, and that the Dowry is consistent.

Heirs bound to pay Mortgage debts.

That the Defendants Colentheynachy and Walliar Vissowenaden, are entitled to succeed to a moiety of the Mortgage grounds, and that the Defendant Chinnepulle Aromogam to the other moiety, if they choose to pay the debt. Ordered that the Defendants be put in possession of the Mortgage ground in question, if they pay the debt, and that Maylatte be appointed as Guardian of the Defendant Chin-

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nepulle Aromogam, otherwise that the Mortgage grounds be sold in payment of the capital, interest, and the costs of suit.

Joan Diago Werepattiren of Carreoor... ... ...*Plaintiffs.*

Vs.

11th Mar. 1803.

Bastianpulle Marco, and others... ... ...*Defendants.*

DUNKIN, Judge.

Tamotherapulle, one of the heads of the Caste, being asked whether the Mortgage must be cleared up notwithstanding the Dowry, says, that the Mortgage must be cleared up. He further says, that the father is not entitled to give away all his property to one daughter; if he do so, that, notwithstanding the dowry Ola passed in favor of one daughter, the dowry so given may be taken back, and shared among all the daughters, in an equal share.

Father's right to give Dowry.

Questions by the Court.

Q. Whether all the debts ought to be deducted under the said dowry Ola? Answer.—Yes.

Q. Whether the father is not entitled to any share for his own maintenance? Answer.—One-fourth part is to be delivered directly to the married daughter, the other to remain under the father, until the marriage of the other daughters.

Ordered that the Bonds be required from the Weeskamer, and that the Defendants do file an Inventory of their property, and a list of their debts, upon oath, on Monday.

Inventory.

Ambager Vissowenaden... ... ...*Plaintiff.*

Vs.

18th May, 1803.

Mothalitamby Murger... ... ...*Defendant.*

DUNKIN, Judge.

The Plaintiff produces a Petition.

The Defendant appears, and the said petition being read, and explained to him, he says, that it was not known to him the first time, when he gave the extract from the Thombo to the late Secretary of the Civil Court, that the land "Oerotty-Wayel, was given as a dowry to

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Extract from Thombo.

the daughter of the debtor Periar Amblawaner, and that he was lately apprized thereof.

The Court dismisses the Plaintiff's Petition, unless he can disprove what the Defendant alleges.

Ambiapaga Modr... ... ...*Plaintiff.*

29thOctr. 1812. 17th June, 1830

Vs

Kandappa Sidemberenaden, and wife Teywane...*Defendants.*

DUNKIN, Judge.

The first Defendant appears and admits that he owes to the Plaintiff the sum of Rds. 130, as stated in his Petition in this case.

Dowry Land Mortgaged

Husband's admission is sufficient.

It appearing that the Dowry lands of the second Defendant is Mortgaged for the debt in question, the Court decrees the first Defendant to pay to the Plaintiff the sum claimed. The Court declines to give any decree against the second Defendant, unless she makes her appearance before this Court.

No. 79.

Decided, 22nd July, 1812.

Wally, daughter of Natchie... ... ...*Plaintiff.*

Vs.

Ayen Nagen... ... ...*Defendant.*

RICHARDSON, Judge.

Daughter's Dowry and Joys

Held that A. the mother was entitled to the whole of the Dowry property of her daughter, who died without issue, and to the Joys worn by her, though acquired after marriage, and to half of the rest of the acquired property. Held also, that she was bound to pay her proportion of the debt contracted by her daughter, and her husband during marriage. *

No. 170.

17th Oct. 1812.

Cadrasy widow of Coomarewaraden Modr... ...*Plaintiff.*

Vs.

Walliamme, wife of Cadergamer ... ... *Defendant.*

RICHARDSON Judge.

It is decreed that the Defendant do forthwith relin-

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* What proportion of the debt ? Is it half or more ? I think just half.

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quish, and give up all right and title to the land in question, and quiet possession of the same, which she held under a Decree of this Court, and in virtue of a Dowry Ola from her Parents, dated 18th May, 1803, the same not being the lawful property of her said Parents, though given and entered in the said Dowry Deed.

That the Defendant's parents do forthwith indemnify the Defendant in all costs and charges, and do pay to the Defendant forthwith, the value of the said Field, as stated in Plaintiff's Libel, being Rds. 125, with all costs incurred by both parties in this suit.

Parents bound to indemnify for the loss of Dowry

No. 24—301

5th Marh, 1817.

S. M. Point Pedro.

Wally, wife of Cadiren, of Alway ... ... *Plaintiff.*

Vs.

Cadiren Maylen and others ... ... *Defendants.*

Vanderlinden, Judge.

Dowried daughter no right to Parent's property.

On turning over to the Records in this case, and upon enquiry into the genealogy of the Plaintiff and Defendant's family, the Court is of opinion that under the Thesawaleme (or Country Code,) the Plaintiff * (being a female) has no right or title whatever to the Estate of her Father's side, although it appears that the Plaintiff has been hitherto in the possession of the land purchased in Otty by her father, (a brother of the third Defendant.)

The Court is further informed by the parties, that the Plaintiff has had brothers, since deceased, who are now left, two male issues under the protection of their mother; and it is evident, that by their being young and unable to claim their due, the Plaintiff has been enabled to appropriate the Land and trees in question, in which she has no right.

The Plaintiff states that she obtained the Otty land and trees in dispute, in Dowry from her deceased father,

* She must have received Dowry.

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but that Otty Ola, among other things, had been stolen from her by a thief in 1812 or 1813. Although this might be true, the Court cannot help judging it illegal. *

It is therefore ordered that Plaintiff's claim, to the land *Tambea-polam*, be dismissed with costs.

No. 2,667.

Augt., 8th 1817.

Cadiry, wife of Venasy, of Sandilipay ... ... *Plaintiff.*

Vs.

Neelen Wenasy ... ... *Defendant.*

RICHARDSON, Judge.

Compensation for Dowry sold.

Wife, though separated from her husband, is not entitled to claim compensation from him for Dowry property that might have been sold with consent. Held, she had no right to live apart from her husband, and that she should go and live with him at once.

No 7,118.

July 29th, 1818.

Sinnepulle, daughter of Pooder, of Varasy Eyetalle *Plaintiff.*

Vs.

Aromogatar Welayder ... ... *Defendant.*

LEDGER, Judge.

Husband bound to make good wife's Dowry.

It is decreed that the Defendant do live with the Plaintiff as his lawful wife, and that he do make good to her the Property mentioned in her Dowry Ola. The Defendant do pay costs of suit And it is further ordered, that previous to this Decree being enforced, the Plaintiff do make oath in the most solemn and binding manner, that the marriage actually took place with the Defendant, in the manner described; and that the eleven head of cattle, as well as the Joys, have been given to Defendant, which were never returned to her.

The standing Commissioner reports that the oath directed to be made by Plaintiff, was duly administered to her, and that the Plaintiff did swear by stepping over the body of her sister.

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* Why?

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No. 7,378. 1st Octr. 1818.

Sawonderiamma, wife of Sawoonderesegem, of Puttor ... ... *Plaintiff.*

Vs.

Wedenayegam, widow of Soopayer, and her Son Mootayen ... ... *Defendants.*

Leger, Judge.

A. and B. daughters of C., were married and dowried. A. dies, leaving a daughter, who succeeds to her Mother's property, and gets a Dowry from C. on her marriage, and dies without issue.

Aunt entitled in preference to Grand-mother.

Held B. her Aunt, entitled to her property in preference to C. her Grand-mother, but as the Dowry Deed by C. to her Grand-daughter was on insufficient Stamp, the claim of B. to the Property included in the Dowry could not be supported.

No. 7,134. 1820.

Provincial Court.

Nagie, widow of Venasy, and others ... ... *Plaintiffs.*

Vs.

Walen Soopen, of Ploly ... ... *Defendant.*

Scott, Judge.

The undersigned Commissioners having been appointed by this Court to investigate into the matters in dispute between the above parties, beg leave to report, to wit:—

"We have, in terms of the order directed to us, enquired with respect to the right of the above parties, to the half share of the land called Oyerpoe; none of the said parties have adduced proof to substantiate by what right either of them are entitled to the said land."

Females inherit from the Female line, Males from the Male line.

"That on our further inquiry, we have come to an opinion that both of the above parties are entitled, each to a just share of said half share of Land; from the circumstance of the Dowry Ola filed by Plaintiff, it appeared she is entitled to the same from the female line, and from the general contents of the same, the male from the male line—thus we

have decided each of the parties to an equal share,—costs to be borne by the parties themselves.

10th July, 1820.

No. 7,263.

Sangerepulle Maylwaganam... ... ... *Plaintiff.*

Vs.

Sangerepulle Nawisewayen, and four others......*Defendants.*

LAYARD, Judge.

A. purchases a piece of land in favor of B., his minor son, B. transfers it in Dowry to his daughter. Held that B.'s brothers cannot disturb the Dowry given.

Illegal Schedule.

Odear, the 5th defendant, made to pay costs for granting illegal Schedule, without enquiring into an intricate point of Law.

Questions by the Court to the standing Commissioners.

Q.—Can any son, until he is married, acquire any Property which can be considered solely his own, his father or mother, or either of them, being alive ?

A.—No. So long as a Parent lives, it belongs to the parents ; provided the parents are dead, the joint accumulation of the unmarried brothers is considered general stock, if there has been no division of parents' property ; but if there has been a division, and the sons live separately, then the property belongs entirely to him who acquired it.

Q.—Supposing a father to have but one son, and he purchases in the name of that son a piece of land, will the sons afterwards born, be entitled to any claim on that land ?

A.—If the son is unmarried, at the time of the purchase, the sons born afterwards will be entitled to equal share.

Q.—Can a Father, without consent of his children generally, give either of his Grand-daughters any part of his landed property ?

A.—He can neither give or sell it without the consent of his sons, and to prove their consent they must place their signatures, as witnesses, to the Transfer vouchers. If the wife is alive, he can, excepting dowry property.

Q.—Are sons at liberty to make these objections to such transfers during their father's life ?

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A—Certainly not; as the property, during his natural life, belongs to him.

Q.—In case of a son refusing to ratify his Father's sale of property?

A.—He must give notice to men in authority, and obtain their permission. We mean the Court's permission to the sale.

Q.—If the husband and wife are both alive, can the husband sell any of his acquired property without the consent of his wife or children?

A.—Yes he can.

The Court, on considering the case, is of opinion, that the other Transfer must hold good, saving those of Senaderayen Walewo, Illopaner Walewo, and one Lacham of Tillewayal, which appears to be the purchased and acquired property of the deceased father of the parties, and could not be legally transferred by the husband, after his wife's death, without the consent of his sons generally.

It is therefore decreed, that the Transfer of the former land, dated 13th day of September, 1815, be set aside. One Lm. of Tillewayal appearing in transfer dated 17th April, 1815, and that the same be considered as the property of the general estate, and that the defendants pay costs.

No. 1,023.

Provincial Court.

August 18th, 1820.

Isabella wife of Sebastian, of Sillale... ... ...*Plaintiff.*

Vs.

Sebastian Anthony, and others... ... ...*Defendants.*

Layard, Judge.

Daughter cannot claim during father's lifetime or after Dowry.

The Proctors refer the Court to the several laws of the Country, and the attending Commissioners are examined; the Law decides, and they declare the Plaintiff cannot claim the property on any account: the father, in the first place, is alive, and in the second, she having received her dower, can have no claim on the property her mother lived to inherit from her Aunt, had her mother died first, possibly the case would have been otherwise.

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It is therefore, decreed that the Plaintiff's claim on the Estate of Joanal be dismissed, the same being the property of her Father Diago Sebastian, and that she do pay the costs of this suit.

No. 597.

7th September, 1820.

S. M. Point Pedro.

Cadergamer Valliappen... ... ...*Plaintiff.*

Vs.

Mapaner Santayner and another... ... ...*Defendants.*

KRIEKENBECK, Judge.

Husband's right to sell Dowry property.

It appearing that the share in question in the Land Agopitty, is the second Defendant's mother's Dowry property, her husband had no right to dispose of it (*); as for the second Defendant and her two Sisters having been joint Otty Vendors, it is considered that was an illegal transaction, they having been minors at the time, consequently the Otty Bond, dated 11th August, 1812, is invalid, and is cancelled ; and second Defendant and her Sisters are ordered to remain in the possession of the mother's said Dowry share, but they are ordered to pay 81 Rds. to first Defendant, who has proved that their father contracted the debt, and first Defendant is ordered to pay to the Plaintiff Rds. 81, and interest from the date of the Otty bond, dated 11th August, 1812, (and which latter is also Cancelled). †

No. 1,441

14th Dec. 1820.

Lechemy, wife of Casy, of Vannarponne... ... ...*Plaintiff.*

Vs.

Pooder Casy... ... ...*Defendant.*

LAYARD, Judge.

The Court calls Commissioners as to Law and Custom. The Court having considered this Case, and the hardship this Plaintiff is made to suffer by the Defendant's desertion of her,

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(*) See Domat., 1 Vol. P. 77.

† It does not appear on what principle the children were ordered to pay the debt, except it be that the Magistrate had—Clause in mind ; but then, surely the daughters ought not to have been included.

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decrees, that she is entitled not only to recover from him the 50 Rds. as per Otty Vouchers, dated 15 April last, but also a sum of Rds. 2 monthly, (being his lawful wife,) for her support, it being evident to the Court that she has done all in her power by going (ever since this spurious Agreement with a view to get rid of her, was Executed) to reside in his house, hoping thereby to——him, and the Court finding the woman is by this desertion disgraced in the Country, and that not to insist on such support being given, would only be encouraging others to the like conduct.

Desertion and alimony.

It is further decreed, that Plaintiff's Dowry be given over to her own management, and that Defendant do pay Costs of this Suit.

No. 1,143,
Provincial.

Sedawy wife of Perian and daughter Nagey, of Malagam... ... ...*Plaintiff.*

Vs.

Cander Walen... ... ...*Defendant.*

Layard, Judge.

Poodie, daughter of Walen, and her husband Mootan*... ... ...*Defendants.*

Declares he never bought but one stamp for 15 Rds. from the School-master, and that filed in the case is the very one. On considering the Case before the Court, it appears that this stamp, No. 6, for 15 Rds., bearing general Brownrigg's Signature, could not have been sold to Canden Welen in 1812, as it was not, according to Tissewerésinga Modeliar's Books, issued from the Cutcherry until the 23rd May, 1815.

That it has been attempted to support this case by pro-

* Plaintiffs obtain Judgment against Defendant for costs, issued Writ and got property seized and advertized for sale, but the Claimants object to the sale, claiming the land as their Dowry property, given to them by the Defendant and his wife (first Claimant's father and mother) upon the Dowry deed, dated 22nd November, 1817. Plaintiffs contend that the Dowry deed was executed after the Judgment, to prevent Plaintiffs from recovering the Costs.

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duction of false evidence, amongst whom the School-master of Batticotta is unquestionably perjured.

That there is every reason to believe the Voucher was forged purposely, to prevent the Claimant in original suit recovering the amount of the execution in her favor, as declared by her witnesses, is to be believed, from the age of the Claimant's Husband, from the voice of the people of the Village, that she was not considered as married till lately, from no entry of the marriage having been entered, no license obtained, &c., and it is decreed the Land conveyed thereby, is liable to be sold in satisfaction of the original plaintiff's decree, and for the Costs of the former and present suit.

There was a circumstance also, peculiar in the case, to be recorded, which is, that the original Defendant had two other daughters, and nevertheless had made over all his property to Claimant, not reserving to himself a shilling.

26th March, 1821.

No. 1,541.

Sedemberen Tamoderen & wife Walliar, of Caremben...*Plffs.*

Vs.

Second Plaintiff's Father Aromogatan Ramen & Son...*Defts.*

Layard, Judge.

Father's life interest.

The Plaintiffs allowing they have no dower, this claim on their Mother's dowry property unsupported by any gift Voucher, and the Father having entered into no second marriage, is dismissed with costs.

25th July, 1821.

No. 1,687.

Ayatte, widow of Canden, and Son... ... ...*Plaintiffs.*

Vs.

Cadiren Wenasie and wife... ... ...*Defendants.*

Layard, Judge.

It appearing evidently the Plaintiffs are endeavouring to deprive the Defendants of the property, which was the dower of Cadrasie, mother of second Defendant, and which is ennumerated in the Agreement filed—and it is decreed that Plaintiff do execute a regular transfer deed of the lands, in the proportion set forth in the Agreement of the

Dowry Agreement.

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29th April, 1817. The Defendants furnishing Costs, and that Plaintiff do pay the Costs of this suit.

The Plaintiff is the Grand-mother, and had given a Dowry Agreement in 1817, to Defendant's mother, held.

No. 1,686.

11th August, 1821.

Maria, wife of Anthony Philipo, of Sirrowolan... ...*Plaintiff.*

Vs.

One Amaresinga Mudr., Casey, and second, Soose Anthony, of Sirrowolan... ... ...*Defendants.*

LAYARD, Judge.

Date of the Libel, 17th January, 1821.

Libel or Summary Petition of Plaintiff.

Plaintiff's Sister was married to second Defendant, she died in December, 1820, without issue, Plaintiff as her sole heir, according to the Country Law, claims her dowry property, moveable and immoveable.

Answer of the first Defendant.

The Dowry deeds, both of Plaintiff and Defendant, are insufficiently stamped, and therefore invalid. Second, the Lands dowried were in Otty and Mortgage. Third, the Otty holder and Mortgagee having objected to second defendants possessing the lands dowried, he returned the Dowry deed to the first defendant to pay off the Otty and Mortgage, and grant him a valid Dowry deed. Fourth, that the Plaintiff's parents had several children, some of whom are Minors, and therefore the property should be equally divided.

The second Defendant files a similar Answer. Plaintiff replies that though the Dowry deed might be on an insufficient stamp, that her late Sister was in possession up to her death, and that the first Defendant and his other brothers had divided the rest of the property among themselves, and therefore that she was entitled to the dowry property of her late sister, as they would be to each others property.

Evidence of Custom. Welandareser Mudr., sworn.

Married sister.

According to the Thasawaleme, the married sister inherits alone the dower of such of the married sisters who

died without children. The unmarried sister cannot inherit if there be a married sister living.

Q. Supposing a man to have married a second time, and that at the time of his second marriage he gave dower to such daughters as could find husbands, and portions to his younger daughters who had not arrived at proper age or could not get husbands, as those daughters have no more claims in the Estate, would they not equally with the married sister surviving be entitled to inherit from the married sister who died?

A. Certainly not.

Ramalingam Mudr. Tiager sworn.

Q. Supposing a dowried sister to die leaving two sisters, the one having dowry, and the other not yet married, would her inheritance be equally divided or given to one sister in preference to the other.

Dowry goes to dowried sister.

A. The Dowry would be inherited by the dowried sister surviving only, by defendant. A father can give to either child what he pleases.

Judgment.

The Court finds that Defendant's witnesses have by no means shewn any grounds why the promised dower should be set aside, as plaintiff's dowry voucher.

It is decreed that Plaintiff's claim is just.—That the property, which was promised should be given to the deceased wife of the second defendant, should devolve on her married sister as the sole heir to that property, according to the Country Law, about which the Court has made all due inquiry. That the dowry voucher filed, admitted by first Defendant as signed by him, should have been executed on a regular stamp, is unquestionable, but the present plaintiff was in no wise a party in that transaction, and the first defendant cannot be considered entitled to take advantage of his own wrong. The first Defendant admitting plaintiff's dower voucher is written also on a less stamp, is advised to grant her a new one on production of the proper stamp, or he will be compelled to do the same. First defendant to pay costs.

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No. 1,543.

October 1st. 1821.

Nagatey, daughter of Chedemberiar... ... ...*Plaintiff.*

Vs.

Chedemberiar Candappen... ... ...*Defendant.*

LAYARD, Judge.

The Court finds the Defendant could have no right, nor has he offered to shew any to deprive plaintiff of this land, her dower.

If it was his by possession, as inheritance, his three brothers would have had an equal share. It is decreed, the possession of Nochicado in dispute is the property of Nagatte, by virtue of her Dowry voucher, proved, filed, and dated 10th May, 1794, and long possession; that at her demise, having no children, the same is devolvable on her sisters or their Heirs. That she is further entitled to recover from defendant twenty Rds. as two years produce, and costs of suit.

Dowry devolves on sisters.

No. 1,548.

14th November, 1821.

Wallinachy, widow of Welayder, and others... ...*Plaintiffs.*

Vs.

Manatoonger Vissowenader, and others... ...*Defendants.*

LAYARD, Judge.

The larger part of the amount borrowed having been for the use of first defendant, the Court considers that the first defendant will be answerable for half of this debt, even if the second defendant should enforce the decree against the property of the deceased, and therefore advises that first defendant to pay half the amount of the decree in the case 1,462, and that Plaintiffs* in this case do pay the other half to prevent the execution being carried into effect on the Title Deeds, which it may yet be, if the second defendant prosecutes and obtains judgment against the Estate. The Court considering that according to the Thasawaleme, the wife's dower ought not to be answerable for more than half of the husbands and her joint debts,

Wife's heirs bound to pay her share of debts.

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* Plaintiff's are the Heirs of the first Defendant's late wife, she having died without issue.

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provided he has any property that can be found and appropriated towards discharing of the same. Should he not have property, the creditor certainly is entitled, eventually, to issue Writ on the Lands mortgaged for the whole.

2nd August, 1822.

No. 2,209.

Anthony Philipo of Sirrowolan ... ... *Plaintiff.*

Vs.

Amerasinga Modliar, and Son ... ... *Defendants.*

FARREL, Judge.

Defendants have no evidence, but file Copy of a decree of this Court in case, No. 2,122, in which present Defendants were also Defendants, to pay a debt 250 Rds. on bond (in which the land called Cottowarpoolum is mortgaged) to the Plaintiff, part of the said Land is mentioned in Plaintiff's wife's Dowry Ola, and Defendants wish to have it understood that it is liable for the said debt.

If mortgage not mentioned in Dowry deed, grantors must redeem.

It is decreed, that the Dowry Ola executed by first Defendant in favor of Plaintiff's wife, and dated 20th May, 1817, is valid, and that the land and other property therein mentioned belong to Plaintiff's wife, and that Defendants do pay costs of suit; and further, it is the opinion of the Court, that any mortgage on the Land mentioned in Plaintiff's wife's Dowry Ola by first Defendant, is to be paid by first Defendant, such mortgage not having been mentioned in Plaintiff's Dowry Ola granted by first Defendant.*

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* The permission to plant and transfer in favor of Plaintiff.

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No. 2,278.

22nd August, 1822.

Marriamootto, widow of Paulopulle, and Son Paulopulle ... ... *Plaintiffs.*

Vs.

The Plaintiff's children Maria, daughter of Paulopulle wife of Phillipe, and husband, and others... ... ... *Defendants.*

FARREL, Judge.

First Paintiff claims two pieces of lands in right of dower, the first and second Defendants having mortgaged the former without her knowledge, and the latter, the Defendants having proposed to sell.

First Plaintiff admits that half of the lands were given in dower to Kitoria, Sister to first Defendant.

Mother no. right to interfere with property given in Dowry.

It appears to the Court that first Plaintiff is entitled to no part of the lands, Alady and Copentarrewayel, half of those lands having been given to her daughter Kitoria, on her marriage, and the other half of the same lands to her daughter Maria, first Defendant, on her marriage. Plaintiff to pay costs of suit.

Affirmed by the High Court of Appeal.

Colombo, 4th January, 1823.

No. 2,761.

13th Septr. 1832.

Parpaddy, wife of Moorgen, and Sister Weedy, of Valawettetorre ... ... *Plaintiffs.*

Vs

Sowen Maraken ... ... *Defendant.*

FARREL, Judge

Sister of deceased wife entitled in preference to husband.

Plaintiff's state that their sister Cadirey was married to the Defendant, by whom Defendant had a daughter, both mother and daughter being dead. Plaintiff's claim her Dowry property, said to be worth 500 Rds. Defendant denies the marriage, and states that he kept her as a Concubine.

It is the opinion of the Court, that Defendant and Plaintiff's late sister Cadirey lived together as man and wife, that on the 16th May, 1809, they jointly sold one sixth of Cateecado, being Cadirey's Dowry Land, to Canden Welen

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for Rds. 55, and that on 17th May, 1809, Canden Welen sold his land Neerengeecado to Defendant alone, for Rds. 80.

It is therefore decreed, that the land Neerengeecado now in Defendant's possession, being valued 55 Rds. (being amount for which Plaintiff's Cadirey's Dowry land was sold) be deducted from the said value, and be paid to Plaintiff as Heirs of their deceased sister Caderey, and that the remainder, the valuation of the said land Neerengeecado (after deducting the 55 Rds.), be equally divided between Defendant and Plaintiffs. Defendant paying to Plaintiff's the amount of their half, and keeping the land Neerengeecado in his possession. Defendant to pay costs of suit.

Judgment Affirmed by the minor Court of Appeal, with the exception of the costs, which is to be recovered in the first class (the Case was brought in the third class.)

1823.

No. 2,989

Vallinachy and others... ... ... *Plaintiffs.*

Vs.

Cadergamer... ... ... *Defendant.*

FORBES, Judge.

Unmarried sister not entitled exclusively.

A. and B. were sons, and C. and D. daughters of the same parents, one of whom died before C. and one after C. C. marries and dies without issue, leaving dowry property, &c. Held that A.'s widow and children were entitled to a quarter of A.'s parents property, and to a quarter of C.'s property, and that D. was not exclusively entitled to C.'s Dowry property, &c., as she was not a "married sister."

First Judgment 9th March, 1824.

No. 3,005.

Sangoe Chitty Wayramootto, of Vanarponne ...*Plaintiff.*

Vs.

Tangam widow of Wettiwalan Admx. to the Estate of Pitchemootto... ... ...*Defendant.*

FARRELL, Judge.

A. and B. were two brothers, A. died leaving a son, and

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B died leaving a daughter, who was married, dowried and died without issue. Held that the dowry property should go to the maternal cousin of B.'s daughter, that is B.'s wife's sister's daughter. The petition of Appeal and the judgment of the Supreme Court, explain the case.

Maternal cousin succeeds in preference to Paternal cousin

Petition of Appeal

To

His Excellency, Lieut.-General the Hon'ble Sir Edward Barnes K. C. B. Governor and President, and the Hon'ble the Members of the High Court of Appeal.

Colombo.

The humble Petition of Samgoe Chetty Wayramootto Chetty of Vanarpone.

Respectfully sheweth;

That in the Provincial Court of Jaffnapatam, the Petitioner as Plaintiff, has instituted a suit against Tangam widow of Wettiwalen, respecting inheritance, and on the 9th instant decision was pronounced against the Petitioner, against which he has appealed, and begs to state, that the Petitioner's uncle Ramen was married with one Sewagamy great Grand mother of the Defendant, and they had two daughters by that marriage named Pitchemootto and Parpaddy who were afterwards married under regular dowry from their parents. The latter, or Parpaddy, died without children, the former, or Pitchemootto, therefore inherited the Estates of the deceased, and some time after, she likewise died, without children, consequently the petitioner, according to the 7th Article of the Thesawaleme, (an extract of which is herewith annexed for perusal of this Honorable Court) became fully entitled to the whole of the hereditary property of his said uncle Ramen, which had been dowried to the said daughters, and further to one half of the accumulation; in the like manner, Defendant became entitled to the whole of her mother's dowry, and to one-half of the accumulation. That the hereditary property of the said Ramen, to which the petitioner is entitled, consists of land called———together with one half of the house furniture found at Pitchemootto's

house after her death. That the petitioner humbly begs to observe that the first mentioned land, was exchanged by the said Ramen for certain other of his Modisium or hereditary lands called———and afterwards dowried to his daughter Pitchemootto, the land Ikanatotom is registered in the name of the said Ramen in the Saleworam thombo, and Tallechetty in the village Tolworam, and none of them registered in the village Moolay nor exchanged for Thesegowalewowayel, as stated in the decree of the Provincial Court. That the petitioner further begs leave to observe, that notwithstanding that he has fully proved to that Court by proper documents and credible witnesses, and established that the above lands are really the hereditary property of the said Ramen, yet the Court, as the petitioner humbly conceives, by some misunderstanding, pronounced the decree in favour of the Defendant who has not proved that Plaintiff's claim was for the dowry lands of Pitchemootto and Parpaddy's mother Sewagamy, but only stated in her answer that those lands are the dowry of that Pitchemootto and Parpaddy. That it is customary to grant dowry to children, both from the property of the father and of the mother, and in case of the children who received the dowry dying without children, the property given for the mother's dowry, devolves to the heirs, and in like manner that which was given from the father's property, devolves to his heirs. That the petitioner humbly takes the liberty of stating that the Provincial Court of Jaffnapatam aforesaid, has without entering into the investigation whether the property in question, is the dowry by succession, or whether it is the hereditary property of the said Ramen, and given in dowry to the said Pitchemootto and Parpaddy, or accumulations of them both, pronounced the decree contrary to the tenor of the Thesawaleme which is the Country Law of this District, according to which Civil cases are decided, as directed by Government Regulation.

The petitioner therefore, most submissively prays, that this Honorable Court will be pleased to reverse the said decree, and direct the case to be again inquired either in the said Provincial Court, or referred to Arbitrators, and after such

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investigation to decree the said property of his uncle Ramen aforesaid, to the petitioner, agreeably to the Country Law, with all costs.

Jaffnapatam, 18th March, 1824.

In the High Court of Appeal in the Island of Ceylon.

On reading the proceedings in this case, it is considered and adjudged that the decree made in this case by the Provincial Court of Jaffnapatam, on the ninth day of March, one thousand eight hundred and twenty four, be altered, and that the Plaintiff and Defendant in this suit are entitled to a moiety of the property in question, and that each of the parties do pay their own costs.

Maternal and Paternal cousin entitled equally

Given at Colombo, the 7th day of January, in the year of our Lord, one thousand eight hundred and twenty six.

By order of the Court.

Signed THOMAS EDEN,

Registrar.

No. 3,091,

April 22nd, 1824.

Swam Madie, of Alleputty ... ... *Plaintiff.*

Vs.

Santiago Maden, and brother ... ... *Defendants.*

FARRELL, Judge.

The case is this—Plaintiffs father Swam, and the two Defendants were brothers, Plaintiff's Father died when she was a child, and while *his* father and mother were still alive. Plaintiff's Grand-father and Grand-mother died seven or eight years ago, leaving property behind which Defendants took to themselves without giving Plaintiff her father Swam's share, which she was entitled to, and Defendants are now said to be in possession of their Father's and mother's property. It is decreed that Plaintiff is entitled to one-third share of the property, moveable and immoveable, which belonged to Swam Santiago, and wife Sandy, at the time of their death, that the Dowry Deed dated 25th July, 1801, in favor of second Defendant's wife, be set aside, the same being illegal, there being no instance, when the parties are of equal birth, of the Bridegroom's father and mother bestowing Dowry on

Dowry to daughter-in-law.

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their daughter in law, and that the lands mentioned in the Dowry, be considered part of Swam Santiago's and his wife Sandy's Estate. Defendants to pay costs.

1824.

No. 3,135.

Provincial Court.

Cadergamer Aromogam, Administrator of Cottyar deceased of Batticotta ... ... *Plaintiff.*

Vs.

Sidemberem, widow of Wissowen ... ... *Defendant.*

Farrell, Judge.

A. dies, leaving a widow and three children, the widow and one of the sons give Dowry of some of the Lands, being the acquired property of her husband; the dowried daughter dies, leaving minor children.

Widower's right to Dowry.

Held that the Father of the minor children, was entitled, as Administrator to his deceased wife, to the Dowry Lands, and that it was quite competent for the widow to Dowry acquired property, but that the Dowry Deed did not bind as far as the share of the other child, who was a minor at the date of Dowry Deed, was concerned.

1824.

No. 3,093.

Swanal, wife of Santiago, of Carreoor ... ... *Plaintiff*

Vs.

Cander Anthony, and others ... ... *Defendants.*

Farrell, Judge.

Held A. entitled to the whole of her sister's Dowry property, who died without issue, and that their mother was not entitled to any portion.

5th May, 1825.

No. 3,516.

Cadergamer Moorgen, and wife Sinnevel ... *Plaintiffs.*

Vs.

Cannawediar Pasdappen, and others ... *Defendants.*

Forbes, Judge.

Plaintiffs state the Dowry property to be worth about Rds. 600 the Dowry Ola of the 1st August 1824, being on an *in-*

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sufficient stamp, is rejected under the fourth Clause of the Regulation No. 7, of 1823. Defendants admitting that they dowried all the property in the Dowry Ola of the 1st August, 1824, to their sister, the second Plaintiff, and stating it is the Bridegroom who is by *custom* obliged to furnish the *Stamp* for the transfer "they accordingly object to comply with Plaintiff's request."

Bridegroom to furnish Stamp.

The four following persons viz. 1 Wellewederasa Modliar, 2. Welayden Cartigasen, 3. Don Joan Madeweraga Modliar, 4. Malleweraga Modliar, being sworn and questioned by me, state that, according to the *tenor* of the Thesawaleme, fifth Clause, "the party giving Dowry, is to furnish the *stamp* for the Dowry Ola" but prior to the stamp regulation of 1806, the *Bridegroom* supplied the Blank Ola for the Dowry Ola, and since the said Regulation, it has been *customary* for the *Bridegroom* to bear the expences of the stamp for the Dowry Ola.

Resumed from yesterday,

6th May, 1825.

The four following intelligent persons viz.

1.—Segewagenam Wala Soopermania Ayer.

2.—Senaderaye Modliar.

3.—Wasierkoon Modliar Sittembalem.

4.—Ramanaden Swam Welayden, being consulted "whether the giver or receiver of Dowry is to bear the expences of the stamp for the Transfer," state on oath, that the former must, according to the spirit of the Thesawaleme, furnish the stamp for the Dowry Ola.

It is decreed that Defendants do execute *a Dowry Ola* in favor of second Plaintiff, their sister, and bear the expence of furnishing the requisite stamp for that purpose. The costs of the suit to be borne by Defendants.

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3rd June, 1825.

No. 3,524.

Chinnepodichy, widow of and son of Tondamanaar ... ... *Plaintiff.*

Vs.

Sewagamy, widow of Sandresegra Mapana Modliar and two daughters ... *Defendants.*

Forbes, Judge,

Dowry prior and subsequent to marriage.

Dowry before or after marriage.

It appearing that Dowry is given for years "prior and subsequent to marriage," admonished and discharged the Plaintiff's eighth witness, as I still am impressed that he has not stated the truth.

July 20, 1825.

No. 3,024.

Cadergamer Vessowenaden, and wife ... ... *Plaintiffs.*

Vs.

Wellawarasinga Modliar, Santiagopulle, and others ... ... *Defendants,*

A. as Guardian of his child, claims from its maternal Grandmother, the Dowry property of his late wife. Held by J. G. Forbes Esq. P. J., that as the Dowry Deed was on an insufficient stamp, the claim could not be supported.

1825.

No. 3,299.

Modelitamby Ramanaden, and wife, of Carretivo *Plaintiffs.*

Vs.

Satter Sooper, and others ... ... *Defendants.*

Forbes, Judge.

The right of a party to dispose of her own Dowry.

It is decreed that second Plaintiff is entitled to the Land Tamben, of thirty-four and half Lachams, entered in the Thombo, in Sewagamy's name, in right of Dowry, and that Defendants have no claim or title to any share of the said Land. Costs of suit by the first and second Defendants.

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Ayate, widow of Coonjitamby of Delft... ... *Plaintiff.* 1825.

Vs.

Tanecoody Ramen, and others ... ... *Defendants.*

FORBES, Judge.

Plaintiff's evidence,

Caylayer Candappa, alias Candappa Modliar, late Maniagar, sworn and questioned by the Court, states he knows the Land, Satiatotom; it was planted by Plaintiff's Paternal Grandfather, and the produce has, since his decease, been held by his son, Plaintiff's father, and his widow, Plaintiff's Grand-mother, from the death of the latter till two years ago. Plaintiff's father and his sister Natchattey have enjoyed the produce; Plaintiff has never possessed the same, and her Aunt Natchattey still lives on the said land. This land, together with half of the produce of the land, Tongampalley, were dowried to Plaintiff when a child, half of the produce of Satiatotom, was only dowried by the Plaintiff's father, and Grand-mother Ayatte. Plaintiff has never possessed the Shares of Satiatotom and Tongampalley, but she lived for three years on Wedemtotom and then quitted it. Plaintiff's father has since the Execution of the Dowry Ola, ottied Satiamtotom and Tongampalley. Plaintiff is not a married woman. Sidambery Coonjytamby is not Plaintiff's but her eldest sister Nagattey's husband. Plaintiff has lived as a Concubine of her Sister's husband. Defendant witnessed the Dowry Ola about twenty years since.

As Plaintiff is *not married*, her Dowry is liable by Thesawaleme, to be sold for her Father's debt. Deponent points out his signature in the Dowry Ola of the 20th of August, 1805.

Dowry liable for debt.

By Defendant.

The Land Satiatotom was publicly sold at Delft, after due notice, and Plaintiff did not object to the sale; it was sold for Plaintiff's father's and Aunt Natchattey's debt to Government. Defendant as Ceremony renter of Delft, in 1815 or 1816, refused, by order of Mr. Nolan, to grant a license to Plaintiff to marry her Sister's husband, when Plaintiff was about to be married at the date of the Dowry

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Ola, to Candapper Conjitamby (Defendant's Nephew), that person was her intended Bridegroom, but he is now married to another, all others signed the Dowry Ola.

Judgment.

It appearing that Plaintiff has not possessed the three lands sued for, in terms of the Thesawalemme, 3rd Clause of Section 1st, and believing Plaintiff to be a single woman, and her Dowry property consequently *liable* for the debts of her parents, I dismiss Plaintiff's claim with costs of suit; in short, if such property were not subjected accordingly, the door would be open to Parents to cheat their Creditors, at will, any time prior to the marriage of their daughters.

No. 3,871.

Provincial.

14th, Octr. 1825.

Nagie wife of Conen ... ... *Plaintiff.*

Vs.

The Paintiff's husband, Tanewaller Conen ... *Defendant.*

Forbes, Judge.

Dowry and divorce.

Plaintiff's claim is dismissed, costs to be paid by her, and first Defendant who are recommended by the Court to live happily together for the future, and in the event of disagreeing, after a fair trial, Plaintiff to sue for a separation and her Dowry. *

No. 3,809.

1825.

Modeleynar Cadergamer ... ... *Plaintiff.*

Vs.

Sangaran Somen and another ... ...*Defendants.*

Forbes, Judge.

Married sisters succeed.

A. married B. and died without issue, leaving Dowry property. A's. sister C. married B., the second time. Held that B. and C. were not entitled to any portion of A's. Dowry property, there being other married Sisters, and Sister's children, who had been married previous to C.

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* In case of obtaining divorce her Dowry property to be given to her.

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No. 1,586. — 1826.

Ramalinger of Vanarponne... ... ...*Plaintiff.*

Vs.

Wissower... ... ... *Defendant.*

WRIGHT, Judge.

Held that the debt having been contracted during marriage, the acquired property was liable, and if that be insufficient, the Dowry lands of the deceased wife, which appear to be mortgaged, must next be held responsible.

Acquired property liable for debt.

Dowry after acquired property.

No. 3,926. — 1826.

Kaneger Naganaden... ... ...*Plaintiff.*

Vs.

Wittiwalen Sittembalem and others... ... ...*Defendants*

WRIGHT, Judge.

If the husband has wasted the Dowry property of his wife during her life time, is he bound to make good the deficiency to the heirs of his deceased wife.—Not decided.

Husband bound to make good dowry.

No. 4,079. — 1826.

Jaccohal, wife of Anthonipulle... ... ...*Plaintiff.*

Vs.

Moottocarpen Chitnar... ... ...*Defendant.*

WRIGHT, Judge.

It appearing that the first Dowry Ola of Plaintiff, under date the 8th April, 1822, is written on an insufficient Stamp and that her second Dowry Ola is executed subsequent to the date of the debt due by her father to the defendant. It is decreed, that the Plaintiff's claim to the half of the land situated in this Town, occupied by the Plaintiff and her mother, be set aside, and that the same be liable to be sold in satisfaction of the Defendant's debt. Plaintiff to pay costs of suit.

Dowry property liable for debt if Deed subsequent.

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1825.

No. 4,109.

Tellinader Wisearetnam of Oromberay, by his Father Visearetna Modr. Tillenader......*Plaintiff.*

Vs.

Aronasalem Cadiritamby and wife Walliame...*Defendants*.

WRIGHT, Judge.

According to the Country law in this Case, and with reference to the Dowry deed filed in it, under date the 9th of April, 1825, which does not specify the particular articles of moveable property, which it is destined to transfer to the Plaintiff's wife, it appears to the Court unnecessary to go further into the Case than to appoint three Commissioners, as was done in the Case No. 4,106, this day, heard between the same parties, for the purpose of valuing as much gold and silver, brass and other property of the Defendant, as would have realized the amount stated in the above mentioned deed of Dowry at the period of its Execution—and it is ordered accordingly.

16th May, 1826.

20th May

The Commissioners file their Report.

It is ordered that the Commissioners be called upon to explain why they have not valued so much of the Defendant's property as would have realized the Plaintiff's claim, according to the order of the 10th March.

13th June.

Father entitled to retain all the property of his wife during child's minority.

The Commisioner's report the Defendant has no more of the Dowry property of Plaintiff's late wife. It is therefore decreed, that the gold and silver joys and other articles, mentioned in the Report of the Commissioners under date the 16th May, 1826, and valued at Rds. 99 3 1 be delivered up to Plaintiff, to be held by him for the benefit of his son, the first Plaintiff during his minority as the Dowry property of first Plaintiff's late mother, and that the ear ornaments called Chalada Coppoo and valued at Rds. 90, be restored to the second Plaintiff likewise, the same having been made for the use and worn by his late wife, and being devolvable wholly upon first Plaintiff as her son—and also, that the Defendant pay unto the second Plaintiff the sum of Rds 40 8 3, being the balance due upon the value of the joys, and brass articles, as stated in

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the Dowry deed when compared with the value assigned to them, or such of them as were produced to the Commissioners for valuation, and lastly, that the Defendant do pay the costs of suit.

1st Sept. 1826.

No. 4,381.

Mariemootto's wife Sidambrewalle... ... ... *Plaintiff.*

Vs.

Plaintiff's husband Coomarawalen Mariemootto ...*Defendants.*

WRIGHT, Judge.

Dowry after marriage.

It is decreed that the Plaintiff and Defendant be lawful man and wife. That the Plaintiff do cause to be executed in her favor, the Dowry formerly promised by her parents at the time of her marriage with Defendant, the Vouchers for which he still holds—and that the Defendant do pay the costs of this suit.

1827.

No. 4,520.

Moorger Veeregetty of Manipay... ... ... *Plaintiff.*

Vs.

Anendam widow of Aronasalem and Son... ...*Defendants.*

BROWNRIGG, Judge.

The Court does not consider it necessary to call upon the witnesses for the defence.

In the present case the Plaintiff claims certain Lands in right of dower to his late wife, and to substantiate such claim produces several witnesses to the Dowry Agreement, and others to the possession of the land in question, in right of dower.

With respect to the first point, the Court observes that none of the witnesses to the alleged Dowry Ola, although one, the writer of it, has been an assistant Notary, and consequently, is well accustomed to draw up documents of the kind, can speak distinctly to the contents of the Ola, or even say on what value of stamp it was written, have been called.

The only witness who speaks to the contents of the agreement, is the eighth, who states that it was an agreement to make out a regular Dowry Ola on a proper stamp at a fu-

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ture period, and therefore if such an Agreement ever existed, it must have been a manifest evasion of the Stamp Laws, and consequently an illegal document.

The witnesses to the possession almost all speak to the joint possession of the lands by the husband of the first Defendant, as well as by the Plaintiff, and which the Court considers to be true.

It is therefore the opinion of the Court, that the Plaintiff's claim to the lands, claimed as Dowry property of his late wife, must be set aside; with respect to the other property claimed in the Libel, nothing has been proved excepting as regards the Otty bond of land Coeneywiel, the Otty deed of which appears to have been drawn up in favor of Plaintiff's late wife, and must therefore be considered as acquired property during marriage, and as such the Plaintiff is entitled to the possession of it while he lives single.

If Otty deed in favor of wife, their acquired property.

It is therefore ordered that Defendant do deliver up possession to Plaintiff of that land, or pay him the value, Rds. 50. The remainder of Plaintiff's Libel to be dismissed with costs, leaving the Defendant at liberty to proceed against him, in order to secure the property of his late wife to the child, in case of his having, as stated by them, contracted "fresh marriage" which must however be the subject of a fresh suit.

26th April, 1827.

No. 319—1,580.

S. M., Point Pedro.

Vinayger Walen and Wenayeger Modely, of Ellale...*Plaintiffs.*

Vs.

Waliar Welen and Patteney Wally of Tumpale...*Defendants.*

Toussaint, Judge.

The objection of possession complained of by Plaintiffs, has not been proved at all, and the proofs adduced by Plaintiffs about the possession of second Defendant's mother, Patinear's share, by themselves and their deceased brother, Murgen, is a very doubtful one, and not to be relied on at all. That as this Patinear is called in the Otty deed in question, as the daughter of Walliar, and not as the wife or widow of any person, and her son the first subscribing witness,

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appearing in the said deeds, is likewise called by the name of her mother, as Patinear Walli, the Court has reason to believe that Patinear, the second Plaintiff's mother, was not a regular married woman, and as such that she could not have obtained any Dower whatever, nor the land in question to be given in Otty to the Plaintiff's deceased Brother, Murgen, but that she was only entitled to a share by right of inheritance from her parents' estate ; and even that, the Court finds, that she could not have obtained, as she died prior to her mother, and the mother only died in last year. Although the Otty deed aforesaid, bears date 1819, still the writing of the same appears to be so new, that the Court greatly doubts the truth of the same.

Dowry not given to a woman who does not contract a regular marriage.

Considering therefore the foregoing doubts, and the testimony of the witnesses produced by the defendants, it is decreed that the Otty Deed filed by the Plaintiff's, dated the 5th July, 1819, be cancelled, and set aside, and the Plaintiff's claim be dismissed with costs.

Judgment affirmed by the Minor Court of Appeal.

24th May, 1828.

No. 5,242.

29th Novr. 1827.

Modelinatchy, widow of Sokkander... ... ... *Plaintiff.*

Vs.

Morgen Sidemberepulle and others... ... *Defendants.*

Brownrigg, Judge.

Plaintiff obtained judgment for 500 Rds., and interest from 1822, against Wissowaner Walayder and his late wife. Defendants have no claim on the Estate and Walayder by judgment of this Court. There is an amount in deposit, being the proceeds of sale of Welayder and his wife's property, and Plaintiff sues that her claim be satisfied first, in preference to defendants'.

By the former decrees of this Court, in the cases 4,356, 4,586, and 4,494, it appears to me that the claim of the Plaintiff in the case 4,586 (now second defendant) is first to be satisfied from the acquired property, and if that be insufficient, from the dowry property of the defendant in that suit,

Debts to be first paid from acquired property.

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the first of whom is also defendant in Case 4,494; that the acquired property to be applied in discharge of the whole claim of the plaintiff in 4,586, in property of the claim of the plaintiff in 4,494, and present suit, whose bond being dated in 9th August, 1822, is later than that in 4,586, which is dated in January of that year; after settling the claim of the plaintiff in 4,586, the half of the remaining proceeds of acquired property, which would belong to the defendant in 4,494, is liable to answer the demand of the plaintiff in that amount, in the present suit; but, as according to the decree in favour of the plaintiff in 4,365, they are entitled to certain Lands as Dowry as well as money, and to half the acquisition, according to Thesawaleme.—See 27 Clause, all diminution of Dowry property is to be made good from the acquisition. the Court considers the plaintiffs in 4,356 have a prior claim on the present plaintiff to any surplus remaining for the satisfying the decree in 4,586. It is therefore decreed, first, that the proceeds of the acquired property of Wissowaner Welayder, and his late wife, shall first be applied to the discharge of the amount decreed in favor of the plaintiff in the suit 4,586, according to the decree of this Court in that suit; second, that the proceeds of the said acquired property must, under the provision of the Thesawaleme, be next applied to make good the Dowry property decreed by this Court, in favor of the heirs of the said Welayder's deceased wife, who are the plaintiffs in 4,365.

Dowry made good.

3.—That should there be any residue of the said proceeds of acquired property, it be divided into two equal shares, one of which is (under the decree in 4,365) to go to the heirs in that case, and the other as liable to the claims of the plaintiff in 4,494, and present suit.

Plaintiff's Libel dismissed with costs.

Judgment of the High Court in Appeal.

The object of the present suit is to obtain satisfaction of the judgment, which the plaintiff obtained against Wissowaner Walayder in No. 4,494, notwithstanding the Judgment obtained against the same person in 4,586, by

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Ramalingam Tamoderam the second Defendant, now before the Court. And the Judgment now to be pronounced, must depend on the joint effect of those two decrees, together with that given in No. 4,365, all which three decrees never having been appealed against, must now be considered as binding, and must be carried into effect as strictly as possible. The decree in No. 4,365 declares and specifies what part of the property possessed by Welayden, and his deceased wife, is to be considered as the Dowry property of the said wife, and what part shall be considered their acquired property, which latter is to be equally divided between Welayden and the heirs of his late wife. It seems only to be material for the present question to observe, that the two pieces of land Mulinekattie and Mulukalaty, (of 50 Lachams), mortgaged to the Plaintiff, in No. 4,586, by Welayden by the Deed of Eleventh January, one thousand eight hundred and twenty-two, in which Judgment was obtained by Plaintiff, in 4,586, were decreed to be dowry property, and that the two pieces of land, viz. the other Mulakality and Ittiady, mortgaged to the Plaintiff in 4,494, who is also the Plaintiff now before the Conrt, by Welayden by the Deed of ninth August, one thousand eight hundred and twenty-two, on which also she obtained Judgment in No. 4,494, were decreed to be acquired property. The joint effect of the decrees in Nos. 4,586 and 4,494, is this.—In 4,586 the debt was incurred by Welayden in the lifetime of his wife, the acquired property is therefore adjudged liable for it, and if that should be insufficient the dowry property also becomes liable. But in No. 4,494, since the bond was granted by Welayden for a debt of his father's, whose Estate Welayden held, Welayden alone is held liable, and no part of his wife's Estate. But there is nothing in either of these decrees, which decides that the whole of the acquired property is to be applied in liquidation of the Judgment in No. 4,586, before that of 4,494 can be taken into consideration, nor does the priority of the bond in 4,586, in point of date, entitle it to this exclusive preference. In each bond certain property is especially mortgaged, which consequently is in the first instance

Acquired property first liable for husband's debt.

Then Dowry property if specially mortgaged.

If wife does not join in debt her property not liable.

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liable to satisfy the particular debt, which it was intended respectively to secure. There is nothing in the Malabar law as it prevails in the district of Jaffna, to prevent a husband from mortgaging the acquired property, whether with or without the consent of his wife. If so, the mortgage must be considered as having a paramount claim over all others, or else such mortgage is a mere fraud. The decree, however, in case No. 4,494, by which this Court must now consider itself bound, has declared, that the lands mentioned on the mortgaged bond filed in this case, being the acquired property of Welayden and his late wife, are to be divided equally between the Defendant and the heirs of his late wife's Estate. The Defendant's half being only liable for the debt in this case, that half therefore, must be considered as primarily liable to satisfy the claim in No. 4,494. The passage which has been cited in the decree of the Court below, from the Thesawaleme, only declares that the Dowry if diminished, must be made good from the acquired property if it be sufficient, if not, he or she who suffers the loss must put up with it patiently.* Here again the principle on which a special mortgage must be considered as having the first claim, must prevail, and the qualifying term in the Thesawaleme, if it be sufficient must be understood with reference to claims of a prior and higher nature, which must first be satisfied, and then, if there be sufficient, the dowry property shall be made good. It is therefore, decreed, that of the lands Mulukalaty and Ittiady declared to be the acquired property of Welayden and his wife, and mortgaged to the present Plaintiff, the half which, by decree in No. 4,494, was awarded to Welayden, and was decided to be alone liable for the debt in that case, shall first be applied in satisfaction of that judgment. That if any remain of that half, after satisfying the judgment in No. 4,494, it shall go towards satisfaction of the Judgment in No. 4,586, that the rest of the acquired property as well as the Dowry lands specially mortgaged to the Plaintiff in 4,586, be applied in the first instance in satisfaction of the Judgment in that case, as is therein decreed.

Husband's right to mortgage acquired property.

Diminution of Dowry when made good.

* See Domat, 1. Vol. p. 167, 168.

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And lastly if any of the acquired property should remain after satisfying the Judgment in 4,586, it shall go to make up the deficiency, if any there be, in the Dowry property decreed to the heirs of the deceased wife of Welayder, in 4,365.

Given at Colombo, the Eighth day of December, in the year of our Lord, one thousand eight hundred and twenty-eight.

No. 4,690. 1827.

Canden Sandrewen of Neerwalie ... ... *Plaintiff.*

Vs.

Kannie, widow of Cadiren, and others ... *Defendants.*

BROWNRIGG, Judge.

A. marries B. and gets in dowry with B. property in otty, on condition that he should pay the otty.—A. and B. mortgage certain lands being A.'s property to pay off the otty debt. B. dies without issue. Held that the heirs of the deceased wife were bound to refund to A., the husband, the money paid by him to redeem the otty.

Wife's heirs bound to pay back husband's money.

No. 5,077. 1829

Innasy, widow of Sawerimutto ... ... *Plaintiff.*

Vs.

Pagotewa Modr., Agettar, and brother Gregory ... *Defts.*

BROWNRIGG, Judge.

A. and B., husband and wife, ottied certain dowry property belonging to B., which B. redeemed after the death of her husband by selling another of her Dowry properties. Held, A.'s brother was bound to make good the amount paid for redeeming the Otty.

Husband's heirs to make good wife's Dowry.

Award of the Arbitrators.

The acquired land, one, two, three, of these three parcels, are given to Plaintiff, so much land as is worth 135 Rds., to make good the loss sustained in her Dowry property, the remainder lands should be divided between Plaintiff and Defendants —each half.

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That the land four, now sold in Otty by a certain Canden, and wife, to a certain Anthony, for 55 Rds., which was afterwards purchased from the said Anthony by Sawerimutto (Plaintiff's late husband) with his modisum money, consequently the said money should belong to defendants.—Each party to pay their own costs.

1st July, 1829.

No. 5,782.

Waler Canden ... ... *Plaintiff.*

Vs.

Plaintiff's Sister Vallia, and others ... ... *Defendants.*

Brownrigg, Judge.

The Dowry Deed filed by defendants in this case, being explained to the Plaintiff, he admits the execution of the same, and that the person in whose favor the said Dowry Deed is granted, was the sister of the first defendant. The Court therefore, considers it unnecessary to hear witnesses, as the plaintiff, under the provisions of the Country Law, or Thesawaleme, Clause 5th of the 1 Section, can have no claim on the Dowry property of his sister, which devolves on the other sisters.

Brother no claim to Dowry

The Plaintiff's claim is dismissed with costs.

11th June, 1830.

No. 6,004.

Anthony Canden ... ... *Plaintiff.*

Vs.

Caderen Ayen, and two others .. .. *Defendants.*

Price, Judge.

It is the opinion of the Court, that the Land Alady, stated to have been bought by second defendant for Rds. 300, has, in part, been paid for out of acquired property after marriage, and should therefore, be sold, and after paying second defendant the sum of 61 Rds., (for which it appears part of her Dowry property had been sold) and the amount paid in part purchase of this land, *half* of the residue should go in payment of Plaintiff's debt.

Compensation for Dowry sold.

Plaintiff's claim against third defendant is dismissed, her

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costs to be borne by plaintiff, the other costs by first and second defendants.

No. 6,656.

1831.

Cannatte, wife of Weeren, and another ... ... *Plaintiffs.*

Vs.

Argnen Cadiren, and others ... ... *Defendants.*

Price, Judge.

Dowried daughter no right to mother's property.

A. obtains Dowry, and claims, upon the death of her mother a portion of the moveable and immoveable property left by her. Held that her brothers were exclusively entitled to the property left by their mother, as she had obtained Dowry, and had no further claim.

No. 7,100

1831.

Sidemberem, widow of Soopen, and sister ... *Plaintiffs.*

Vs.

Sanmogam Canden ... ... *Defendant.*

Price, Judge.

Sister's daughter entitled to Dowry or compensation.

A. and B., husband and wife, die. Held that C., B.'s sister, was entitled to have the whole of her sister's Dowry property, which had been sold away during the lifetime of A. and B., made good, and that the rest of the property being acquired property, should be equally divided between A.'s and B.'s heirs.

No. 2,587.

18th Decr. 1831.

Wally Natchy, widow of Catper, and another ... *Plaintiffs.*

Vs.

Waler Alwar and wife ... ... *Defendants.*

Toussaint, Judge.

The defendant being inquired as to the reason the Marriage and Church Registry copies are filed, says to prove that the first plaintiff was married in 1788, and the Dowry Deed bears date 1796; and that her younger brother, the last Grantor in the Deed, was at the time not in competent age to grant the same. To this, the Court would reply, that it is found in other instances, that Dowry Deeds are executed

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Dowry before or after marriage.

before and after the marriage, as the Parents or Grantors, and the receivers at the time agreed to, and that the marriage does not take place on the day, month, and year, it is caused to be registered, but at such time as they best please, either some years before or after the said register, according to the heathen custom. Whether or not the last Grantor of the Deed, was in his proper age to grant the Deed, is of very little importance in this case, as there appears to have been in evidence a full admission of the other grantors, and supported by credible witnesses, which, and by the appearance of the Deed itself, and the more so by proof of possession, the Court must believe the half of the land, or the whole of first Plaintiff's mother's share, is in dower to the first Plaintiff, and the Court suspects the second Defendant's dowry deed and proof produced to support the same, as also the Defendant's possession of the land. It is decreed, that first Plaintiff be left in unmolested possession of half of the land Wateremplo, situated at Ploly, in right of Dower, and that Defendants do pay the Plaintiffs' costs of this suit.

19th January, 1832.

No. 2,576.

S. M. Point Pedro.

Nagy widow of Sinnewen ... ... *Plaintiff.*

Vs.

Amblewen Wally ... ...*Defendant.*

TOUSSAINT, Judge.

Subscribing witnesses.

It is a well-known matter, that the custom among the natives here, is to select as witnesses for their deeds, mainly persons of their own caste and relations; particularly to Dowry Deeds. But it is strange that the witnesses Plaintiff called, are all of a different caste, on whose evidence and the Dowry Deeds, the Court, according to the circumstance of the case, say that there is not sufficient reliance to be placed. By the title deeds, the purchase deeds, possession, and other circumstances, the Court must believe that the Plaintiff's parent's share is transferred to Defendant in full proprietory, and that the Plaintiff's claim

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of Otty, is false. It is decreed that Plaintiff's claim be dismissed, and that the Plaintiff do pay the costs of suit.

No. 7,395.

May 4th, 1832.

Omeawally, widow of Wairwanada Modr., and her sons. ... ...*Plaintiffs.*

Vs.

Wairawenada Modr., Retnesingam and others ...*Defendants.*

PRICE, Judge.

It is decreed that first Plaintiff was the lawful second wife of the late Wairwenade Modr. deceased, and as such, is entitled to her Dowry property (if any), together with all the acquisition during deceased's marriage with her, and half of the hereditary property of the deceased—this property with the exception of first Plaintiff's Dowry, is to be held by her as natural Guardian of second and third Plaintiffs, until her marriage for the second time. First Defendant to pay the costs to Government.

Property acquired during marriage, and hereditary property.

No. 7,275.

23rd January, 1832.

Wiregettiar Canawedy... .. ..*Plaintiff.*

Vs.

Canatte widow of Kaneger, her son Canewedy and another. ... ... *Defendants.*

PRICE, Judge.

The Court is of opinion that the Dowry Ola filed in this case, dated 21st November, 1804, is not a genuine one; it is therefore ordered, that it be cancelled. It is decreed that first and second Defendants do pay to Plaintiff the sum of Rds. 850, Otty money due on the Bond dated 27th November, 1828, as admitted by them. From the answer of the third Defendant, and evidence called by him, it would appear that the property he claims, was the Dowry property of his late sister Sinnepulle—Sinnepulle having died without issue, the property should go to her sister. Defendants to pay the costs.

Dowry goes to sisters.

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June 25th, 1832.

No. 6,327.

Wally, widow of Wayrawen, and another ... *Plaintiffs.*

Vs.

Nallewer Aromogatan, and another ... *Defendants.*

PRICE, Judge.

Heirs to pay debts.

A., B., and C., three sisters, all Married, and all Dowried, B. dies leaving a daughter and a grand-daughter, C. dies leaving a son, who dies at the age of fourteen. Held that A. was entitled to half C.'s son's estate, B.'s daughter and grand-daughter each to one-fourth, and that they should pay each their proportion of the expenses incurred, for the support of C.'s son, up to his death.

11th April, 1833.

No. 7,927.

Santiago Diogo, and brother Sawerimuttoo ... *Plaintiffs.*

Vs.

Innasecootty, widow of Manuel Louis ... *Defendants.*

PRICE, Judge.

Purchase made during marriage acquired property.

The Court is of opinion that the lands in question are the acquired property of defendant and her late husband. The plea of defendant having purchased these lands with the money she received in Dower, cannot be attended to, as the Dowry Deed is dated in 1795, and the purchase Deeds are dated in 1814 and 1826.

It is therefore decreed, that plaintiffs, as heirs of the defendant's late husband, are entitled to one-half of the acquired property of defendant and her late husband,—(the lands in question being considered as part of the said acquired property,)—also to their share of the moveable property, after deducting one chest, one box, one brass water-pot, one brass bason, and one standing lamp, which appear to form part of defendant's Dowry property. Defendant to pay costs.

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No. 6,117.

8th May, 1832.

Cander Amblem ... ... *Plaintiff.*

Vs.

Walliamme, widow of Cander Waritamby ... *Defendants.*

PRICE, Judge.

Defendant has failed to prove that the lands were purchased by the sale of her Dowry property and joys, and there is no proof to shew that Theywane was regularly adopted by her and her late husband, with the knowledge of the nearest relations on both sides.

Adoption.

It is therefore decreed, that plaintiff is entitled to half of the acquired property, moveable and immoveable, as appears mentioned in the list given in by the Commissioners, dated April, 1827, as brother and only heir to defendant's late husband Waritamby, was also to half of the Otty amount due on the land Pattymooder. Defendant to pay the costs. Plaintiff is at liberty to bring another suit for any property omitted in the List.

No. 7,453.

29th July, 1833.

Cadrasy, daughter of Candappa, wife of Tamoderen *Plaintiff.*

Vs.

1 Perameynar Naganaden Maniagar, of Delft Island, and others ... ... *Defendants.*

PRICE, Judge.

The Dowry Deed filed in this case, and dated 22nd January, 1811, not being on Stamp, the same is ordered to be cancelled.

With regard to the evidence touching the other documents filed, it appears that the lands have been purchased in the name of plaintiff by her parents. Plaintiff's mother being still alive, first plaintiff unmarried, the Court will not decide the lands to be the property, but conceives them to form part of the Estate of her parents.

Property in the name of minors.

Defendants have failed to prove the property in question to belong to Tanocody Tamoderen, as stated by their Witnesses, their claim is therefore dismissed with costs.

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5th April, 1834.

No. 7,519.

Wissowa Coolootonga Mestry, and wife Teywane...*Plaintiffs.*

Vs.

Soopremanier Sidemberen, and others .. ... *Defendants.*

PRICE, Judge.

The Assessors are asked their opinion on the following :—

Q.—Whether they consider that any Dowry property was given to first Defendant's late mother?

Donation and Dowry.

A.—It is not usual to marry out daughters without giving them property in dower; from the evidence, we believe that Jewels and money were given to the first Defendant's late mother—but not in nature of Dower, but Donation, and we consider such donation will not prejudice first Defendant's late mother's claim upon the Estate of her parents.

Plaintiffs admit in their libel, that first Defendant is entitled to a share in the land, and the point for consideration is, what share that is to be.

I am not altogether satisfied with the evidence of Nagattey's possession; it appears she held the land jointly with her mother Cottiar, and that the produce was taken in common, but what share fell to Nagattey does not appear.

I am of opinion, that under the circumstances of there being a doubt whether property was given in Dower to first Defendant's late mother, and whether Nagattey held any, and what, share in right of dower, that the fairest and most equitable decision would be to consider that no dower was granted to the first Defendant's late mother, and that the evidence to prove Nagattey's possession in right of dower, is insufficient, and then divide the property between the Heirs of Cottiar.

It appears that Cottiar was married twice, and that Nagattey was her only child by the first marriage; by the second marriage it appears she had three children—one daughter and two sons. The daughter named Tangam, late mother of the first Defendant—the sons Cadresen and Moorgen are dead; the latter died without issue, the former died leaving issue second Plaintiff.

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I am therefore of opinion, that the nine Lachams of the land Nodonkeny, entered in the Thombo in the name of Cottiar, should be divided as follows: four-half Ls. to the fourth Defendant, as heir, to Nagatte, (Cottiar's daughter by the first marriage), and the remaining four half Ls. to be equally divided between first Defendant (as heir of his late mother Tangam, daughter of Cottiar by second marriage) and Plaintiff as the daughter of Cottiar's son Cadresen, and that the parties do pay their own costs.

Ordered accordingly.

No. 504.

1819.

Sadopulle, wife of Tamoderan... ... ... *Plaintiff.*

Vs.

Sanecody Tamoderen and others... ... ...*Defendants.*

Scott, Judge.

It is decreed that Plaintiff be immediately put in possession of all the property moveable and immoveable mentioned in her Dowry Ola dated 1st August, 1803, and hereunto annexed, that may now be forthcoming, in order that she may possess, and continue in the full enjoyment of the same; that the Plaintiff is to all intents and purposes, the lawful wife of first Defendant, and that her children born during the time they lived together as man and wife, that is, from 1802 to 1806, are the legitimate children of the first Defendant, begotten of his wife, the Plaintiff, as it appears in evidence, that both the said Plaintiff and first Defendant have lived and continue to live in open fornication, the Court declines giving any Order requiring a reconciliation, or for the said parties to live together as man and wife, as such, their conduct, precludes it. Each party to bear his or her own costs.

Adultery.

It is distinctly to be understood that this decree in no way affects the rights and interests of any person or persons holding the lands, or any part thereof, in right of Otty from Plaintiff, or by any other title granted by Plaintiff.

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15th October, 1834.

No. 2,089.

District Court, Islands.

Judgment of the Supreme Court.

Dowry property not liable for husband's debts

According to the law of the Malabar Districts, dowry property is not liable for the husband's debts. The question arose on a prisoner for debt applying to the District Court of Jaffna, to be discharged under the Insolvent Regulations. The District Court decreed his discharge, and the creditors having appealed, the case came before the Chief Justice on Circuit; one of the objections to the prisoner's discharge being, that he had not inserted all his property in his Schedule. The Chief Justice felt compelled to dissent from the opinion of the District Court, considering that one-half of the proceeds of the dowry property, to which it was admitted the husband was entitled, ought, in justice, to be answerable for his debts, and to be inserted therefore, as yearly income, in the statement of his property; but reserved the question for fuller consideration, at Colombo. Having accordingly referred it to the Assessors there, who appeared to be well-versed in the customary law relating to dowry, and having enquired into the practice in the latter district, with reference to insolvents similarly situated, the Chief Justice found that the decision of the District Court of Jaffna was fully warranted by long established usage, and that the Dowry property, and the rents and profits arising from such property, had constantly been excluded from the statements given in by insolvents. Without entering, therefore, into any discussion of the justice or equity of such exclusion, the Supreme Court was bound to affirm the decree of the District Court, as being supported by law, in the shape of constant and invariable Custom.*

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* From Sir C. Marshall's Judgments, the original case not being forthcoming.

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No. 2,467.

15th November, 1836.

Waligammo.

Wissower Cadrasen and wife Sidamberam of Batticotta West ... ...*Plaintiffs.*

Vs.

Coongipulle, daughter of Cadrasen and others of same place ... ... *Defendants.*

BURLEIGH, Judge.

Disobedience to parents.

The first Defendant has lately contracted a marriage with the second defendant, against the wish of her parents, and according to the Thesawaleme, she cannot expect to procure any property from her parents, if she disobeys them. I am therefore of opinion, that the sale in favor of the first defendant should be annulled. The Assessors and the District Judge consider that the first witness is almost correct as to the age of the first defendant.

The Assessors agree in opinion.

It is decreed, that the sale of the Land in question purchased in favor of the first defendant, be set aside. Defendants to pay costs.

Evidence of the first witness (the Notary.)

I recollect that a Purchase Deed was executed in favor of first defendant in 1829, before me ; the Land was purchased from Sarrawannepermal Naranen and wife Pattane. I believe that the first defendant's father paid the money. First defendant was then, I think, about 15 years old. I think she is now about 20 or 22 years old. As the first defendant was a minor, I presume that the father paid the money.

Judgment *reversed* in Appeal, 22nd April, 1837.

No. 493.

22nd June, 1835.

Waddemoratchy.

Ramanaden Sinnatamby and wife, of Ploly ... *Plaintiffs.*

Vs.

Mottocomaro Werappen and others ... ... *Defendants.*

TOUSSAINT, Judge.

It does not appear at all proved that the second Plaintiff's mother, or the second defendant in this case, got the share

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Caste subscribing witnesses.

in dower. It is not the custom among the natives that persons of different caste will be employed to subscribe as witness to their Dowry Deed—but in this case, that the second witness was admitted, is a surprise. It is decreed, that the claim be dismissed, and that the Plaintiff do pay the costs of suit.

1835.

No. 1,035.

Waddemoratchy.

Cander Colendear and wife, of Araly ... ... *Plaintiffs.*

Vs.

Caderen Wayrewen and seven others ... ... *Defendants.*

Burleigh, Judge.

I fully believe that the last witness for the plaintiffs has spoken nothing but the truth, he is an old and respectable Headman. I place no confidence in the evidence of the second witness, who was husband to the late Vallie. I am of opinion that he has combined with the Plaintiffs, to trick the second and eighth defendants out of their Lands. I am very sure that he would have given very different evidence had Vallie left issue by him. First plaintiff says, that he was not regularly (legally, he means) married to her, his meaning in saying so, is to try and make the Court believe that she had no legal claim on the land, as she was not legally married; he goes on to state that his marriage was not registered, now this was not required until 1822, according to Regulation of Government, the Ceremony, which he admits to have been performed, was quite sufficient, according to the custom then existing, to make it a legal one. Young men marry here solely to obtain a dower, and it is therefore absurd to suppose that the husbands of Vallie and Ramasy would have married them without dowers. The country Customs say that if the parents would give all their property away in dower, and they have nothing left to support themselves, the daughters must support them. The general Custom is for parents to reside with one of their daughters, when the others (if there be any) jointly contribute to their support; the fact of Ramasy having maintained the Plain-

Registry.

Marriage Ceremony.

Dowried daughter's and Parents in poverty.

tiffs convinces me they gave her some of the Lands in dower; she possessed a larger dower than Wallie, this most probably, was the cause of Plaintiffs residing with her and her supporting them. The last point in this case, and which the Plaintiffs appear to consider, although I must confess I do not, the most material one in their favor, is that no dowry deeds in favor of Wallie and Ramasy, are produced.—One of the Assessors has remarked that perhaps they were not executed on a proper Stamp, and therefore the Defendants were afraid to produce them; my opinion is that they never received any, but trusted their parents, believing they would not act so cruelly as to take that from them on their marriage day. It as a frequent occurrence in this district for daughters to receive dowers without deeds, one of the Assessors, who is a very intelligent person, has mentioned that some of his relations have held lands in dower for several years without deeds, and that whenever their parents become displeased with them, they threatened to take their lands from them. If they had the power to do so, the result, would be, most probably, that their husbands would at once abandon them and turn them out of their houses. I consider that such gifts to all married people should be considered most binding. If their happiness and welfare be thought of, the Country Customs (at hand, as I understand them) consider it advisable and perhaps necessary that dowry deeds should accompany dowries, but merely for the safety of the daughters. My decided opinion is, that it would be a gross act of cruelty (I may almost say fraud) if parents were permitted to recover dowries given in this manner, after they have been possessed by the daughters for many years; young women naturally trust their parents, and do not consider that they could act so inhumanly as to take their all from them. I have considered this case well, and am of opinion that the claim should be dismissed; recommending the Plaintiffs to Appeal, as they appear to consider that Vallie and Ramasy had no claim to the lands, because they did not obtain dowry deeds.

Dowry deeds.

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The Assessors agree in this opinion, and they state they have only one doubt with regard to this case, which is whether by the Country Custom it is positively required or not that dowry deeds should be obtained; however they agree in opinion with the District Judge.

It is decreed that the claim of the Plaintiffs be dismissed with costs, and they are recommended to appeal.

I have omitted to mention that according to the Custom of the Country the lands devolve to the second and eighth Defendants.

Appeal Petition of the Plaintiffs and Appellants.

Respectfully sheweth;

That in the District Court of Valligamo, in the Case No. 1,035, the Appellants as Plaintiffs instituted this suit, and in which case the said Court was pleased, contrary to the *Thesewalame* or Country Law, and justice, passed a decree to the prejudice of the Appellants on the 18th day of February instant; the Appellant being aggrieved with the said decree, appealed against the same, for the following reasons with respect to the nature of the case.

1st. That the children of the Appellants are six in number, viz., four daughters and two sons, two of the eldest daughters, the second and eighth Defendants, were lawfully married out by the Appellants on granting to them a regular Olah under the signatures of the Appellants, by specifying in the said Dowry Olah such property the Appellants agreed to give them.

The Appellants observing, that should they in like manner grant the remaining property in Dowry to the other two young daughters, they with their two sons will have no other property for their future support, the Appellants with an intention conformable to the prevailing usage of this Country, that their two young daughters and two sons might divide the remaining property, after the demise of the Appellants, equally into children's share—the Appellants without granting to their two young daughters regular Dowry Olahs married them out, and they living together with the Appellants and

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without the least distinction, possessed the lands in contest generally among themselves.

To ascertain for the observation of this Hon'ble Court that the lands in contest are the actual property of the Appellants, will appear in the Estimate list of the Headman, delivered by them to Government, that these lands are hitherto, registered in the names of the Appellants, and the tithes of the Crops are collected by Government in the names of the Appellants, and obtain the regular receipt for the payment of the tithes in their, the Appellants' names. If these Lands had been given away in Dowry by the Appellants to any of their daughters, the Donee will not allow the Crop of such lands to be estimated by the headman in the name of the Dowry grantor, but will have it estimated in their own names agreeable to their respective Dowry Olahs, and is done so among the Dowry receivers in the Country up to this very day. That during the time the Appellants with their two young daughters generally possessed the lands in dispute, these two young daughters of the Appellants died in 1832, without any issue, after which the Respondents contrary to the tenor of the Country Law, opposed the Appellants unlawfully in the possession of the whole of their landed property in dispute, in consequence of which, the Appellants instituted this claim. But the Respondents in their defence, pleaded that the property in dispute was granted in Dowry under a regular Dowry Olah, to their sisters the two deceaseds, and that these lands were their actual property and that the deceaseds during their lifetime lived and possessed the said lands in dispute separately, and that conformable to the *Thesawalame law*, the lands ought to devolve to them, and for which purpose they suborned several persons as witnesses, and cited them to prove this fact in Court. But as the Respondents observed that the Judge of the said District Court found out that no Dowry Olah was granted to the deceaseds, the Respondents artfully waved their said witnesses from being examined.

The Appellants strongly proved to the Court that they did not grant any Dowry Olahs to their two deceased daughters,

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but that they with the Appellants jointly and severally possessed the lands in dispute, and that the deceaseds did not possess the lands separately, and that the lands were not registered in the Estimate List by the Headman in the names of the two deceased daughters of the Appellants, and that these lands do not devolve to the Respondents, nor are they entitled to the same agreeable to the *Thesawaleme* or Country Law.

The case being thus, the said District Court in this case observed that although no Dowry Olah was granted to the deceaseds, but that the deceaseds without such a document did possess the lands in dispute, and that there was a verbal promise made by the Appellants to their said two deceased daughters, that they would give no Dowry to them, the lands in dispute, and on these grounds and tenor of the Regulation of Government No. 13 of 1822, with respect of possession, dismissed the Appellant's claim, and in the mean time the Judge observing that this decision is against the Country Law, and doubting whether such possession without any legal document could be considered lawful, recommended the Appellants strongly to appeal.

2nd. This Regulation of Government No. 13 of 1822 enacts,—Title, the cause under which possession is held, the right or claim a Demcnination of inheritance and property possessed under lawful documents—such possession are considered in force after ten years. But the regulation does not mean the possession of such, of such children that possesses property by the help of their Parents, jointly any documents as a lawful possession of such children; and if there was no future claim in these lands, and was an unmolested possession of the two deceased daughters of the appellant's, they would have not defaulted during their lifetime to Register these lands by the Headman in the Estimate list in their respective names. Notwithstanding one of the deceased, Appellant's daughter, died within 10 years after her marriage.

3rd. It is specified in this Country law and Custom, that a daughter who obtains her Dowry under a regular Dowry deed, happen to die without issue, her property devolves to her sisters, who have also received and possessed proper-

ty in dowry under a Dowry Ola, which rule and custom is hitherto prevailing in this country, for the purpose of preventing such evil as aforesaid from taking place.

And that, if a daughter that is married without a Dowry Ola, happens to die without issue, her property devolves back to her parents, and if no parents, devolves to the surviving brothers and sisters who have not obtained any property under any document from their parents, equally, but does not devolve to such sisters that have obtained their property under a regular Dowry Ola, which rule and custom hitherto, is prevailing in this Country.

This Honourable Court will be pleased, on a reference to the Stamp regulations, No. 2 of 1817, No. 7 of 1823, and No. 4 of 1827, to observe that all Dowry deeds, gifts, transfers, and settlements executed for immoveable property, are to be written on 5 per cent. paper or ola stamps, and such regular vouchers are to be considered by the Courts of Justice, legal, but if such documents are executed on less stamps, such vouchers are considered illegal, and are to be rejected by Courts of Justice. But in this case, the respondents brought no written evidence in their favor, at least on a blank Ola, agreeable to the Country law.

This Honourable Court may be pleased to consider, that no person can be entitled to any property unless there are regular Title Deeds in his favor, but a person by law cannot be entitled to any property under a verbal promise.

Should any Courts of Justice be allowed to pass a decree for immoveable property in favor of a person, without the notice of any regular document, it will not only be a great loss to the inhabitants of this Country, but they will be entirely deprived of their landed property without the least protection.

To prevent such evil from taking place in this Country, the Governors of the late Portuguese Government, and the present British Government, having taken into consideration the great benefit of this Country, and good to the convenience of the inhabitants, was pleased to establish that the laws contained in the *Thesawaleme* be carried into execu-

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tion; agreeably the law is hitherto followed by the inhabi- ants of this Country, and further, this Country law was affirmed by Government in 1806, Regulation No. 18, sections 6 and 7, as a law to this Country.

Should it please the Judges of any Courts of Justice, to set aside this beneficial law of the inhabitants, that has existed for a century of years, and pass judgment in cases of this nature, agreeably to their own opinion, the inhabitants certainly will in consequence, not only be unable to secure their landed property, but are left in the dark to find out their relief. Namely, that should a creditor, for the recovery of his debt, take out a Writ of Execution against the pro perty of his debt, on although the headmen do deliver a schedule for the property of their debtor for sale, when the childen of such debtor come forward and claim the lands as their property by right of Dowry gift, &c., and thereby object to the sale taking place, for the purpose of ruining the creditor of his debt. But, however, the Courts on examining such claim, and finding the claimants have no documents to produce in defence of their claim, such claimant's claims are dismissed, and the Creditor recovers his debt; but if the claimant will admit such claim legal without any document, then of course the debtor will not allow even one of his lands to be sold for his Creditor's debt. If the Thesawaleme should be set aside, of course the respondents have no claim to the appellant's property.

Therefore, the appellants most humbly and respectfully pray the three Judges of this Honourable Court, will be pleased, after kind a consideration of the above appellants' statements, to enforce the necessary regulations enacted by Government and the Thesawaleme law, to be carried into execution, for the benefit of the inhabitants of this place, with respect to their landed property; and that on reference to the proceedings taken by the said District Court in this case, reverse the decree of the said Court, and pass a judgment in favor of the appellants, by confirming them in the possession of their actual and sole landed property, and respondent to pay the costs of suit.

28th February, 1835.

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Judgment affirmed in Appeal by the Supreme Court, on the 10th June 1835, at Colombo.

No. 2,561.

District Court, Jaffna.

22nd October, 1836.

Wanketta Amma, wife of Ramapatter, of Vanarponne... ... ... *Plaintiff.*

Vs.

Her husband, Namperomal Ramapatter and others... ... ... *Defendants.*

Price, Judge.

Dowry money.

Plaintiff has entirely failed to prove that the land in question was purchased with money raised by the sale of her joys, as stated in the Libel. The Court and Assessor consider the land in question must be considered the acquired property of Plaintiff and first Defendant, and as such is liable for the debt due by the first Defendant to the second.

It is therefore decreed, that the land for which Plaintiff has filed a bill of sale, be sold in satisfaction of the debt due by the first Defendant to the second, and that Plaintiff do pay all costs.

No. 2,727.

9th August, 1837.

District Court, Wanny.

Mapana Modliar Naranapulle ... ... *Plaintiff.*

Vs.

Sinnetamby Ponambalem Cadergamer Sidemberepulle and wife Parpaddy, of Atchowaly... *Defendants.*

Burleigh, Judge.

Judgment.

Mother succeeds to daughter's dowry.

The two lachams in dispute, it has been clearly shewn, were the dowry property of Cadrasy, the sister to the first witness, and his deceased brother Sinnetamby; now, according to the Country Custom, this land must have devolved to the mother, immediately on her death, as she left no sisters, and the property having been given to her in dower, the

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sons could only claim it after the death of the mother; now this Otty Deed purports to have been granted solely by Sinnetamby, who most certainly had no right to grant the deed during the lifetime of his mother; moreover, it appears that in 1809, the mother and her two sons, exchanged one of Caderasy's dowry lands, why therefore, if this Otty Deed is a true one, was not the same plan pursued? and it is dated 1803; and this voucher has been shewn in Court, where the mother and sons are mentioned as the grantors. I am clearly of opinion that a decree should pass for the Defendants.

Assessors agree.

It is decreed that the claim of Plaintiff be dismissed with costs.

30th August, 1837.

No 1,991.

District Court, Tenmoratchy.

Sooper Paramen, guardian of his brothers... ... *Plaintiff.*

Vs.

Elayen Soorian, and others... ... ... *Defendants.*

SPELDEWINDE, Judge.

Possession of Dowry.

It has not been proved that the Plaintiff's late parents had never entered into the possession of the land in dispute, said to have been dowried to them by the first Defendant and his late wife, which, agreeably to the fourth paragraph of the commencement of the Thesawaleme, beginning with the words "And in case the new married couple, &c.," and ending "of this their delay in taking possession as aforesaid." A Pagan proverb appears included therein, which says in Tamil, *Ottium Chidanam Pattyil,* which signifies Dowry and powers must be immediately taken possession of, this not being done, the lands, slaves. &c., again become a part of the common estate, of course they must forfeit, their claim to the land in dispute.

Decreed that the Plaintiff's claim to recover the land as

N. B.—A Dowry deed is filed, dated 4th August 1811, which is executed with schedule of Odear.

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belonging to them in right of inheritance, from their late parents, be dismissed with costs.

No. 2,475.

5th March, 1838.

District Court, Islands.

Coomarawaler Moorger and wife of Walliamme Walentalle ... ... *Plaintiffs.*

Vs.

Sitteridawer and others ... ... *Defendants.*

MOOTIAH, Judge.

Parents' right to dower.

The two first Defendant's who are the owners of the 30 lachams of the land Mawatte, I believe to have an undoubted right, at all events to give it to the second Plaintiff, their daughter, whose right to it they now admit in their answer in this case now before the Court, without any prejudice to the interest of the third Defendant, as the two first Defendants have still more than sufficient property by which third Defendant can recover the £3 due to him under the Writ No. 2,281, as the property given to be managed by the two first Defendants on account of their age and infirmity, under condition of giving them the produce until their death is, in fact, their own property, and liable as such for their debts incurred prior to dividing it between their sons, or to be incurred afterwards.

Property donated liable for debts.

It is decreed that the lands Mawatte given in dower to second Plaintiff, by the Notarial dowry deed, dated 25th Novr. 1824, under condition of being held by her after the death of the two first Defendants, be exempted from being sold under the Writ No. 2,281 in favor of the third Defendant, as there is more than sufficient property still belonging to the two first Defendants by which he can recover his debt. Each party to bear their own costs: third Defendant's costs to be paid by Plaintiffs.

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8th May, 1838.

No. 2,665.

District Court, Wanny.

Peromaynar Wissowenaden, and wife, of Batticotta ... ... *Plaintiffs.*

Vs.

Sangrepulle Aronesalem, and others ... ... *Defendant.*

BURLEIGH, Judge.

Entering into possession of dowry property.

I am clearly of opinion on this evidence, that the claim of Plaintiffs should be dismissed, for it does not appear that they have any right to the land—had they any, they would have entered into possession on their marriage, according to universal custom in this District. The four witnesses for plaintiffs, state that second plaintiff's mother received the land Audachikallate, and that the younger Uncles divided the property : the first plaintiff states in his answers to questions put to him—that he did not possess any of his wife's property before her grand-father's death ; he says that he cultivated with him, and he took the produce; this I presume, he has stated to account for not having possessed the Land in question, after his marriage. Now this first witness states that after the marriage he cultivated two lands and took the produce of his *own house.*

I am of opinion that the plaintiff's claim should be dismissed with costs.

Dismissed with costs.

17th August, 1838.

No. 2,761.

Mootuvel Cadiren, of Vanarponne ... ...*Plaintiff.*

Vs.

Plaintiff's Sister Sandy, wife of Ayen, and others...*Defendants.*

ATHERTON, Judge.

Son succeeds to all mother's property.

I am of opinion that Mootuvel and Perial each possessed seven Lachams of the land in dispute ; that Perial dying childless, her share devolved by the Thesawaleme, on her only sister Mootuvel. That Mootuvel, her daughter, the first defendant, marrying, gave her seven Lachams in dower. That at her death the remaining seven Lachams devolved to her son the present plaintiff, as the axiom is plain that daughters

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who have received dowry can claim nothing more at the mother's death if there is a son surviving. Therefore, that a decree must go in favor of plaintiff for the seven Lachams in dispute. The present first defendant has filed no answer and taken no part in the case, which is solely defended by the third defendant, who therefore, in justice, ought to bear all costs. Assessors agree.

It is decreed that plaintiff be confirmed in the possession of seven Lachams of the land in dispute, and that the third defendant do pay the costs. *

No. 2,033.

4th April, 1839.

Sewagamy, daughter of Wayrewen ... ... *Plaintiff.*

Vs.

Wally, wife of Canden, and Cadiry, wife of Canden .... *Defendants.*

Toussaint, Judge.

Plaintiff claims one-third share, and excludes the defendants. Why they should be excluded while they received no dower, is a question ; the defendants say that the four females are only entitled each to one-fourth share, and exclude the brother. If it is in right of inheritance, why should the brother be excluded ? is another question. The plaintiff's Proctor is asked if he can call the Writ Book in which the dowry deed is said to have been filed, as stated, by the late Maniagar of Odoputty. The Proctor went and returned with an answer, saying, that he don't think the Writ Book or dowry deeds can be produced, so that in the absence of proof that defendant received dower, there is nothing to exclude them from a Child's portion of all the property devolved from their parents not even excluding the brother or any of the females. The Court is therefore of opinion, that while there is such doubts whether or not the defendants actually received dower, and the deeds they produced in evidence are some separately granted, and some jointly, by all the four females, that it will be safe to declare all the five children Heirs of their Parents' estate, and all entitled to share alike.

Sons & daughters succeed equally to parents' property.

* Third Defendant is the Creditor who pointed out the land to be sold in execution, as property of the first Defendant.

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The Assessors agree with the Court. It is decreed, that plaintiff's claim for one-third share of the land in question be dismissed, and that defendants pay costs of suit.

Affirmed in Appeal.

3rd May, 1832.

No. 2,897.

District Court, Islands.

Nagatte daughter of Sidemberepulle... ... ... *Plaintiff*

Vs.

Moorger Cadiren and wife Maria... ... ... *Defendants.*

Mootiah, Judge.

It is clear from the evidence that the land in question registered in the name of Ambelatal wife of Cornanden, was inherited at her death, without issue, by the Plaintiff's mother Sengamalem, her brother and four sisters, and that these persons have since given it in dower to Plaintiff, upon a dowry agreement dated 15th June, 1837, and that the Plaintiff's father had no right whatever to it according to the special law of this Country, called Thesawaleme, and according to this law the dowry or hereditary property of a wife cannot be held liable for the debt of her husband, unless she was a joint party with him in contracting such debts. The debt under which execution was out in this case, appears to have been solely incurred by Plaintiff's late father, this induces me to pass a decision in favor of the Plaintiff.

Wife's property not liable for husband's debt.

It is decreed that the land Mekosantanne be considered, as forming a part of the property given in dower to Plaintiff, upon an agreement dated 15th June, 1837, and that it be, as such, exempted from being sold under the Writ 824.

Defendants to pay costs.

5th July, 1839.

No. 2,676.

Philiper Gabriel and wife, and others... ... ... *Plaintiffs.*

Vs.

Paulopulle Parangie and others ... ... *Defendants.*

Burleigh, Judge.

It is probable that the Plaintiffs have held the lands in the manner they say, but in such cases it is difficult, and al-

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most impossible (with any certainty) to come at the truth, unless the parties have deeds which can be depended on; the one filed with the libel in the name of second Plaintiff, is unstamped. I, therefore, do not feel myself justified in noticing it. If I was convinced that it had been granted in 1822, I might do so; but I suspect it was fabricated for this case, no attempt has been made to prove it, which might easily have been done. I presume the mother appears to have admitted this just before the institution of this case, but it would appear from the libel, that the second, third, and fourth Defendants, by flattery, as they say, caused her to alter her mind, in another case she said that she gave land to the second Plaintiff; this was said by her in 1835.—*No dependance whatever can be placed on the word of the old women of this Country, when, in like situations they speak in favor of these children* who at the time feed and treat them with the utmost kindness. Whether right or wrong, there can be no doubt that she had full power to give her own dowry property to her daughters; and if she was alive, she would decide the matter, but she died before the answer was filed, and I now have only to decide whether the second Plaintiff (who is the only claimant in this case) received a dower or not, I am inclined to believe that she never received a dowry deed. Two months (or about that period) after she filed the Libel Dowry memorandum as it is called, she, or I presume her husband, for her, filed a dowry deed in the name of Isabel (it appears to have been filed by proctor for Plaintiffs), I did not notice this deed until last night, when I was looking over the case, and I am convinced that it is a forged instrument. I was particular in asking the third Plaintiff when her sister Isabel married, and she says thirty years past, that is, in 1809, the deed is dated March 7th, 1809, *but the Stamp is dated* 1815—*six years after the date of the Bond.* I suppose they purchased an old Stamp (there are plenty in the country for such purposes) lately, and wrote the contents without shewing it to a person who understands English, supposing it was dated 1806, when first the Stamps

Widow's right to give her own property.

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came in. I am of opinion that the claim should be dismissed; had no deeds been filed, I, perhaps, would have formed a different opinion.

The Assessors are of the same opinion.

It is decreed that the claim of the Plaintiff be dismissed with costs.

20th Sept. 1839.

No 3,017.

District Court, Islands.

Cadry daughter of Wissowen ... ... *Defendant.*

Vs.

Punnen Wissowen, and wife Wallee... ... ... *Plaintiffs.*

MOOTIAH, Judge.

Parents to support daugher, give dowry, and marry her out.

It is clear that Plaintiff is the legitimate daughter of the Defendants, and they are, as such, therefore bound to maintain her with food and raiment, and give her a reasonable share of their property in dower, and marry her out; and the first Defendant, who lives seperately from the second Defendant, should be made liable to pay plaintiff 6 Rds. annually, considering the annual produce of his property at 12 Rds. and that the parties should be considered each to bear their own costs.

The Assessors agree.

It is decreed that the plaintiff be considered as the legitimate daughter of the Defendants, and they, as such, are bound to maintain her with food and raiment, and marry her out, on givng her a reasonable portion of their property. The first Defendant is particularly decreed to pay plaintiff the sum of 6 Rds. per annum, for her maintenance, out of the produce of their property, and each party to bear their own costs.

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No. 2,703.

4th Novr. 1839.

District Court, Islands.

Anthonipulle Manueltamby and wife Maria, residing at Caremben... ... ... *Plaintiffs.*

Vs.

Santiago Jacço and wife Anthonial, and Isabel wife of Santiagopulle... ... ... *Defendants.*

MOOTIAH, Judge.

The plea of the two first Defendants, that the whole of the land was not intended by them to be given in dower to their daughter, the second Plaintiff, by the dowry agreement in question, cannot be allowed, as it appears by the evidence of the Notary before whom the deed was attested, that about five days after the execution of it, the two first Defendants applied to him for correction. Allowing the mistake was discovered, they could have immediately rectified it without invalidating the deed by such correction, and would not have allowed all the property, including the disputed part of the land, to be held by the Plaintiffs for one year.

Under these reasons, I am of opinion, that the Plaintiffs should be confirmed in the possession of the land Silligen, in extent 16 lachams paddy culture, as forming a part of the dowry property of the second Plaintiff, under the dowry agreement dated 16th June, 1836, and that the plaintiffs are not entitled to the land given in dower by the third Defendant, as part of their dowry property, it having been already decided in case No. 2,774, in favor of the third Defendant and her husband as their acquired property, during their marriage, and setting aside of her giving it as Dowry to second Plaintiff without the consent and approbation of her said husband. Costs to be paid by the two first Defendants.

Husband's consent necessary. Wife's right to give Dowry.

Decreed accordingly.

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1839. No. 2,045.

District Court, Waligammo.

Periar Sinnatamby... ... ...*Plaintiff.*

Vs.

Soose Lukas and wife... ... ...*Defendants.*

Raphiel Philipo... ... ...*Intervenient.*

BURLEIGH, Judge.

It appears to me that this is a vexatious opposition on the part of the Intervenient, who, in fact, has nothing whatever to do with the Lands in dispute, as he dowried them to his daughter the second Defendant, who is dead the Defendants have not attempted to make any defence, they just appeared on the 27th February 1836, and denied having made any opposition the second, stating subsequently, but on the same day, that she received two pieces of lands in dower; —on the 3rd of March following, Intervenient filed his Libel, that is, three or four days after the answer given by the Defendants. Intervenient in his Libel says that he is entitled to half of the lands, and does not say a word of the Dower to his daughter the second defendant, after this there is great contradiction between Intervenient and second Defendant, in her reply she flatly denies questions put to her on the 20th June 1836, contradicts what she stated in February, by saying that the lands had been given to her by her Father to *cultivate and take the produce, but not in dower;* in contradiction to this, and also to his Libel, Intervenient stated to the Court that he did dower the lands to his daughter, but not in a Bond. It matters not whether he gave the Dower on a bond or without one, he did give them to his daughter, and that is all which is necessary to know. I think it very probable that a Bond was granted, but which has been kept away from this case. The Plaintiff has clearly proved possession of two-thirds of the land, which the Defendants have not in this case attempted to deny, and I believe that the first Defendant would have made a defence had he considered that his child (of which he is the Guardian) had a right to the half share of the Lands. The Intervenient's witnesses have

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proved that his daughter possessed the lands in right of dower. Intervenient admits that 10 Lachams of land were dowried to his sister; but he afterwards states that, at his mother's death, her property was divided between them in equal shares; he admits that Plaintiff managed his mother's property previous to her death, this shews that he was then married to his sister who of course had her dower before her mother's death, and it is not the custom for married women to divide the general Estate after they have received dower—they must remain satisfied (says the Thesawalame) with their dower. I am of opinion that a decree should pass for Plaintiff. The Assessors fully agree.

Married women and Division of property.

It is decreed that Plaintiff (on behalf of the Minor Grand-children) be put into possession of one Lacham of the land Talencado and three Ls. of the land Calenderavattey (exclusive of what he already holds), as claimed in the Libel Intervenient to pay Costs.

No. 2,800.

3rd December, 1840.

Sooper Sidemberenader and wife... ... ...*Plaintiffs.*

Vs.

Cadergamer Sinnatamby and others... ... ...*Defendants.*

PRICE, Judge.

The Court, on reference, finds that the deed filed by the plaintiffs, is as stated by the last witness, a dowry agreement, by which it appears that certain lands are to be given in dower to second plaintiff on her furnishing money for the expense of the transfer. The Court is aware that agreements of this kind, are often granted for the purpose of evading the stamp duties.

Dowry agreement.

Plaintiffs not being provided with a proper title deed for the land in question, the Court is of opinion that their Libel should be dismissed with costs. This decision is not to prevent their bringing the claim forward again, upon their being furnished with a regular dowry deed.

The Assessors agree.

Libel dismissed with costs.

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4th Decr. 1840.

No. 3,180.

Sarrawanemootto Mandlesamy, and wife Teywane ... *Pltffs.*

Vs.

Wesentipulle Mattheus, Odear of Caremben, and Alsandro Soose ... ... *Defendants.*

Mootiah, Judge.

The Court is of opinion that the plaintiffs have fully established the genuineness of the dowry deed in favor of the second plaintiff, dated 13th August, 1824, and the consequent possession of the property conveyed by it, particularly the lands in dispute, and that a decree therefore, should go in favor of the second plaintiff, respecting the lands in question, and that these lands as such, be exempted from being sold under Writ No. 4,453 in favor of the second defendant, as the property of the second plaintiff's brother Somanaden Waytianaden, and that the first defendant should be condemned to pay all costs, in consequence of this dispute having arisen by the return he has made of these lands in question, to be sold under the above Writ as the property of second plaintiff's brother Somanaden Waytianaden.

Odear's return.

The Assessors agree with me in my opinion.

Judgment affirmed in Appeal,

Jaffna, 4th August, 1841.

2nd Decr., 1841.

No. 3,857.

District Court, Jaffna.

Ayempulle Sinnatamby, and wife Manganayagam, residing at Pottor ... ... *Plaintiffs.*

Vs.

Wayrawypulle, widow of Ponnambalem, and others ... ... *Defendants.*

Price, Judge.

The evidence on the part of plaintiffs, goes to shew that third defendant, and her late husband, possessed the land in question, but whether they were the dowry property of third defendant, or the inheritance or acquired property of her late husband, is not shewn; neither party has adduced evidence to prove this point. If the lands were dowry property of third

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defendant she would have a perfect right to convey them in dowry to the second plaintiff who is the doneo of third defendant's daughter, but, if on the contrary, the lands were the inheritance, or acquired property of third defendant's late husband, she would have been entitled to a share of the lands.

Mother's right to give dowry.

There being no evidence to shew the right by which third defendant, and her late husband, hold these lands, until the contrary is shewn, the Court must suppose that third defendant's late husband at the time of his death, had an immediate interest in the lands, and in that case the evidence of possession is equally favorable to plaintiffs and first and second defendants.*

Under the circumstances, the Court is of opinion that the present Libel should be dismissed; parties bearing their own costs. The Assessors agree in the opinion of the Court. Libel dismissed. Parties to pay their own costs.

No. 2,698.

16th March, 1842.

District Court, Waligammo.

Sinnepulle, widow of Wissowenaden, for herself and on behalf of her children... ... ... *Plaintiff.*

Vs.

Wissowenaden Sarrawaney, and others ... ... *Defendants.*

BURLEIGH, Judge.

The Court and Assessors are of opinion that a Decree should pass for the plaintiff, it is for the second defendant to shew that she received a Dower, without it she must be content with half of the property left by the parents. I believe that the defendants want to defend as paupers, merely to be able to bring forward a host of perjured Witnesses to prevent any loss to themselves. The Assessors observe that they do not believe second defendant received a Dower, as her parents were dead when she married.

Dowry and pioperty left by parents.

It is decreed that the plaintiff's children are entitled to a just half of the lands claimed in the Libel, the defendants to

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* First and second defendants being also children.

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pay costs. The defendants have had every opportunity of making a defence, but they would not do so except as Paupers. Two Proctors reported that they had no good cause of defence.

26th May, 1842.

No. 5,021.

District Court, Valevetterre.

Madewer Weder and wife Modilium of Mallagam ...*Pltffs.*

Vs.

Pooder Sinnatamby ... ...*Defendant.*

Burleigh, Judge.

The Court and Assessors consider it sufficiently proved that the defendant refused to marry the daughter of plaintiffs when requested to fulfil his engagement. The Court and Assessors are of opinion, that a Decree should pass for the Plaintiffs for the full amount claimed.

Decreed that defendant is indebted to plaintiffs £18. 15s. and costs.

Dowried daughters have no further claim.

The statement of defendant regarding the Jewels has not been proved, if it had, the Court could have paid no attention to it. The statement is no doubt untrue, because the Dowry Deed in favor of the daughter of Plaintiff, is admitted by the defendant, who moreover states he was present when it was executed, and his brother was a witness to it ; if he had not been satisfied with the Dower given to his intended wife, he should have objected at the time, and no doubt would have done so had he been dissatisfied ; by the Thesawalame, the party receiving a Dower must be satisfied with it, and can have no further claim on the property of the parents ; this written Custom or Law is well known to all.

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4th November, 1842.

No. 4,985.

Waligamo.

Welayder Sinnatamby, and wife Cadrasy... ... *Plaintiffs.*

Vs.

Amblewaner Sanmogam... ... ... *Defendant.*

BURLEIGH, Judge.

It is quite clear that a Decree should pass for the Plaintiff.

The first Assessor states,

The Dowry Deed in favor of the second Plaintiff is a good and legal one, and I consider that a Decree should pass in her favor; with the exception of the last, I am of opinion that all the witnesses for the defence have given false evidence.

Brothers witness to Dowry Deeds.

The second and third Assessors are of opinion, that the Deed filed by the plaintiffs is an illegal one, and they believe the evidence of defendant's witnesses; they add, in the absence of the mother, it was necessary for the defendant to be a witness to the deed, as some of her Dowry property and acquisition was given to the second plaintiff, and the plaintiffs do not prove that they received the Lands in question in dower; the Plaintiffs proved by the Evidence of the Maniagar, their own witness, that the Plaintiffs deceived second Plaintiff's father, and got the Dowry deed written, and a decree must not go for the Plaintiffs: first Plaintiff *said* that the five pieces of lands were commuted in his name, the other Lands being commuted in the name of his Father-in-Law, the voucher should be cancelled, and according to the Country Law, the son and daughter should get an equal portion of the estate. It is decreed that the lands mentioned in the Libel are the Property of second Plaintiff, the Defendant to pay to the Plaintiff eighteen shillings, value of the produce of those lands, with the Costs of this suit.

Sons and daughters entitled to equal portions.

The matter now in dispute has already been decided in case No. 4,723, in which the late Father of the second Plaintiff and Defendant prosecuted the Defendant, alledging he had made objection to his giving in dower to the second Defendant, two-thirds of all his lands, and two-thirds of the moveable property: the defendant replied, on being examin-

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ed by the Court, that the lands and property mentioned in the Libel, belonged to his father, that he had made no objection but had cultivated the lands on behalf of his father; on this the Court and Assessors were of opinion that the father should be permitted to divide his property in the manner he wished, which was just and equitable, and it was so divided; had the defendant felt aggrieved with the decision, he ought to have Appealed.

Divison of property.

The five lands which appear on the answer, and which the defendant now says, were given to the second Plaintiff in 1825, are mentioned in the Libel, in case No. 4,723, as the Father's property, and which the defendant then admitted to be so, which is a clear proof that the present defence has been made lately.

Publication.

The Maniagar proves that the Dowry deed in favor of second Plaintiff, was legally executed, after due publication. From the manner in which third, fourth, fifth and sixth witnesses for the defence have given their evidence, the Court does not believe them, they have evidently been tutored, they are by far too precise as to the date of the marriage of the Plaintiff, the price of the land in question, and the age of the father; the Court asked the sixth witness when his own son was married, he replied "seven or eight years past, three or four years past, do I recollect in what year he was married," the Court has no doubt that if it had wasted its time in examining the other witnesses, they would have given similar replies: it is very difficult to tell the exact value of Paddy Land, and as to the age of natives, they rarely can tell it themselves; it is very plain that the Evidence was got up, and appears very like a double conspiracy, because in a late Criminal Case No. 3,876, an attempt was made to have the deed filed in this case by the Plaintiff, set aside on the ground that it was insufficiently stamped, and the witnesses who came forward to prove that case against the Plaintiff, were the sons of the second, third, and sixth witnesses, the son-in-law of the fourth, and the first cousin of the fifth, the defendant did not himself appear in the case, but it must be presumed

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that it was got up on his behalf, because an informer cannot, by the present Stamp Ordinance, recover any portion of a penalty; the complaint was dismissed, as it appears to have been brought to prejudice the present case. The Supreme Court affirmed the decision.

The Court has to observe, that it was unnecessary for the defendant to be a witness to the deed after the decision of the Court.

The Maniagar and the Dowry deed prove that the lands in question were given in dower to the second Plaintiff, the Maniagar does by no means prove, that the second Plaintiff deceived (as they term it) the father, there was no attempt to dispute the act, but the contrary, as the father came openly before the Court.

By the Thesawaleme or Country Law, a large portion of the Estate must go to the daughter, the second Plaintiff would get a very small portion of it, if she only obtained the five lands mentioned in the answer.

Large portion to daughters.

From the demeanor of the second Assessor, the Court was compelled to explain to him, that he went beyond what was required of an Assessor, he spontaneously gave a decided opinion in the early part of the case, when nothing had transpired to call for such an opinion, and he evinced marked displeasure and annoyance when the Court gave its opinion.

One of the witnesses states that the marriage was solemnized in April or May 1825, and it is alleged that the dowry deed was executed on the same day, if it had been so, the deed must have been executed before a Notary, according to the Regulation of Government No. 25 of 1824, and the Defendant would doubtless have produced the duplicate.

Appeal Petition of the Defendant.

Sheweth;

That the Appellant, with due deference, begs leave to inform this Honourable Court, that the second Respondent, and the Appellant, are the only children of their parents, and their mother Seller having departed this life during their minority, they, as well as their property, were placed under the guardianship of their late father Ambalawanam, who on

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second Respondent's having attained her proper age, married her to the first Respondent in the year 1825, and on the occasion of her marriage, the Appellant's said father Ambalawanam, jointly with the Appellant, granted her, the second Respondent, five pieces of lands in dower, which are mentioned in the answer, and from thenceforward they, the said Respondents, had held an inclusive possession of the said lands, and with the profits and produce accrued from the same, they have since acquired some additional lands, and the Appellant and his said father continued in an unmolested possession of the remaining pieces of lands, and acquired some other lands besides by their own acquisition. But now, about three years ago, the Appellant having contracted a marriage with a woman at Manipay, he was obliged to allow his said father to live with his daughter the second Respondent, who, during the said time, with her husband, the first Respondent, perfidiously persuaded and prevailed upon Appellant's said father Amblewanam to grant them a fresh and an increased dower, to the prejudice of Appellant, who, two months before his death, to wit, in the month of November, 1841, yielding to the entreaties and request of his daughter and son-in-law, granted them an illegal dowry deed, without the knowledge of Appellant, enlarging thereby their dowry, and making over to them the following best and valuable pieces of lands, called Narrasingaparuke Vingden, and other parcels Viapoken Silembeicarenden and other parcels, and Sinnetty Cadiren, together with three pieces of lands out of their original dower, and the Respondent, after this Notarial, but illegal dowry deed, was constructed, illegally suppressed their former deed, and very cunningly instituted this case on the 6th class, touching the first mentioned land only with a view to try their chance with less expense, and, if possible, to strengthen the illegally got up deed by a decree of the Court below, but the Appellant being for the first time surprised with the illegal combined act of the Respondent and his late father, filed an answer in defence, contending that not only to the land in dispute but to all the other lands aforesaid the Respondent could not

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pretend to have any legal claim, neither could the least right be attached to the apparently illegally got up dowry deed filed by the Respondent, and further contended that the Respondent's claim should be exclusively confined to the five pieces of lands alone which had been originally assigned to them in dower, by the mutual consent of the Appellant and his father, and undertook to prove accordingly; that on the 4th Instant, the said case came on for trial, when the Appellant established his defence to the satisfaction of the Court below, by the testimony of seven credible witnesses, and strongly proved the existence of an original dowry deed in favor of the second Respondent, its subsequent suppression, and further, the Respondents' exclusive possession of those lands only which the Appellant had alleged to have been granted to them in dower. But the Court below, under unreasonable grounds, came to a conclusion most unjust and detrimental to the Appellant, and wholly against the tenor of the Country Law, with which decree of the Court below the Appellant being very much aggrieved, begs leave to Appeal therefore, to this Hon'ble Court, under the following substantial grounds, to wit.

That, in the first place, the Appellant begs to draw the attention of this Hon'ble Court to consider, whether the evidence adduced by the Appellants to prove the original granting of the five pieces of lands in dower to the Respondents, on the occasion of their marriage, as required by the Country Law, and their exclusive possession of the same from 1825 as per Commutation of Paddy Tithe Tax entered in their name, is sufficiently conclusive or not, and if conclusive, how far the Court below is justified in allowing the illegal dowry deed now filed by the Respondents in this case to take effect, to the utter loss of Appellant, who is thereby not only deprived of an equal share of his parental property, but unjustly stripped of what he acquired by his own exertion after second Respondent's marriage.

That, in the second place, Appellant begs to observe, that the framers of the Country Law wisely anticipating the probability of parents, advanced in years, being induced by their

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daughters to make over to them some of their property, it is provided by the third and eighth Clauses of the Country Law, that daughters are obliged to obtain their dowry portion on the occasion of their marriage, and must be contented with that dower alone, without having further claim on the property left behind by their parents. But the opinion of the Court below appears in this case to be very singular, which holds the father is qualified to grant dower to his daughter even fifteen or twenty years after her marriage, to prejudice the interest of the sons. That the Appellant further begs to state, that if a new married couple by neglecting to take possession of their dowry property within ten years, should forfeit their right thereto according to the Country Law, how much less would the Respondents in this case, be entitled to have their dowry granted to them sixteen years after the consummation of their marriage.

That, in the third place, Appellant begs to observe, that the Court below is of opinion that Appellant's father, Amblewer, having been allowed by the Court below, in Civil case No. 4,723, with the knowledge of the Appellant, to do any thing legal and just with the property in his charge, and so long as that order was not appealed against by the Appellant, that his said father was qualified to grant the dowry deed in question, and that his act cannot now be called in question, but the Appellant begs to state, that if he had the slightest intimation that the said order would in any way tend to induce his father to execute and grant Respondents the illegal instrument now in question, he would have surely not omitted to appeal against the order of the Court below. That this Hon'ble Court will find, through the whole course of evidence adduced by the Appellant, and truth in the deposition of all his witnesses, to admit of any doubt on the mind of the Court below, which, however, for strengthening its own opinion, construesthe same similarity of a matter of disbelief, and further unjustly disqualifies the corroborating evidence of Appellant's second, third, fifth, and sixth witnesses in the sight of the Assessors, by stating that they being the relation of some witnesses who had once before given evidence in the

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Criminal case No. 3,876, in which Appellant was not a party, their evidence cannot be relied upon, but Appellant leaves for this Hon'ble Court to consider with what degree of equity and justice the Court below could make the above remarks on the incompetency of Appellant's witnesses,—but notwithstanding the remarks made by the Court below, two of the Assessors who heard the case, and who appear to be the better Judges of the Customs and Usages of this place, totally disagreed with the Court below in its opinion, and insisted upon the newly got up dowry deed filed by the Respondents being cancelled as an illegal instrument, so long as the Appellant was no party to the said dowry deed, and for other reasons alleged by them and recorded in the proceedings, but the Court below put an unjust remark on their allegation also and overruled their opinion, and recorded its own opinion as the ultimate decision in the case, to the greatest prejudice of the Appellant.

That the Appellant under the aforesaid circumstances humbly prays this Hon'ble Court to refer to the proceedings had in the case, and after mutual deliberation to reverse the decree of the Court below, pronounced on the 4th instant, and to set aside the dowry deed filed by Respondents, the same being executed against the tenor of the third and eighth Clauses of the Thasawaleme, and further prays for such other relief as to this Hon'ble Court shall seem meet.

15th November, 1842.

Judgment affirmed in Appeal, with costs, at Jaffna, 28th February, 1843.

No. 7,594.

14th Novr. 1842.

District Court, Jaffna.

Teywane, daughter of Paramen ... ... *Plaintiff.*

Vs.

Walliamme, widow of Wayrewen, and others ... *Defendants.*

Price, Judge.

Dowried daughter no further claim.

Plaintiff claimed one-fifth of property left by her parents: she having other brothers and sisters.

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The Court and Assessors are of opinion that it is proved that plaintiff received property from her parents in dower, and that she cannot therefore, claim their property in right of inheritance. The Court and Assessors are therefore, of opinion, that plaintiff's claim should be dismissed with costs.

Plaintiff's claim dismissed with costs.

26th Novr., 1842.

No. 5,211.

District Court, Waligamo.

Moorger Sidemberen, of Elaley ... ... *Plaintiff.*

Vs.

Pooder Omeyer, and others ... ... *Defendants.*

BURLEIGH, Judge.

A claims his portion of the inheritance from his parents, B. sets up a dowry deed. District Court non-suits Plaintiff. The Supreme Court Judgm nt is as follows.

It is considered and adjudged, that the decree of the District Court of Waligamo of the 26th day of November, 1842, be set aside, and the proceedings be remanded back to the District Court, to hear further evidence on both sides, and to give judgment anew. This Court gives the Plaintiff credit for having omitted to summon additional witnesses, owing to error in believing the Decree in the former case would be conclusive evidence in his favor, and the non-suiting the Plaintiff in the present suit would only tend to protract litigation between the parties by a fresh suit being institut-ed; and no Dowry Deed having been adduced by the Defendants, their failure to support their claim of dower against Plaintiffs title to one third of other lands of their parents, is in favor of the Plaintiff's demand.

28th Feby., 1843.

Son and daughter entitled to equal portion.

Further evidence taken, and thereupon the Court gave the following judgment.

The Assessors state, we are of opinion that a judgment should pass in favor of the Plaintiff, as the Defendants have filed no dowry deed or adduced evidence in support of it.

Decreed that Plaintiff is entitled to one-third from the land with Palmirah trees. Defendants to pay costs.

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No. 3,795.

25th Jany., 1843.

District Court, Islands.

Walen Wayrewen and wife Cadiry ... ... *Plaintiffs.*

Vs.

Alwan Naraner and others... ... ... *Defendants.*

Burleigh Judge.

The Court and Assessors are of opinion that a Decree should pass for the Plaintiffs, giving them one-fourth from 65 Rds. and one fourth from the land in question, as it is proved by the Dowry Deed, that this was given: the first and second Defendants admit that they hold, the land and they have totally failed to prove the payment of the 65 Rds. The first and second Defendants pretend to suppose that because they gave this dowry to Sedawie they have a right to take it back again, but by the Thesawalame, the second Defendant and her other married sisters are unquestionably entitled to it. Defendant to pay costs.

Right to take back dowry property.

* Decreed accordingly.

No. 5,746.

22nd April, 1843.

District Court, Jaffna.

Podate, wife of Poodetamby... ... ... *Plaintiff.*

Vs.

Mootar Cander and two others... ... ... *Defendants.*

The Plaintiff's allegation that none of her daughters acquired dowers, is totally unworthy of credit, as no man in this District will marry a woman without dower where the parents have the means of giving one; this is distinctly observed in the Thesawaleme. The Court does not place much weight on the report of the proctor, that the second and third Defendants did not produce evidence before him.

Dowry and marriage.

The Assessors agree in opinion.

It is decreed that the claim of Plaintiff be dismissed

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* First and second Defendants are the maternal uncles of Siede who being an orphan child and poor, they gave their own property in Dower.

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with costs (she paying the costs of the Defendants, the Intervenients to pay their own costs,

Judgment affirmed in Appeal.

Jaffna, August 9th 1843.

No. 8,064.

20th June, 1843.

District Court Jaffna.

Waronicapulle wife of Santiagopulle and her husband .. .. *Plaintiffs.*

Vs.

Mariammootto widow of Arrsenelutta Mudliar of Carrevor... ... ... *Defendant*

Burleigh Judge.

The Court and Assessors are clearly of opinion that the land in question was purchased with funds acquired by the sale of first Plaintiff's dowry property, and that a Decree should pass in her favor.

Land purchased with dowry money.

It is clearly shewn both by the Plaintiff's witnesses, as well as the last witness for the defence, that the land sold by the Plaintiffs to the first witness Enasymotto, was first Plaintiff's dowry property, and it is also satisfactorily proved that she paid to the Fiscal Rds. 1,483 4 0 on account of the purchase of the land in question, it is scarcely necessary to observe that if a woman sells one of her dowry lands for the purpose of purchasing another, the latter must be considered her sole property, and can form no part of the acquired property, the last witness for the defence proves a very material point in favor of the Plaintiffs, when he admits that the second Plaintiff has had no property for seven, or eight, or ten years, proving thereby, that no part of the purchase amount could have been derived from property acquired by him; according to the law of this District, dowry property is not liable for the husband's debts, neither can one half of the proceeds or the rents and profit arising from such property, be held liable for the husband's debts (see case No. 2089 from this Court.)

The Defendant has entirely failed to prove that the land

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in question was purchased with money acquired by both the Plaintiffs.

It is decreed that the land in question is the property of the first Plaintiff, in right of purchase at a Fiscal's sale, the Defendant to pay the costs of this suit.

No. 9,441.

14th July, 1843.

District Court, Jaffna.

Moorger Mootocomaren and wife Sinnepulle ... *Plaintiffs.*

Vs.

BURLEIGH, Judge.

According to the Thesawaleme, section 1st, Clause 5, the second Plaintiff's mother could not have been called as a witness, being an interested party, because she would be obliged to make good any loss, which her daughter might sustain in this case.

Dowry made good.

The Court does not adjudge the second Defendant to pay costs, as he is under his father the first Defendant.

Judgment Affirmed in Appeal.

Jaffna, 5th Februery 1844.

No. 5,517.

14th Decr. 1843.

District Court, Waligamo.

Junasiar Anthony, and others ... ...*Plaintiffs.*

Vs.

Nathalie widow of Soose and six others... ... *Defendants.*

BURLEIGH, Judge.

The Court never witnessed such prevariction and shuffling in any statement, which appeared quite wilful.

The Court and Assessors are of opinion, that according to the Thesawaleme, the Plaintiffs have no right to claim the land in question, the late wife of the first Plaintiff, having received a regular dower, and these lands not forming a part of it, they consider that the parties should not be allowed to proceed with the case, the point in dispute being so simple that it will only be squandering their property to no good purpose.

Dowried daughter no further claim.

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It is decreed that the claim of the Plaintiffs be dismissed with costs.

It was quite unnecessary to join the second and third Plaintiffs with the first Plaintiff in this case, as the latter is the sole guardian of his late wife's estate, during his life.

It is admitted that the late Clara, mother of the first Plaintiff's late wife, left five children, vis—1 Soosey late husband of first Defendant, and father of the second and third Defendants.

2nd. Nicholas late husband of the fourth Defendant, and the father of the fifth Defendant.

3rd. Thomas late husband of the sixth Defendant and father of the seventh Defendant.

4th. Maria Magdelana late wife of the first Plaintiff, and the mother of the second and third Plaintiffs.

5th. Anne Maria who died without issue.

It is admittted that the first Plaintiff's late wife received a dower from her brothers and sisters, and according to the Thesawaleme, section 1st, Clause 3rd, she must rest satisfied with the dower, and can claim nothing more.

It appeared by the statement of the first Plaintiff, that his late wife received her dower in 1805, and he says that Katrinal or Cathrina died in 1817, or 1818, how then can first Plaintiff's late wife have sueceded to her property which went by right to her Brothers and unmarried sister Anna Maria. This part of the Thesawaleme is so well known, that the Court is surprised at this case being brought. If the Plaintiff's late wife had received no dower, she would only have been entitled to one-fifth share of the land in question ; as before said, this case is too clear to require further evidence, and it is decided in accordance with the 10th Rule, first section, Civil jurisdiction, an admirable Rule, if the District Judges would take the trouble of attending to it more frequently than is done.

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No. 3977.

21s Decr. 1843.

District Court, Islands.

Cannewedy. Wissoever and, his wife Walliame... *Plaintiffs.*

Vs.

Walen Passopady and others... ... ... *Defendants.*

AMBLEWANEN, Judge.

Nearest relations enlarge dowry.

Childless couples right to alienate.

It appears that the second plaintiff received the land in dower by virtue of the dowry deed, dated 23 August, 1806, and possessed it for a period of upwards 36 years ; this land was given to her by her uncle Ayen Nagen, as an enlargement of her dower, it is not unusual for the nearest relation of any bride, to enlarge the dower, as it will also appear by the Country Law, Section 1. It is true, that a husband and wife who have no children, cannot give away their property without the consent of their mutual relations, as appears by the Country Law, Section 4, but in this case, it appears that when Ayen Nagen gave this dower to the second plaintiff, his late brother Ayen Cadiren's sons and heirs being Cadiren Walen, Cadiren Canden, and Cadiren Wayrawen fathers of the defendants, except the fifth, were present, fifth defendant is widow of the said Wayrawen, Besides this, it appears that due publication was made before the execution of this Dowry Deed took place, the silence of the four first and sixth defendants' fathers, as well as that of the defendants for so many years, shew that this dower was given to second plaintiff with the consent of the relations of the late Ayen Nagen, if his Heirs did not consent to this dower, why did they not make their objection long before ? Therefore, the Court is of opinion that the dower was given with the mutual consent of the heirs of Ayen Nagen, the Court believes the evidence of plaintiffs' witnesses, and does not believe the evidence of the defendants' witnesses. Therefore a Decree should be given in favor of the Plaintiffs, for the land and the value of produce being 4 shillings, with costs.

The Assessors agree in opinion with the Court.

Decreed accordingly.

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2nd May, 1842.

No. 5,546.

District Court, Waligamo.

Cannagy, daughter of Sinnatamby... ... .. *Plaintiff.*

Vs.

Tandege Kanagaraya Mudr., Poodatamby, and others..*Dfts.*

Burleigh, Judge.

It is quite clear that the land in question was the property of plaintiff's mother, and that the second defendant was not entitled to it ; this is proved beyond doubt. The defendants now only allege that the second defendant was entitled to half of the land, but how was it that the whole was sold as his property ? The Plaintiff's mother's dowry deed is not quite regular as regards the stamp, which no doubt caused the Odear to refuse to grant a schedule on it without the concurrence of the second Defendant, of which he now attempts to take undue advantage. The Assessors fully agree in opinion with the Court. It is decreed that the land in question is the property of plaintiff, the sale of it held on the 30th of September, 1843, be cancelled and set aside, the first defendant to pay the costs of this suit, he however pointed out the land as the property of the second defendant, second defendant lends to the third defendant the sum of £1 19 3 in part payment of the purchase amount. Third defendant will receive the remainder which is in the—day will be paid third defendant by an order from Court.

Schedule.

28th January, 1845.

No. 14,577.

District Court, Jaffna.

Teywane, wife of Walen ... ... *Plaintiff.*

Vs.

Welyder Wenasitamby, and others ... ... *Defendants.*

Price, Judge.

As the husband admits the receipt of the Jewels, the Court is of opinion that the delivery of them to the husband, is good, and she must therefore, hold him responsible for them, the proceeding to a decree in this Case would in the Court's opinion, only tend to evidence the breach which appears to exist between man and wife. Should the husband still con-

Husbands right over wife's property.

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tinue to desert his wife, she will always have her remedy with regard to recovering her Dowry Property.

Desertion and Dowry.

Assessors agree.

Libel dismissed with Costs.

No. 4,034.

8th May, 1845.

District Court, Islands.

Cadiren Aromogam ... ... *Plaintiff.*

Vs.

Patter Amblewen, and three others... ... ... *Defendants.*

AMBLAWANEN, Judge,

Deed A. is a Dowry Agreement granted after the death of the plaintiff's wife's mother, the property given, was the dowry property of the first defendant's late wife. First defendant's sons joined in granting the dowry.

It appears that the first and second defendants granted the deed marked A. to the plaintiff's late wife Walliamme. It is allowed by the Country Law for a father to give a dower to his daughter, as the first defendant had done in this case, which is also confirmed by long practice in this possession. The District Judge believes the evidence of the plaintiffs witnesses, therefore a Decree should be given in favor of the plaintiffs.

Father's right to give dowry.

The Assessors agree.

Decreed accordingly, first and second defendants to pay the plaintiff's costs, and the plaintiff to pay the third and fourth defendants' costs.

No. 14,849.

3rd July, 1845.

District Court, Jaffna.

Sadopulle, widow of Welayden of Anascotte ... *Plaintiff.*

Vs.

Sinnatamby Ramalingam and another ... *Defendants.*

PRICE, Judge.

The Court disbelieves the evidence of the last witness, but allowing his statement to be correct, the Court does not

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Note. Third Defendant is Plaintiff's husband.

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consider that plaintiff can maintain the present claim. The last witness says, then the 150 Rds were the Dowry Property of Plaintiff (there is no such mention made of it in the Bond, neither is Plaintiff a party to the bond) he also states that the money was lent by Plaintiff to her late husband, and by him to the Defendants. This evidence would have been very well in an action by Plaintiff, against the Estate of her late husband, but the court is of opinion, that it can be of no use to the plaintiff in the present suit.

The Court is of opinion that the Libel should be dismissed with Costs.

Wife's right to recover from husband's Estate.

This decision will of course not debar plaintiff, from bringing another action to recover the amount from the Estate of her late husband.

The Assessors are all of opinion, that the amount claimed was not the dowry property of the plaintiff, and further concur in the opinion of the Court.

Libel dismissed with Costs.

25th Novr., 1852.

No. 6,316.

District Court, Jaffna.

Pooder Moorger Odear of Nonavil. .. ..*Plaintiff.*

Vs.

1. Menyana Mahomado Nena... ... ...
2. Moorger Sangrepulle and another... ...*Defendants.*

Decision of the Supreme Court in Appeal, upon an Interlocutory order, dispaupering first defendant, by Mr. Justice Carr.

The proceedings in this Case having been read, and explained by the Court to the Assessors, it is considered and adjudged that the order of the District Court of Jaffna, of the twenty-fifth day of November, 1852, be set aside with Costs.

Dispaupering.

The Defendants refusal to transfer property, to value of £5. which he avers, belongs to his wife and children, is not a ground to dispauper him, as the plaintiff adduced no

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evidence to shew that defendant was entitled in his own right to any part of that property of the Value of £5, but if the plaintiff can adduce such proof he may renew his motion thereon.

Colombo 21st Dec. 1852.

No. 3981.

28th May, 1852.

District Court Jaffna.

Soopremanier Cander... ... ...*Plaintiff.*

Vs.

Letchemipulle, wife of the above Plaintiff ...*Defendant.*

Price, Judge.

The Court is of opinion, that it is proved, that defendant has lived in adultery with Seder Coornader. The Court is further of opinion, that it is not proved that plaintiff has lived in adultery with Caderasy.

The assessors are of opinion that each party should bear their own costs.

Divorce costs paid out of Dowry.

The Court is of opinion, that the costs should be paid by the defendant as she is in possession of dowry property and has forced the plaintiff into Court.

It is therefore decreed, that the marriage between plaintiff and defendant, be dissolved, and plaintiff is divorced from the defendant.—Defendant paying the costs.

No. 7009

District Court Jaffna.

Sanmogam Caderawaloe... ... ...*Plaintiff.*

Vs.

Kadrasy widow of Sittambalam, and son... ...*Defendants.*

The property in question is admitted to be the grandfather's, the grand-mother had no share. Plaintiff's grandmother died first, then plaintiff's mother, then plaintiff's grand-father.

The plaintiff's mother who had received dowry, predeceased the plaintiff's grand-parents, she had a brother whose heirs were the defendants. Held that the plaintiff's

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mother having received dowry the sons, or their children were exclusively entitled to all the property left behind by the parents.

2nd August, 1855.

On reference to said dowry deed, it appears that Teywane (plaintiff's mother) Sanmogam Caderawaloe (plaintiff). Trager Coomarawaloe, and wife Sidemberam (the grand-parents) are the grantors. The Lands conveyed are called their dowry, purchase, inheritance and possession of the Lands so given in dower; one is the Land Wannanpoolam 18 ⅛Ls. 16Ls of this Land, plaintiff's last witness stated were given in dower to plaintiff's late mother Teywane, who possessed it for 10 or 12 years, if she had not received it in dower, where was the necessity of her joining in the dowry deed, in favor of her daughter, for it is not shewn that she had any other title.

The Court does not think it necessary to call upon defendants for further evidence, being of opinion that the Libel is not proved, and that it should be dismissed with costs. Teywane having received dower she could have no further claim on the property of the grand-parents.

Libel dismissed with costs.

3rd Decr. 1836.

No 2419.

District Court Waligamo.

Santiago Bastianpulle and wife Madelenal... ... *Plaintiffs.*

Vs.

Retnesinga Mudliar Manuelpulle and others... *Defendants.*

BURLEIGH Judge.

Plaintiffs, who are Cousins, and heirs at law to the Defendants who had no children, objected to the sale.

Thasawaleme the Law of Manaar.

The Defendants in the case, insist that it should be decided according to the Customary Law of Manaar, I am not aware that the Law of that District differs from the Thesawaleme; the people are the same in every respect, both as to customs and manners. Even allowing that such law does not exist, I consider that this case should be decided by the Thesawaleme, because the Plaintiffs and the Defendants (except the first and second) reside in the District where

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the property in dispute is situated; the second Defendant was born there also, and went to Manaar to be married: by the Thesawaleme, the seond Defendant was not at liberty to dispose of her dowry property without the consent of her heirs; should even any of the dowry property be diminished during marriage, the same must be made good from the husband's acquired property. If it be sufficient, a woman when in needy circumstances may not dispose of more than one-tenth of her property, and then she must obtain the permisssion of the Court before she can do so. It is stated in one part of the Thesawaleme (section II) that a husband and wife wishing to adopt another person's child, may do so, but should one of the heirs not consent, his share of the estate cannot be given to the child. In another part of the Thesawaleme, it is stated, that if a husband and wife have no children, and are desirous to give away some of their lands to their Nephews and Nieces, or others, it cannot be done without the consent of the mutual relations, and if they will not consent to it, they may not give away any more of their hereditary property or dower. Of course it stands to reason that if they cannot alienate the property by gift, they cannot do so by sale, (unless their circumstances as before stated, require) because they could not easily make a deed of sale without receiving one penny and thereby cheat the heirs. It would be superfluous to mention the word sale in this part of the Thesawaleme, the first Defendant wishes to shew that he requires money to give security; this is quite unnecessary, as he may pledge the second Defendant's property to the Collector of Customs; the heirs cannot object to this. I am of opinion that a decreee should pass for Plaintiff. The Assessors are of the same opinion. It is decreed, that the sale of the lands be annulled, first and second Defendants to pay costs.

Right to alienate dowry with consent of heirs

Loss of dowry made good from husband's property.

1-10th of dowry property.

The Proctor or general attorney for the first and second Defendants, presented an application, praying that the Permanent Assessors of the District Court of Jaffna, might be called to give evidence in this case. I consider this unnecessary. This being a case of consequence, I asked the Per-

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manent Assessors their opinion as to whether the second Defendant had power to dispose of her dowry property without the consent of the heirs, and they gave their opinion that she had not such power. I asked them because they are from long experience, with well acquainted the customs and laws of the Malabars.

Judgment reversed in Appeal.

Colombo 26th April 1837.

N.B.—The Thesawaleme is correctly stated in the Petition of Appeal, that they had a perfect right to dispose of their property; the Supreme Court however, states no reason.

18th Jany., 1858.

No. 239.

Court of Request, Jaffna.

Sidimbrenader Venantamby ... ...*Plaintiff.*

Vs.

Wayrewanader mutters and wife Sidawen... ..*Defendants.*

PRICE, Judge.

It is admitted by Defendants that on the Lands being seized second Defendant (the wife of the first) laid claim to them. I objected to the schedule being granted for the sale, under Plaintiff's Writ. Second Defendant files transfer deed in her favour for the Lands, dated 21st December, 1841, granted by her husband, first Defendant, and in her statement before the Court, on the 2nd September, *last*, says, the lands were purchased with her dowry; this however is not proved, and the Court being of opinion that there has been collusion between the Defendants to defrand Plaintiff of his just claim, sets aside the objection of second Defendant, and it is decreed that the Writ be re-issued, and the lands sold in satisfaction of Plaintiff's claim, Defendant to pay costs.

Schedule

Land purchased in wife's name.

Affirmed, 20th March 1858.

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No. 9007.

25th May, 1858.

District Court, Jaffna.

Sandrewer Sarrawanemootto... ... ...*Plaintiff.*

Vs.

Wally, widow of Walen, and others... ... ...*Defendants.*

Price, Judge.

The Dowry deed seems to have been given after the marriage, and the Schedule was granted in spite of the objection made by the Plaintiff.

First Defendant and her late husband, were indebted to Plaintiff upon Bond, dated 12th May, 1845, £8 8s, and interest, for which Plaintiff obtained judgment and pointed out the Debtor's property. Subsequent to the granting of the Bond he first Defendant and her husband dowried the said land to their daughter; fourth Defendant,

Plaintiff contends that the Dowry deed is invalid as far as his debt is concerned, and that the Dowry deed being a voluntary and gratuitous gift, having been made when the grantors were justly indebted to Plaintiff, and with the view of defrauding him of his debt, it should be held liable for his debt: also contends that the debtors were not possessed of other unencumbered property. Defendants contend that the Lands were given in dower by the first Defendant and husband, to their daughter the fourth defendant, upon a Dowry deed, and as the lands were not in mortgage to Plaintiff, the dowry is valid Defendants contend that the debtors are possessed of other unencumbered property, which they failed to prove.

The Court is of opinion that the Dowry deed dated 31st January, 1855, granted by first Defendant and her late husband, Mapne Mudliar Waler, in favor of the fourth Defendant, has been got up with a view of defrauding Plaintiff of his just claim, due on a bond dated 12 May, 1845, upon which he got Judgment, in case 7848, of this Court.

Fraudulent Dowry to defrauding creditors.

It is decreed that the Land Catta Wayel, and other parcels seized and sequestered under Plaintiff, Writ 7848, be sold in satisfaction of Plaintiff's debt.

Costs of Plintiff and second Defendant (the Odeor) to be

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paid by the first, third, and fourth defendants and the Estate of first Defendant's late husband.

23rd Feby. 1859.

No. 9602.

District Court, Jaffna.

Parpaddipulle widow of Welayder... ... ...*Plaintiff.*

Vs.

Cander Sedemberepulle and five other... ... ...*Defendant.*

Price, Judge.

Dowry property not liable for husband's debt.

It is decreed that the Land in question in Extant 50 Lachems by name Carralle wayed which was seized under Writ in favor of 2nd 3rd 4th 5th Defendant (3594) is the property of Plaintiff in right of dower and possession, and that it be released from Sequestration, and Plaintiff be quieted in the possession thereof.

It is further decreed, that second, tqird, fourth, and fifth, defendants do pay damages at the rate of £7 10s., per annum, with costs.

21st March, 1859.

No. 10,016.

Letchemy Ammah, and husband Morgase Ayer
Cartigas Ayer ... ... *Plaintiffs.*

Vs.

Coomarasamy Ayer, Ramasamy Ayer, and wife
Paropathe-Ammah ... *Defendants.*

Price, Judge.

Plaintiff's Proctor refers the Court to the Country Law Section 1, Clause 5.

The Court is of opinion that this action cannot be maintained, the same parties had a former case in the Court, under No. 6,270, and upon the same dowry Agreement—that case the parties settled amicably, by second plaintiff and second defendant dividing the Lands in dispute, between them, each party paying their own costs.

The Court is of opinion, that plaintiffs can take no more under their dowry agreement, than what they have already got Judgment for—plaintiffs claim is therefore, dismissed with costs.

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The Clause of the Country Law submitted by plaintiff's Proctor does not refer to cases of this kind,

LIBEL,

N.B.—That defendants on the occasion of second plaintiff's marriage with the first, promised and undertook to give to second plaintiff, in dower, certain Lands and money, amounting to £139 19s. as will appear by the annexed agreement. Afterwards defendant artfully brought suit No. 6,270 charging plaintiffs with having forged said agreement, and on the day of trial, parties agreed to Judgment going in favor of plaintiffs, for a half only of the Land the defendant originally agreed to give in dower, and in consequence whereof, plaintiffs have lost of the originally agreed amount of dowry, £69 19s. 6d. which defendants in terms of the Country Law, are bound to make good to plaintiff.

Answer denies agreement, and says that the same was disputed in 6,270, and on the day of trial the matter was settled, and plaintiffs consented to take judgment for half shares only, of the Lands, and the other half was adjudged to second defendant. Pleads estoppel.

No. 23,669.

21st March, 1859.

Court of Requests—Jaffna.

Murogaser Maylwagenam, of Cokovil ... *Plaintiff.*

Vs.

Casinather Vaytilingam, and others ... *Defendants.*

MUTUKISNA, Judge.

Husband to make good loss of Dowry.

1. Defendant admits the claim—plaintiff consents to tak Judgment against first defendant *personally*. The dowry property of the wife (tho' mortgaged) not to be sold. Though in strict Law, the plaintiff is entitled to discuss first the property mortgaged to him, still, as according to the Thesawaleme, the husband is bound to make good such loss to the Heirs of the deceased wife, the Court suggests, to avoid future litigation, that the plaintiff should take Judgment against the first defendant's (husband), and not against his wife's Estate.

Parties consenting—Judgment for plaintiff against first defendant *personally*, and not as representative of his deceas-

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-ed wife's estate, for the sum of £5 with interest at 12 per cent. from the date of the Bond, and costs: claim against the other defendants dismissed.

20th Feby. 1860.

No. 539.

Court of Requests, Jaffna.

Sinny, widow of Walen, of Sangane ... ... *Plaintiffs.*

Vs.

Valen Caderen, and others ... ... *Defendants*

PRICE, Judge.

Parties with a view of preventing further litigation, are called upon to produce further evidence.

1.—To the fact of the land having been purchased with the dowry money of the minor's late mother.

2.—As to which of the parties is Heir to the estate—plaintiff by her plaint calling herself the sole Heir and defendant by his Final account in Testamentary case No. 8,450 stating that he is sole Heir to the estate. In the mean time the sale of the Lands to be stayed.

PRICE, Judge.

2nd March, 1860.

The parties' Proctors admit that the Lands in question, were purchased by plaintiff, stating it was with the dowry money of her late daughter, the mother of the minor.

2.—Welayther Cander, affirmed, states. I know the parties. I know Caderen Walen, the Grandson of plaintiff, he died a minor ; defendant was his Father—plaintiff is the deceased's heiress. The Otty money belongs to the plaintiff—defendant is not entitled to any of the Otty money because it was the dowry money of plaintiff's daughter, and the deed was made in favor of plaintiff's grandson ; this money is not plaintiff's acquisition ; the deceased minor had no other heir save plaintiff.

I knew the minor's mother; she had two children, plaintiff had three daughters, two died without issue, the other one was defendant's late wife. I live within ¾ of a mile of plaintiff's house.

5th March, 1860.

The Court wishes to call in special Assessors to assist the disposal of this case.

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ASSESSORS.

9th March, 1860.

1 Sewacoronatha modliar Irregonatha, modliar.

2 Soopremanier Tilleyamblam.

3 Welayder modliar Sampander.

The facts of the case are stated to the Assessors.

The Court is of opinion that the plaintiff is the heir of the deceased minor, and not defendant, who is the Father of the deceased.

Husband no right to wife's dowry.

The money is admitted to have been the dowry money of the minor's late mother, the fact of its having been given to the minor after his late mother's death, does not make it a donation to the mother, and therefore defendant can have no claim on it, as acquisition by his late wife who was the daughter of the plaintiff.

The Assessors agree in the opinion of the Court.

The Writs to be re-called and cancelled, and the receipts granted by the plaintiff are considered as sufficient discharge for the debts under which said Lands were seized, defendant paying all costs.

19th March, 1860.

No. 602.

Court of Requests, Islands.

Nagatta, wife of Nagappen of Manipay ... ... *Plaintiff.*

Vs.

1st. Vayrewy Nagappen, and

2nd. Sanmogam Cander ... ... *Defendants.*

PRICE, Judge.

First defendant admitted in his *viva voce* Examination, on the 15th Instant, that the first mentioned Land in the Plaint, is plaintiff's Dowry property, the second mentioned Land Poompantalwalawoe, in extent two and a half Lachams, registered in the thombo in the name of Wenasy Sidemberem, plaintiff claims in right of purchase.

This suit arises out of the seizure of said Lands, under second defendant's Writ, in No. 24,149 of the Court of Requests of Jaffna, against first defendant. The judgment in said Case was on admission, second defendant is the son-in-law of first defendant.

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When the sale was about to be held on the 12th November, 1859, plaintiff claimed the Lands as her Dowry and purchased property, and gave security and stayed the sale.

It appears by the evidence, that plaintiff and first defendant have been married many years, but have not lived happily together, and, for the last ten or eleven years, there has been but little communication between them, seeing each other only at intervals and on those occasions quarrelling and separating again.

You have it in evidence that plaintiff has for many years supported herself and her children, having no assistance whatever from first defendant. The Court fully believes this, as first defendant has produced no evidence whatever, to prove to the contrary. While thus separated, in October, 1853, plaintiff purchased the second mentioned Land in question, with her own money derived partly from her Dowry property, and partly with money of her sister's. This is denied by first defendant, who states plaintiff bought the Land by pledging jewels for Rds. 30 (£2. 5.) and with Rds. 30 (£2. 5.) which he borrowed, and that he paid the purchase amount, but this he has entirely failed to prove. The evidence of plaintiff's second witness, the seller of the Land, is, plaintiff herself paid me for it.

On referring to the Deed, the purchase amount appears to be £3. and not £4. 10s.

Properly acquired during separation.

The Court is of opinion that the money with which the Land in question was purchased, was acquired by plaintiff during her separation from her husband, first defendant, and without any assistance whatever from him; such being the case, plaintiff alone is entitled to the Land.

The Court is of opinion that the judgment in favor of second defendant, which was given on the admission of first defendant, his father-in-law, was a vexatious proceeding, both defendants combining to defraud plaintiff of her property.

Judgment in favor of plaintiff for the first mentioned Land in the Plaint, in right of Dower, and for the second mentioned Land in right of purchase, as per Bill of sale, dated 26th October, 1853.

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It is further decreed, that the said Lands be released from sequestration, and that plaintiff be quieted in the possession thereof, defendants paying all costs.*

Judgment affirmed in Appeal, May, 1860.

MARRIAGE CASES.

The Woman Parpady... ... ...*Plaintiff.* — 22nd Feb., 1803.

Vs.

The Husband, Casenader Kaderitamby... ...*Defendant.*

DUNKIN, President.

Both parties present.

The following are witnesses on the part of the Plaintiff, viz.

Sidemberatty, widow of Amblewanar, being duly sworn, declares she knows both parties; she knows they were both married, and the deponent was present at the ceremony of the wedding day; a Taley was tied at the neck of the Plaintiff by the defendant. This happened four years ago. The parties lived together after that ceremony. All the families on both sides were present. There was an entertainment and several principal persons were present. This ceremony was performed in the house of the bride, and after the ceremony the bridegroom took her away to his house. They lived together two or three years. They lived in the house of the Defendant; the house belonged to the Defendant's mother, they separated on account of some house quarrel, and when the Defendant finally left the Plaintiff, the Plaintiff lived with her mother. The Defendant does not know of any misconduct on the part of either of the parties. The Defendant never quitted the house of his father; she never knew that he, the Defendant, beat or abused the Plaintiff; he gave her good food and raiment. She does not know of any misconduct of either party. The Plaintiff was angry and went away from her husband.

Talie.

Marriage Ceremonies.

The Court orders that both parties do live together, as becomes a good husband and wife.

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* The Editor appeared in this case, and thinks the judgment come to, a very correct conclusion, which is in accordance with equity and the spirit of the Thesawalemme.

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5th October, 1805.

No. 564.

Motopulle daughter of Manniar... ... . *Plaintiff.*

Vs.

Illengenayaga Mudr. Caralapulle... ... ...*Defendant.*

DUNKIN, President.

Both parties, and their children and grand-children, present.

The depositions taken in the above cause, together with the Plaintiff's petition and the Defendant's answer; and the Plaintiff's replication having been read and explained to the heads of the Caste Thamotherapulle, Paramenade Mudr. and Komerokolsooria Mudr., and they being desired to give their opinion whether the Plaintiff has a right to claim a marriage after the heathen ceremony, and the cohabitation that took place between the parties according to the rules and rites of the natives in this province. Tamotherappulle says, that as it does not appear to him that the washerman and barber who had attended the ceremony, had been produced to prove the fact, he, Samotherapulle, cannot give his opinion in this cause, but Paramenaed Mudr. and Komarakollsooriar Mudr. say that they are of opinion that the marriage claimed by the Plaintiff, ought to be solemnized and her children duly registered on the church rolls, in the name of the Defendant, as their lawful father.

Marriage Ceremony.

Washerman Barber.

The Defendant says that three brothers or their representatives are in possession of the other lands belonging to Poodatey.

The Court decrees to Kander Kadergaman the sum of ninety-seven Rix-dollars, to Kander Alwan or his representative Alwan Canden to pay the sum of forty-six Rix-Dollars, and to Kander Walley or his representative Walliar Canderen to pay the sum of thirty-seven Rix-dollars and eight fanams, into this Court, to be paid over to the undermentioned mortgages and venders, to wit.

To A...	Rds.	46—„
To B...	„	5—„
To C...	„	34—„
To D...	„	9—8
	Total Rds.	94—8

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The Court annuls the act of reconciliation bearing date the 29th January, 1804, passed between the two brothers Cander Caderan and Cander Alwan, and the husband of Mutty and Alwan Coomarawalen and Alwan Komarawalen and Alwan Cadergaman, in exclusion of Maruthy the sister of the said Mutty and Vallenachy, and decrees the undermentioned dowry Lands of Poodatte called ——— for three sisters Mutty, Vallenaely and Marudy to be divided between them in equal shares.

No. 173.

23rd June, 1860.

Sinnatangam wife of Wettywalen... ... ...*Plaintiff.*

Vs.

Wettywalen... ... ...*Defendant.*

TRANCHELL, Judge.

Parties attend under an order of the 16th Inst.

The Plaintiff calls on Muttocomarar Aromogam, Neelen Permel and Penen Tirookeenen, who are sworn, examined, and cross-examined.

Register.

The evidence being closed, the Plaintiff not having been able to prove the legality of the marriage, and such not appearing by any Register or by any Dowry Ola, which are absolutely necessary to constitute a legal marriage, amongst the Tamils.

It decreed, that the Plaintiff's claim set forth in her petition, No. 173, be dimissed with costs of suit.

No. 6,592.

7th May, 1818.

Caderan Comeren... ... ...*Plaintiff*

Vs.

Mayly daughter of Walen... ... ...*Defendants.*

MOOYAART, Judge.

No Law as to marriage.

As there appears to be no rule established by Law, to render marriage legal, and different methods are pursued in solemnizing marriages, the omission of a Brahmin's attendance, the tying of the Thaly, and the registering of the marriage in the church Roll, in the present instance, does not appear material to disannul the legality of the marriage. On the

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Brahmins Talie, Register.

other hand, the solemnization thereof, by certain rites, is proved, the Plaintiff's residence in the Defendant's house, the report in the village, and the Plaintiff's cultivation of his wife's Dowry Lands, are collateral evidences that the parties were legally married.

The Court therefore cannot but look upon this as a legal marriage, and decrees as such; the parties to pay their respective costs.

Judgment of the Minor Court of Appeal.

Present HOOPER, ST. LEDGER.

22nd July, 1818.

On reading the proceedings had in this case, it is ordered that the decree pronounced by the Magistrate in this case, be reversed and costs to be paid by Respondent. *

22nd Sept., 1818.

No. 301.

Tinegeren Venasitamby... ... ...*Plaintiff.*

Vs.

Poenia Murger and others... ... ...*Defendants.*

ST. LEDGER, Judge.

Walley Caderen being sworn, deposes, that he is a washerman; in his capacity as washerman he attended the marriage of third Defendant and Plaintiff; the barber who was present was the last witness. Defendant produces his permission from the ceremony renter, which states him to be allowed to attend the marriage of Plaintiff, but the bride's name is not mentioned. It is dated 16th April, 1817. It is not always customary to insert the bride's name; all the friends and relations were present, and in every respect Defendant considered it a legal marriage; fifth Defendant was not present, a washerman from Patchelapely attended on the part of the bride, his name was Caderen; a barber from the same place attended for the bride, whose name deponent does not know.

Ceremony Renter.

Arolempalam Modliar of Point Pedro, being sworn, deposes that he was ceremony renter, for the revenue years 1815-16, he granted a permission for ceremonies to be performed at the wedding of the plaintiff; he did not know who was the bride.

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* Copied from copy filed in case, No. 1,118.

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Paremmer Aromogam, being sworn, deposes, that he was not present at the marriage ceremony between the parties but he was present at the entry of their marriage, it was entered in the Marriage Roll by the fifth defendant, he was one of the subscribing witnesses. The others were Venayager Aromogam, Odeasy Tampaley, the son of first and second defendants, and Mapana Modliar Sinnatamby.

Upon a consideration of the evidence it appears to the Court, that the marriage between plaintiff and third defendant is plainly proved, as well as the execution of the dowry Ola, and the entry of the marriage in the marriage Roll. There is no evidence to prove the appropriation by defendants of the goods stated by plaintiff to have been left in their house .

It is decreed that third defendant is the lawful wife of plaintiff, and that she do live with him, as such the subsequent marriage between third, and fourth defendants, to be null and void, and of no effect.

Defendants to pay the costs of suit. Judgment affirmed in Appeal, 22nd May, 1819.

No. 1,164.

25th May, 1820.

Menachy Sidambie ... ... *Plaintiff.*

Vs.

Plaintiff's husband Perial Parmen ... ... *Defendant.*

Layard, Judge.

Defendant denies the marriage, and ordered the plaintiff to produce witnesses on the 30th Instant.

Order to prevent the defendant entering into a second marriage.

31st May, 1820

To prove marriage with defendant, and prevent his entering into second marriage, plaintiff calls,

Arresenayaga Modliar, Tamoderan Chetty, sworn, I know the parties are husband and wife. There are three round huts in plaintiffs father's house, in one of which (the parties) live together. Slaves do not marry in other fashion, only the owner of the female slave calls the male, who presents a

Slaves. Present of cloth.

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Their marriage ceremonies.

piece of cloth to the female, they then cook together and live as man and wife.

Tinnanayaga Chinnatambyar Chetty. The plaintiff lives in my house, and defendant and his brother came to my house and required she should be given in marriage to defendant, we accordingly gave them all assistance, they were married, and he took her to his own house. Plaintiff and defendant are slaves of S. Marenaga Modliar and his sister, and after some time they quarrelled, and then the defendant brought her again a piece of cloth and so they came together again in July last, and lived in my house and were employed by me squeezing out palmira fruits.

Tellanayaga Aromogam Chetty, sworn. About two, or three years ago, the defendant wanted me to accompany him as he wanted to marry the plaintiff. I went to the house of defendant's father, ate beetle and accompanied defendant and his brother-in-law to the house where plaintiff lived—on reaching the house the defendant presented her with a piece of cloth which she accepted, they then boiled rice and ate together, and the defendant took plaintiff home to his father's house accompanied by his brother-in-law Caylayan, so they lived together two years; but two months after she became pregnant, he separated from and left her.

Defendant informs the Court, all that has been said is true; other witnesses are dispensed with.

It is decreed that plaintiff is the wife of Perial Paramen, and he can enter into no other marriages.

No. 1,118.

1st June, 1820.

Cadergamer Welayden ... ... *Plaintiff.*

Vs.

Maylie, wife of Welayden, and three others ... *Defendants.*

Layard, Judge.

To prove marriage.

Welen Caderen sworn, the plaintiff was formerly married to defendant's sister, and he is now married with the defendant, her marriage took place in defendant's house, on the 5th September, 1818, no Brahmin was present as we do not

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have Brahmins present at our marriages, we are Vellalis, We are five hundred families who never tie Talie, or get Brahmins to attend, plaintiff admits there were no Brahmins present, and that they also do not tie Talie.

Vellalies.
Brahmins.
Talie.

Judgment.

The Court finds that this is precisely a case against the same defendant as No. 64-6,592, decided in the Magistrate's Court, confirming her as the wife of Caderen Comeren, but reversed by the Court of Appeal.

It is ordered that a report of the Headman as to custom of the District be called for, particularly warrem. and that the same be submitted with these two cases, for the consideration of the Lieutenant-Governor.

LIBEL.

That in 1818 the second, and third defendants, have married out the first defendant to plaintiff, the marriage was recorded and ceremony License obtained, afterwards they have lived as husband and wife, but now the three last defendants have instigated first defendant to abandon plaintiff and not to live with him.

Plaintiff prays that first defendant be compelled to return to plaintiff, and all the defendants to pay Rds. 100 damages and costs.

Answer of first Defendant,

First defendant was never married to plaintiff, but she is married with Catheran Comeren.

Plaintiff was married with first defendant's sister Parpaddy, and as she departed this life, her Dowry property and one half of her accumulation is to devolve to the Defendant, and on an application having been made for the said property by the Defendant and her husband, the said Caderan Coomaren, the other Defendant's abused her husband and turned him out without leaving him to live with her, upon which, the first Defendant's husband having preferred his complaint before the Magistrate, the Magistrate, after enquiry, ordered the Defendant to live with her husband, but the other Defendants prevent her husband from living with her,

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and first Defendant heard that the second Defendant appealed against the Magistrate's Decree and she does not know the result.

Second, third, and fourth Defendants state that they gave their daughter to Plaintiff in marriage, and a certain Dower also, that they have nothing to say against her living with him.

Report

To the Provincial Court of Jaffnapatam

The undersigned in obedience to the order of Court have inquired into the pomps and ceremonies, which generally takes place amongst the inhabitants of Warrene, on the occasion of their marriage, and beg leave to report as follows.

Priests. Fire.

First—The priest is called upon who performs the ceremony by kindling a fire commonly called Omesendy, as also another ceremony Pullear Paegah, in the midst of that ceremony, a necklace called Salu is tied to the neck of the Bride and a piece of cloth is given to her, and the fire so kindled serves as a token of Testimony, and these ceremonies are performed in the presence of the relations, barber and washerman, which constitutes a legal marriage.

Talie.

Relations. Barber. Washerman.

Second—The priest is called upon who porforms the ceremony, called Pollayar Paegah, the Salu is tied to the neck of the Bride and a piece of cloth is given to her, the relations together with the washerman and barber attend.

Third—Without the attendance of the priest the relations the washerman and barber attend and a cloth is given to the Bride.

Thus this report is written and signed.

(Signed) Sidemparanada Mudliar, Maniagar,
Rasaretna Mudliar Caderaser,
Parperoy Mandowil.

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No. 1,140.

10th August, 1820.

Soopper brought up son of Canawady... ... ... *Plaintiff.*

Vs.

His wife Taywane and two others... ... ... *Defendants.*

LAYARD, Judge.

The Court having considered the evidence before it, has no doubt as to the criminality of the Defendant's conduct, their being persons of different castes, was sufficient reason to have kept them a distance from each other, but for the intercourse which so criminally existed between them.

Different caste.

It is therefore decreed, that the first Defendant be divorced from her husband, her Dowry being considered as answerable to the Plaintiff for the sum of Rds. 120 paid by him to redeem it, and that second Defendant do pay to the Plaintiff a sum of Rds. 180 damages, making about the amount balance of value of first Defendant's dower.

Divorce.

Dowry.

Defendants jointly to pay costs.

No. 1,103.

15th September, 1820.

Nagy wife of Casy... ... ... *Plaintiff.*

Vs.

Silemby Casy husband of Plaintiff... ... ... *Defendant.*

LAYARD, Judge.

Coviah's. Marriage ceremonies.

Evidence to prove marriage custom of Coviahs. Rake Sidemberam sworn. The same day the dowry was drawn out, the Plaintiff and Defendant were married together. We all went first to the house of the Defendant and he was dressed in gold earrings, we then accompanied him 30 or 40 in number to the house of the Plaintiff where the Dowry Ola was executed and the ceremonies of the marriage performed, and when Plaintiff had divided rice to the Defendant they went together with us to Defendant's house, where we left them. They lived in Defendant's house three days, and then she returned to the house of the parents, we all attending them as is usual, where they lived for some time.

Dividing rice.

After the Dowry Voucher was executed the Idol of Pulliar was formed of cow dung and placed in the inner yard of the house, and afterwards Camphor with light was offered

Pulliar.

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to Pulliar, and the bride and bridegroom and present friends made submission and supplication to Pulliar, clapping the hands together, some of the slaves masters, for they are Covias, came previous to the ceremony and some afterwards

Omeal Sinneven sworn, states, I know the Plaintiff is married with the Defendant. I was present at the marriage. The people of the village were invited, and the Gentoo ceremony of our caste performed; a Pulliar was made with cow dung, and a Dowry voucher was written. Defendant's father being dead, I, as his maternal Uncle, was the leading man in getting the ceremonies of the marriage performed; I have heard since he has contracted a second marriage, but I was not present or called to it. The marriage took place at Plaintiff's house, the Defendant having put earrings on in the house of the Plaintiff was conducted thither, and after the marriage they were both taken to Defendant's house. We left there and went away. I went to Caretchy, and was not present at the taking back of Plaintiff to her parents, some cooked rice was given by Plaintiff to Defendant. I did not see camphor and light offered to Pullier, some of the assembled people performed the service for the ceremony, but no Brahmins. The Voucher was on stamp. The washerman and barber amongst other witnesses were also called and examined. They proved that they were present at the marriage ceremony, that it is usual for washerman and barber to be present at such ceremony. The rest of their evidence discloses what is already proved by the above two witnesses.

Washerman and Barber.

Judgment.

The Court is of opinion, the marriage of the parties according to their customs is decidedly proved, but that Plaintiff has not proved her property given in Dower to be in Defendant's possession. The disease contracted, pending this suit, is sufficient proof that Plaintiff's conduct has been such as warrants the Court setting aside such marriage, relieving Defendant from her chains. It is therefore decreed accordingly, leaving to Plaintiff to recover her property whenever she may find it, and as Defendant's denying his marriage was the original cause of this suit, and his not

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performing this obligation as Plaintiff's husband, too likely led her to the performing that act which has placed her in her present sad situation. It is further decreed that he do pay all costs of this suit.

No. 1,460.

6th December, 1820.

Maden Naranie... ... ...*Plaintiff.*

Vs.

Plaintiff's wife Cadery and daughter Sinnecootty..*Defendants.*

LAYARD, Judge.

Wife not entitled to support if she refuses to live with husband.

It is decreed that Defendant is the wife and her daughter Sinnecootty the legitimate child of the Plaintiff, that she must either live with him, or she will have no claims on him for support.

Dowry Deed.

The dowry voucher is to be removed from the Magistrate's Court into the Police Court, where it will be kept until the parties jointly apply for its being restored to either of whom, and that each party bear their own costs.

No. 1,418.

12th December, 1820.

Weregetliar Moorugar ... ... *Plaintiff.*

Vs.

Ramer Wayrawen, and others ... ...*Defendants.*

LAYARD, Judge.

Dowry.

It is decreed that fourth defendant is the wife of the plaintiff, that her dower is to be the same apparent to have been promised to the Intervenient, when her agreement for dower was executed in his favor, under date 15th August, 1818; it is further ordered their marriage be enregistered in the Church Roll, that first, second, and third defendants, do instantly file on oath, a list of the property of fourth defendant's deceased parents, to be taken from them separately, as it is too evident they have been buying and selling the fourth Defendant to answer their nefarious pur poses; and that first, second, and third Defendants do pay the costs of this suit.

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21st March 1821.

No. 1,477.

Maden Caderen ... ... *Plaintiff.*

Vs.

Telletechy, wife of the plaintiff, and Allegeritna Modliar, Modelitamby Parpapaotiega... *Defendants.*

LAYARD, Judge.

Case for Crim-Con.........Plaintiff and Defendant Chandas, second defendant a Madappalle.

Chanda's marriage.

The plaintiff states this to be the whole of his case, no other ceremonies were performed and no license obtained. The case is submitted to Wellewedarasa Modliar, and Waseercoon Modliar Littambalem, who declare a chanda's marriage cannot be supported on this ground. The tying of Taly and the attendance of Barber, and Washerman, according to the Law is actually necessary at a chanda's marriage.

The first defendant is decreed not to be the wife of plaintiff, and his suit is dismissed with costs.

MARRIAGE CASES.

24th June, 1822.

No. 2,129.

Canneger, wife of Moutan ... ... *Plaintiff.*

Vs.

Mooder Mootan ... ... *Defendant.*

FARRELL, Judge.

First Marriage. Acquired property. Division.

It is the opinion of the Court that all the property acquired by Defendant after his first marriage and previously to his second marriage, is to be divided between plaintiff and himself, in equal shares. It is therefore decreed, that plaintiff is entitled to half of the following Lands situated at Nonavil, viz., Torendedelwayel, Kollankeray, Walewoe and Kollenwalewoe, and to half of the said lands from September, 1821, when defendant married his second wife, to the present date. The extent of the said lands, and the value of their yearly produce, to be ascertained by three Commissioners: also, that Defendant is indebted to plaintiff in the sum of Rds. 25, being half of the amount of Otty paid him since his first wife's death, and interest on the same from 1st September, 1821, until day of payment, with costs of suit.*

* Plaintiff was the daughter of Defendant by his first wife.

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No. 2,260.

10th February, 1823.

Wagraver Velaythan ... ... *Plaintiff.*

Vs.

Amblevaner Wayrawen, and daughter ... ... *Defendants.*

SCOTT, JUDGE.

Poother Caderen is sworn. The marriage between plaintiff and second defendant, was celebrated in defendant's presence at the house of first defendant, presiding witnesses were also present. There was no Brahmin, but all the ceremonies usual in that part of the Country were observed, as offering of cloth by the bridegroom and the dividing of Rice and Curry between them by the bride, and their eating together and afterwards serving their friends, a dowry Ola was also executed in second defendant's favor, by first defendant, her father, and deposited in plaintiffs hands, defendant signed it, as a witness. It is the same as filed by plaintiff.

Cloth, rice and curry.

Dowry.

On the day of the marriage between plaintiff and second Defendant, deponent received a license from the Maniager of Chavagacherry to attend on the occasion as washerman, it was brought to deponent's house by Cadergamer Sinnawen, first defendant's nephew and Cadergamer Coornader, first defendant's brother-in-law, on the part of first defendant, plaintiff also got a license for wearing joys from the same. These two licenses were given to deponent the same day—and deponent when examined last year before the Magistrate of Chavagacherry, deposited it in that Court.

Washerman License to attend wedding.

License to wear Joys.

Judgment.

The Court considers plaintiff's marriage with second defendant satisfactorily proved. It is decreed that the second defendant is the plaintiff's wife, and that first defendant do pay all costs.

No. 2,698.

15th April, 1823.

Periapulle Canden ... ... *Plaintiff.*

Vs.

Yanemoely Swamenaden, and others ... ... *Defendants.*

SCOTT, Judge.

The Court considers the entry of marriage nothing beyond a written promise of marriage between plaintiff and

Entry of marriage. Written promise.

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third defendant, and that the third defendant is not now bound to act up to that promise if the plaintiff is obnoxious to her; whether she will subject herself to damages if her promise is broken, is a matter for an after suit, and with regard to the joys, the evidence has not established the delivery by plaintiff to any of the defendants, consequently, it is decreed that plaintiff's Libel be dismissed.

15th March, 1827.

No. 4,819.

Cander Wayraven ... ... *Plaintiff.*

Vs.

Ardambala Modliar, Maniagar of Point Pedro and Cony, daughter of Vallia ... *Defendants.*

Brownrigg, Judge.

It does not appear to this Court that the Plaintiff has shewn the slightest cause of action against the second Defendant.

Marriage registry.

The fact of his marriage having been already registered in the thombo (although such marriage may not have been completed) justified the first defendant in refusing to register a second marriage, without reference to some competent authority

Refusal to register second marriage.

It is therefore decreed, that the plaintiff's claim be dismissed with costs, but that the first defendant be instructed to register plaintiff's marriage, noting in the thombo that it is done by order of this Court.*

2nd November, 1817.

No. 3,973.

Ambalalawaner Weylayden... ... ... *Plaintiff.*

Vs.

Naraner Caderasen... ... ... *Defendant.*

Brownrigg, Judge.

The Proctor for plaintiff states to the Court, that he cannot prove the entry of defendants second marriage in the register, as required by the 9th Regulation of 1822; as he believes that the marriage has not been registered.

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* The marriage was first registered with second Defendant.

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Plaintiff waives his further evidence; under all the circumstances of the case, the Court does not (as the defendant's second marriage is not a legal one) feel called on to take from him the guardianship of his child and her property, as given to him by this Court in the case 2,814, but he is warned to be careful of that property and not to enter his marriage without reporting it to the Court, in order that proper steps may be taken to protect the interests of the child. Case dismissed with costs.

Second marriage invalid.

Guardianship.

Minor's Interests.

No. 594.
5,923.

6th November 1829.

Welayder Corinden, Parpatigar ... ... *Plaintiff.*

Vs.

Ramen Tillier... ... ... *Defendant.*

PRICE, Judge.

The Defendant states that the property he now claims is the hereditary property of his late father, who was married twice; first defendant is the only child of the first bed, and that the debt in question was contracted during the second marriage, and consequently half of the Land in dispute, Paweaatchiepullam is defendant's property, and the other half only liable to be sold. Defendant states, he has no claim upon the Land Predaintottomgel, the Land mentioned in the Libel.

Acquired property. Debt contracted during second marriage.

Plaintiff admits that defendant's father contracted the debt in question during his second marriage, it appears by the decree of the sitting Magistrate of Kaits, that the Land, Piedarikottowagel was pledged to plaintiff for a debt incurred by defendant's deceased father, it also appears on reference to the return to the Writ 3,080, that this Land has been sold for Rds. 240.

It is therefore decreed (plaintiff's claim being on a special mortgage) that he is entitled to Rds. 107, which is ordered to be paid out of the proceeds of the sale.

Affirmed by the Minor Court of Appeal.

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6th April, 1830.

No. 5,510.

Ramasy *alias* Wedame, widow of Aromogam,
and others... ... ... *Plaintiffs.*

Vs.

Sinnepulle, daughter of Coornaden... ... ... *Defendant.*

PRICE, Judge.

Plaintiffs claim a moiety of the Estate of the deceased Mader Sooppen *alias* Mader Yaneprogasam, his wife Yanachy and son David, as being the only heirs of the said deceased, which estate they valued at Rds. 1750 or £131 5*s*. Defendant has failed to prove her having been lawfully married to the deceased Yaneperagasen Davido, as required by the third clause of the Regulation, No. 9. of 1822.

It is therefore decreed, that plaintiffs as heirs to the said deceased Y. Davido, are entitled to all the Modesium property, he obtained on the side of his late father Maden Sooppen or Maden Yanapperagasen, and half of the acquisition of the said deceased, together with all the Joys worn by the said deceased; paying half of the debts due by the deceased either on his own account or that of his deceased parents, and that defendant do pay costs.

Appeal decision.

The decision of the Provincial Judge is certainly supported by the terms of Regulation No. 9. of 1822, but unless some relief can be afforded to the Appellant against it, the Regulation which professes to have for its object the security of property and the happiness of individuals, would, in this instance at least, be productive of directly opposite effects.

The deceased, who with the exception of the entry by the Maniagar in the register, must be considered to all intents and purposes to have been the husband of the appellant, appears to have been extremely anxious that the act of registration should take place. The banns were three times published without opposition, and by virtue of an ola signed by the bridegroom and witnessed by four persons, authorizing the Maniagar to publish them. But it seems that an objec-

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tion was made to the registration, either by the Maniagar or by the Clergyman under whom he acted, on the ground that the woman was a heathen and had not been baptized; afterwards, when the husband was on his death-bed, he sent for the Maniagar, and again asked him to enregister the marriage, but that person refused unless the bride and bridegroom attended and signed the Registry.

On neither of these grounds was the Maniagar justified in refusing to enter the marriage in the Register, so far from baptism being requisite, it is by an express provision in the Regulation, section 13, which has no other object, declared to be unncessary.

Baptism.

Nor is the signature by the parties made a necessary ingredient of the register. It may be very proper in ordinary cases to call upon them to sign it, but it is not made indispensable by any clause in the regulation, and even if it were, it would have been the duty of the Maniagar, considering the state in which the man then was, to have taken the book of Registry to his house for the purpose of obtaining his signature.

Signature not necessary.

The Court would have felt disposed to recommend to his Excellency the Governor to pass an act of legitimation of the issue of this connection, if that measure would have done perfect justice, but it may at least be doubted, whether that act would have any effect beyond the bear terms of it, and whether the property of the deceased would thereby be secured, as, in justice, it ought to be, to his wife and their offspring.

Act of Legitimation.

Under these circumstances, considering that the deceased did everything in his power to procure the reigstration; that the refusal of the Maniagar proceeded on mistaken grounds, either on his part, or on the part of those by whose direction he acted, and that if the deceased had commenced an action against him on his refusal, the Court would have been bound to compel him to enter the marriage, considering also that the penalty imposed by the 8th section of the regulation would be wholly inefficacious in remov-

Registration after death of one of the parties.

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ing the stigma which at present rests most unjustly on this woman and her child.

It is decreed that the Maniagar be ordered to enregister the marriage of the deceased with the Appellant, as of the day on which he was required to do so by the deceased, and refused.

That the Judgment of the Provincial Court of the sixth day of April last be reversed, each party paying his own costs. And it is ordered that a copy of this decree be furnished to the clergyman alluded to by the witnesses, and who gave his evidence on the trial, for his future guidance in similar cases.

22nd December, 1830.

26th January, 1832.

No. 5,927.

Wayrwy, widow of Comarawalen Cadiren, and her two daughters... ... ... *Plaintiffs.*

Vs.

Sangeren Moorgen and others... ... ... *Defendants.*

PRICE, Judge.

Marriage ceremonies.

Mathawa Ayer Carnaye Ayer, Brahmin of Vannarponne sworn; knew the deceased Comarewalen Cadiran he was brother to one Coongy, deceased, and was married to the first Plaintiff; I performed the ceremony of Pullear Poosey, and kindled a sacred fire called Omasandy. The Taly was tied after the ceremony had been performed by me, as priest, a wedding cloth was presented by the Bridegroom to the Bride.

The marriage took place at night, I think it took place between 8 and 11 o'clock. The ceremonies were not splendid, it is necessary for relations to be present at marriage, five or four females were present.

Judgment.

The Court thinks the evidence produced by Plaintiffs has sufficiently proved first Plaintiff's marriage with Comarewalen Cadiran, brother of the decased Coongy (whose estate is now claimed,) and that the second and third Plaintiffs are the children of the said Cadiran, deceased, by first Plaintiff.

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It is therefore decreed, that Plaintiffs are the lawful heirs of the deceased Coongy, and entitled as such to any property she may have died possessed of.

Plaintiff's costs by the first, second, and third Defendants, fourth Defendant's cost by Plaintiffs.

5th November, 1832.

No. 6,928.

Sadopulle, widow Tamben and Son... .. ... *Plaintiffs.*

Vs.

Caderitamby Aromogam and others... ... *Defendants.*

Sattrukil Singa Modliar.

Price, Judge.

Canicapulle of the Salt Store, sworn; I was formerly schoolmaster of the Parish of Chundicully, that situation is now held by the Maniagar, I held the situation from 1810 up to 1822. In the Dutch time, if a woman bore child before marriage, such child was allowed to inherit the estate of his mother, the child would be entered in the Church roll with the name of his mother before his own, instead of his father, which would have been the case if his parents had been lawfully married; in the event of no entry in the Church roll having been made, it remains for them to prove who his parents are, it was not necessary to obtain an oppum from a man in power to have the entry in the Church roll made. If first Defendant took his mother's name, he should be called Cadery Aromogam of Vannarponne, he cannot call himself Caderitamby Aromogam Vallale of Odoputty, unless his parents were married. A marriage should be registered in the Parish in which the bride lives, at least it was the custom to do so, up to 1822, before the entry was made the bridegroom would have to produce a certificate from the schoolmaster of the Parish to which he belongs, stating his father's name, his own, and his caste, and that there was no entry of marriage between him and any woman in his Parish, and that the marriage which he wished entered, his intended wife's Parish should be made without any objection; after the entry is made in the Parish

Dutch practice.

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of the Bride, the schoolmaster of—gives a certificate, that the entry was made agreeable to the certificate produced by the Bridegroom, and authorizes the schoolmaster of the Bridegroom's Parish to enter the marriage in the church roll. If first Defendant's mother and father had been married, their name should appear in the church roll of Odoputty as married persons, with the name of the first Defendant as the issue of that marriage.

By Defendant's Proctor. I know several instances in which persons have been married with the Hindoo ceremonies during the time of the Dutch Government, between the years 1785 and 1822; there might be some cases in which the entry of marriage has been omitted; a man is not at liberty to give his name to a natural son without an authority from a man in power, but allowing that he had taken his father's name, still he would be entitled to his mother's property.

Natural son.

Judgment.

From Evidence adduced, it is the opinion of the Court that the first Defendant is the son of Innasy Halesy and Caderan, and as such was entitled to half (Caderan being dead) of the land, which share appears to have been sold to the fourth Defendant. Plaintiff's claim dismissed with costs.

24th January, 1834.

No. 1,319.

Sadopulle wife of Aromogam... ... ...*Plaintiff*.

Vs.

Cander Aromogam... ... ...*Defendant.*

LAVALLIERE, JUDGE.

The Assessor, M. Sidembesen, is of opinion that, although he is convinced that the Rds: 400 were accumulated from the produce of the Lands belonging to Plaintiff, still that as the parties have lived together, the Defendant ought to be entitled to ½ of the amount, owing to the trouble he had undergone in collecting the produce, and that he alone ought to bear costs of suit.

Produce of Lands.

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The Assessor, T. Sooper, is of the same opinion as the other, because the parents of the parties did not receive any receipt from them for the produce of the first three years after their marriage, of the Dowried Lands.

The Court and the remaining Assessors are of opinion, that since the marriage has not been registered and regularly celebrated, according to the custom of the country, through the opposition of the Defendant, he can consequently have no right or title either to the Lands or for money accumulated from their produce, what he has already enjoyed during the time that he lived with Plaintiff, is a sufficient compensation for his trouble. By the very individual who adopted and brought up the Defendant from his infancy, it has been produced, that he himself is possessed of personal property, and as he has admitted that he had actually lent the amount to the fourth witness, it is to be inferred that it must be from that of the Plaintiff, and to which, according to the law of the land, he can have no possible claim, since the marriage was not lawfully solemnized; in which case only he would be entitled to half of the accumulated property, and his ill-treatment to Plaintiff is, in the opinion of the Court, a sufficient reason for their relations to be anxious for the separation.

Want of registration.

Acquired property.

Divorce.

It is therefore decreed, that Plaintiff be entitled to the shares of the several lands as per list filed by her with the libel, and that Defendant do further pay her Rds. 400, equal to £30, and costs of suit.

Division of property.

No. 593.

22nd October, 1834.

Yanammach daughter of Coomarasamy... ... *Plaintiff.*

Vs.

Ramasaymey Canawedy Ayar, Brahmin ... ... *Defendant.*

Burleigh, Judge.

Brahmins generally contract their children in marriage when they are much too young to form an opinion on the matter, or decide as to whether they felt inclined to the alliance, or not their inclinations are never consulted, and

Brahmin marriage.

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Children's inclination not consulted.

the custom is for the children to make no objection whatever to the wishes of the parents on this head. In the late Provincial Court a marriage was pronounced to be complete if cohabitation had taken place after the registry of marriage. A young man brought an action in June last against the Plaintiff and others, charging her with unlawfully cohabiting with another person, this case is sent with the present one; it appears to me that the parties cohabited. The Assessors (who are Brahmins) are of the same opinion, the District Court thinks it proper to note this opinion, as the parties themselves would wish to make it appear that such was not the case.

Further evidence taken.

The Assessors state, according to our religion, the marriage must hold good, the Taly has been tied on the neck of the Plaintiff, and that, by our religion, constitutes the marriage; we have no doubt, that cohabitation has taken place, *the parties by our religion cannot be divorced; this, of course, is confined to Brahmins. A woman can marry but once, she cannot form another alliance,* even after the death of her husband. We consider that if this marriage was annulled, it would be a source of much mischief to. . . . . . .

Signed, Assessors.

The Assessors, in this case, are the most respectable Brahmins I could procure in this Province, and they perfectly understand the religion of the parties; I agree fully with them in considering that the marriage should not be annulled; I have no doubt that cohabitation has taken place; the fact is, that since Plaintiff's marriage, she has formed an attachment to another man, and wishes to live with him, for she cannot be married again, no Brahmin Priest would perform the ceremony. The Assessors consider that the parties should bear their own costs, as the wish to separate is mutual, (Defendant has not gone to any cost in the case.) I am of opinion, that the Plaintiff's claim should be dismissed, and that the marriage should be pronounced a legal and binding one.

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The Assessors fully agree in this opinion. It is decreed that the Plaintiff's claim be dismissed, and the marriage be pronounced a legal one.

MARRIAGE CASES.

No. 933.

14th July, 1835.

Sooper Moorgar and wife... ... ... *Plaintiffs.*

Vs.

Winayeger Canawedy and another .. ..*Defendants.*

BURLEIGH, Judge.

Naranar Cander, washer, of Sangane, sworn, deposes—My brother Colandayen received the permit I now produce, from the Collector in 1826, in the month of December; in 1822, a dowry deed was granted to second Plaintiff, as the parents of second Plaintiff told me (this question was not asked him, he mentioned the matter without being asked to do so) the marriage ceremony took place before the chit or permit had been received. I refused to wash for the second Plaintiff, because she became pregnant, and she obtained this permit in order that I might wash for her.

Judgment.

Dowry.

Original Deeds

Permits.

The permit which is produced shews most distinctly that the second Plaintiff was married after its date, 7th December, 1826, had the dowry deed been really granted, the original Voucher would have been given with it, according to custom. The first Defendant possesses it. I am very certain that the last witness has not spoken the truth, because it is never customary to obtain permits for the purpose he mentions. I am of opinion that a decree should pass for the Defendants. All the witnesses said they (Plaintiffs) have been married for twelve years, and this permit proves to the contrary; the first witness is a person of suspected character, and no dependence can be placed on the evidence of the second, he being brother to the second Plaintiff.

Assessors agree.

It is decreed that the claim be dismissed with costs.

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17th March, 1835.

No. 382.

Andy widow of Cander... ... ... *Plaintiff.*

Vs.

Wedate wife of Welen and others... ... ... *Defendants.*

TOUSSAINT, Judge.

Priest.

The Court is of opinion, that the marriage of Plaintiff to Defendant's brother, is not proved by the witnesses called to prove the marriage contracted, and there is no credit to be placed in their evidence, that the marriage took place according to the heathen ceremonies; there is no Priest or Brahmin called to prove, nor is there any registry or extract of registry produced, to prove the marriage to be a lawful one. The possession is also very doubtful, for it appears that Sidembran Cander died before Wedate, from whom the land devolved to the children and grand-children. The Court considering the whole, is therefore of opinion, that it is not proved Plaintiff to be the lawful wife of Sidemberen Cander, the Defendant's brother, and that her claim for a share to his property cannot be allowed. The Assessors agree in opinion with the Court. It is decreed that Plaintiff's claim be dismissed with costs.

Supreme Court Judgment.

Set aside, and judgment entered in favor of the Plaintiff, to be quieted in possession of quarter of the lands, with costs of suit to be paid by first and third Defendants, who are also to pay the costs of the second Defendant.

The ground on which the Plaintiff's suit was originally dismissed, was the insufficient proof of her marriage, a defect which was supplied to the entire satisfaction of the District Court, and the marriage distinctly recognized in a subsequent suit, No. 428, commenced a month afterwards, by another party against all the parties in the present suit. Both suits being brought at the same time, under the consideration of the Court of Appeal, the decree in the former is accordingly ratified by reference to the latter.

8th July, 1835.

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No. 581.

9th May, 1839.

Sinnepulle, widow of Ayen, her daughter Amony, and Ayen Sidemberen ... ... *Plaintiffs.*

Vs.

Pievecorhnda Mudliar, Irregonader Maniagar, of Jaffna, and others ... ... *Defendants.*

PRICE, Judge.

The Bride fifteen years old. The Bridegroom about eighteen.

Judgment.

The Court and Assessors consider this case should be dismissed, as the parties to the alleged marriage are under *age,** and are not willing to live together. This decision is not to prevent Plaintiffs bringing a claim for damages, if they think it necessary to do so. Parties to pay their own costs.

No. 1,286.

6th February, 1837.

Kaden Winasy and brother Maden Wayrawen... *Plaintiffs.*

Vs.

Winasy Maden ... ... *Defendant.*

SPELDEWINDE, Judge.

The Assessors say they are of opinion that to constitute a free delivery of any property from one to another, there should appear a regular leading proof or deed to warrant him in the property of the same, which precaution they ought to have taken in securing to them a deed of gift in their favor, to guarantee their ownership to the said lands in dispute, which is the general case in all instances ; now this not being the case, and the Plaintiffs witnesses being persons much interested in this transaction, no credit is due to their evidence. On the other hand it transpired by the deposition of their first witness, the Maniagar, that the supposed Defendant's second marriage with his wife Cadery, to have happened as far as the year 1818, whereas the Libel of Plaintiff contradicts it to 1814, a very gross and obvious error (if it can be called so,) to leave in their minds

*Age does not appear.

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not the least doubt to disbelieve the fact, besides the several variance in the testimonies of Plaintiffs' witnesses. Assessors say they conceive that the Defendant has fully established his long possession of the lands, and his legal property, in it which it seems he had bought during the time of his second marriage, and therefore the Plaintiff can even not have any pretension to half the share of these lands in right of their late mother Nagy's acquisition.

Second Marriage.

Consequently that Plaintiffs, claim should be dismissed with costs, and Defendant be confirmed in the peaceable possession, in which opinion the Judge also agrees. Decreed accordingly.

Supreme Court Judgment.

Affirmed in Appeal, 12th April, 1837.

16th Augt., 1837.

No. 1,782.

Poothatamby Vissovanader and wife Modelinatchy *Plaintiffs.*

Vs.

Sidemberaneder Sangrepulle, his concubine Motenatchy and his son Wissowenader... ... *Defendants.*

Burleigh, Judge.

The first question in this case is, was first Plaintiff married to the second Defendant, she was sister to his first wife (who was mother to the second Plaintiff) and it appears in his own statement in case No. 823 that they were not married according to the Dutch law, and I conceive they were not, but they were most likely married according to the Geentoo laws, which admit any person to marry his deceased wife's sister, a thing to this time of very common occurrence; with respect to this point in case No. 8,403, where the parties stood as they do in this one, the third witness for the Plaintiffs stated, "I know the first Defendant; his first wife was called Teywane (second Plaintiff's mother), she died and he then married her sister Mootonatchie (second Defendant), in another part of his evidence he stated first Defendant appears to be lawfully married to Mootanachy, the second Defendant."

Marriage.

Deceased's Wife's sister.

The fifth witness for the Plaintiff stated,—first Defendant

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married Teywane, she was his first wife, she had only one daughter, the second Plaintiff; Teywane is dead; Moortonatchie, sister to Teywane, is now wife to first Defendant; her son is third Defendant. I do not know if she is lawfully married to first Defendant."

In another part he stated. The parties live in one house.

It would appear from this statement that a second marriage did take place. It appeared clear in case No. 8403 that Teywane was the first wife of first Defendant, and the mother of the second Plaintiff.

In case No. 823 the present Plaintiff stated the following, in a representation referring to an Inventory Deed filed by them (which ola was set aside), the first Defendant in the present case further states in his answer, that an In- "ventory ola is not required to be executed and granted "to the second Plaintiff, as she was ten years of age on "the occasion this Inventory ola was passed; but as the "Defendant attempted to perform *a second marriage, the "family of second Plaintiff, conformable to the country law, "got passed this Inventory ola in favor of second Plaintiff.*

Inventory.

If this statement is to be credited, and I persume it should be, as it comes from themselves, (I don't myself believe the story,) it appears that first Defendant had then (1792) an intention of marrying a second time, and for the security of second Plaintiff's property, this Deed was granted. If this statement is to be relied on, it shews clearly that a second marriage was performed, otherwise the granting of the Bond would have been quite unnecessery, as according to the country law, the second Plaintiff must have remained with all her property under charge of her father, the first Defendant, unless he married a second time before she was herself come to full age, or was married to first Plaintiff, her husband.

It is stated that she was only ten years of age when this Inventory was executed: the parties have lived together, which, I think, shews that the first Defendant was married to the second; and the third Defendant was married in a respectable family. The last point to be considered

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is, whether the first Defendant could leave his hereditary property to his son, I am of opinion that he could, as I have no doubt whatever, that he considered him his lawful child. I consider that the claim of Plaintiffs should be dismissed.

The Assessors consider that the second Defendant was the lawful wife of first Defendant, and that the claim should be dismissed.

It is decreed that the claim of Plaintiffs be dismissed with costs.

Judgment of the Supreme Court.

The proceedings are read and explained by the Court to the Assessors. Before proceeding to the discussion of the many important legal questions involved in this case, it is necessary to ascertain whether in fact a marriage according to the Gentoo rites was ever entered into by the late Sidembrenader Sangrepulle, originally first Defendant, and Moottonachy the second Defendant. The case is therefore referred back to the District Court where the parties are at liberty to adduce evidence on either side, to that point only.*

13th February, 1839.

Judgment.

In this Case, the Supreme Court having expressed its opinion, that a native marriage had taken place between the father and mother of the third Defendant, it is now decreed by consent of the Plaintiff, and said third and only surviving Defendant, that the whole of the property of the first Defendant as claimed by the libel, be equally divided between the said second Plaintiff, his daughter, and the third Defendant his son; and that the third Defendant do account to the said second Plaintiff, for the rents and profits of any of the share now adjudged to her, from the time of the decease of the said first Defendant.

Each party will bear his own costs.

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* Evidence heard and case sent to Supreme Court.

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No. 1,439.

25th March, 1839.

Teywane, wife of Canden, for herself and as mother and guardian of her daughter Poodatte, of Mallagam ... ... *Plaintiff.*

Vs.

Sidembrenader Cander and his parents ... *Defendants.*

BURLEIGH, Judge.

This case rests on a single point: was the alleged Tamil ceremony performed before or after the Regulation of Government, No. 9. of 1822? I am of opinion that it occurred after it, the certificate obtained from the Kutcherry, desiring washer to attend the marriage of Plaintiff, is dated November 6th, 1822, the ceremony must, therefore, have occurred after the passing of the Regulation. It appears that no Talie was tied on the neck of the bride, and this is a necessary ceremony to the legality of a native marriage.

Talie essential.

I am clearly of opinion, that Plaintiff's claim should be dismissed with costs, the Regulation No. 9. of 1822 puts a stop to much litigation of this sort, and such cases must now be looked to with much suspicion.—Assessors agree.

Plaintiffs claim dismissed with costs.

Judgment of the Supreme Court.

The proceedings in this case having been read and explained by the Court to the Assessors, they are of opinion, that the decree of the District Court of Walegamme, of the 25th day of March, 1839, be affirmed.

The Court differing in opinion with the Assessors, adjudges that the said decree be reversed.*

30th July, 1839.

* Plaintiff's witnesses proved the tying of Talie, the giving of clothes, being conducted to the house, &c., and also that the marriage took place before the regulation, though the Court does not believe them.

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2nd September, 1839.

No. 3,379.

Sanmogam Aronasalem and others...... .... *Plaintiffs.*

Vs.

Ponnar Amarasengam and others........... ...*Defendants.*

BURLEIGH, Judge.

The court has received a reply from the Venerable the Archdeacon, by which it would appear that this marriage did not occur, and was not registered. I therefore believe, that the entry made in the register held by the Maniagar of Valigamo west, has been forged, and that previous to the institution of this case. I am therefore of opinion, that the claim should be dismissed with costs. From the evidence of the first and second witnesses, there is much reason to suspect that Teager and second Plaintiff never lived together. Two Tamil ceremonies are proved, and this is never the custom, and the evidence is altogether unsatisfactory; it is usually the custom to examine the wife of a deceased person, when an inquest is held; the second Plaintiff was not examined when Teager died.

Inquest. Examination of wife.

The Assessors are of the same opinion.

It is decreed that the claim of Plaintiff be dismissed with costs.

Judgment affirmed in Appeal.

21st January, 1840.

No. 3,178.

Chinnepulle widow of Aronaselem, and son Mottan... *Plaintiffs.*

Vs.

Chinnepulle widow of Sooper, and two others.... *Defendants.*

PRICE, Judge.

The Court and Assessors are of opinion that the evidence adduced is insufficient to enable the Court to decide that part of the libel which relates to the property claimed.

The Assessors are asked whether they consider the evidence adduced to prove the marriage, satisfactory, and if the ceremonies proved are of that nature necessary to prove a marriage prior to the Regulation of Government No. 9. of 1822. The Assessors state they are of opinion that the marriage is proved.

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The Court sees no reason for differing in opinion with the Assessors on this point.

The Court is of opinion that each party should bear their own costs. The Assessors agree with the Court. It is therefore decreed, that first Plaintiff was the lawful wife of the late Welayden Aronasalem Vellale of Navaly, and that parties do bear their own costs.

Marriage ceremonies.

Evidence to prove marriage ceremony. Velayden Cander Police Vidahn of Navaly, sworn. The usual Tamil ceremonies were performed at the marriage. Taly was tied. The ceremonies were, a fire was kindled, a wedding joy was tied round the neck of the bride, and a wedding cloth called cooray was given to the bride by the bridegroom, the ceremonies were performed at night. Brahmins were present at the marriage ceremony, and they performed.

Other witnesses proved the same.

No. 3,282.

15th June, 1812.

Cannate, wife of Morogen... ... ... *Plaintiff.*

Vs.

Modeley Morogen and others... .. ..*Defendants.*

PRICE, Judge.

The Assessors state that their opinion is that it is proved that the first Defendant was legally married to Plaintiff, and that they lived together as man and wife. The Assessors state, they are further of opinion that from the length of time which has elapsed (since first Defendant went to live with the second Defendant) without Plaintiff bringing this action, (between six or seven years), that Plaintiff is not entitled to any damage against the second Defendant.

Lapse of time.

Damage.

They further state that they are of opinion that Defendant should pay the costs of this suit.

The Court fully agrees in the opinion expressed by the Assessors.

It is therefore decreed, that first Defendant is the lawful husband of Plaintiff, and that Defendant do pay all costs.

Affirmed in Appeal, 1st March 1841.

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5th November, 1840.

No. 4,368.

Aronassalem Ramanaden, and wife Mullopulle... *Plaintiffs.*

Vs.

Sidemberam, widow of Sooper ... ... *Defendant.*

BURLEIGH, Judge.

I passed a Decree in Case No. 1,740, deciding that a certain sum of money (which the Plaintiff in that case said the present second Plaintiff and the Defendant were entitled to on the delivery of a certain Interest Bond) should be equally divided between the present second Plaintiff and the Defendant, this Decree was grounded on the evidence which shewed that the late Ambalawanen cultivated and held the Lands of the second Plaintiff, and it therefrom appeared probable that the amount then in dispute was obtained from that property, it must be observed that the present second Plaintiff filed an application in that case, in which she claims her share of the amount, as the legitimate wife of Ambalawanen, and not as coming from her own property. I am now inclined to suspect that evidence to have been made up, that the second Plaintiff was not legally married to the late Ambalawanen is clearly proved, and, in fact, her Proctor in the present case, reported in a Pauper Petition filed in case No. 1,740, by the present Defendant, that she (second Plaintiff) had no claim on her husband's property, because her marriage was not registered, the ceremony having taken place in 1825, three years after the Regulation No. 9. of 1822; in that case, this Proctor was for the Defendant, he is now on the other side, had the Land in question been purchased with money acquired from second Plaintiff's property (of which there is no evidence) she would certainly have caused a Deed to have been executed in her own name for it, in the present case, second Plaintiff again claims half of this Land, as the widow of Ambalawanen, and says nothing of it having been purchased with her own money: by law she can claim nothing from him, her Proctor evidently grounded her case up to the Replication, on these points that is on her having been Ambalawanen's wife, and on the decided cases, before the List of witnesses were filed. I gave

Acquired property.

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it as my opinion that the marriage should be proved, the Proctor did not attempt to prove this, but tried to prove that the purchased amount had been acquired from his clients property, the Defendant having permitted the second Plaintiff to sue with her jointly for the recovery of outstanding debts the property of Amblavanar, can only be attributed to the ignorance of a simple native woman; she appears to have been enlightened on the institution of case 1740.

It is decreed, that the claim of the Plaintiffs be dismissed with costs.

No. 3,690.

31st March, 1843.

Sidemberem Chettiar Sewe Soopremania Chetty of Vannarponne... .. .. *Plaintiff.*

Vs.

Nagamotto or Nagamenal, daughter of Perietamby, and son Veeregetty...... ... ... *Defendants.*

BURLEIGH, Judge.

Marriage Registry easily forged.

The Court pays little attention to the marriage registry, they are easily forged (as the Court knows well), and if it was not so, this entry by no means proves that first Defendant was not married, as mistakes continually occur, and it is not likely that first Defendant's son would call himself a bastard.

It is decreed, that the claim of the Plaintiff be dismissed with costs.

Affirmed in Appeal.—15th August, 1843.

No. 13,252.

26th October, 1843.

Sinnepulle, daughter of Nenayger... ... ... *Plaintiffs.*

Vs.

Sidemberenader Cander and others... ... ... *Defendants.*

BURLEIGH, Judge.

Cohabitation.

The Court and Assessors are of opinion, that it is proved that the Plaintiff and first Defendant have not cohabited subsequent to the entry of marriage between them.

The Plaintiff and first Defendant are therefore at liberty to perform other marriages, parties to pay their own costs.

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27th Decr., 1844.

No. 5,760.

Mootatamby Poodepulle and his daughter Nagamotto... ... ... *Plaintiffs.*

Vs.

Tavasea Aromogam and another... ... ... *Defendants.*

BURLEIGH, Judge.

Damages.

Dowry Contract.

The Court and Assessors are of opinion, that the Plaintiffs are entitled to recover damages from the first Defendant, as, by the custom of the country, he was bound to marry second Plaintiff on the execution of the Dowry Contract. They are also of opinion that the marriage registry should be cancelled. Decreed that Plaintiffs do recover £3 15s. from the first Defendant, with the full costs of suit, and that the entry of marriage between second Plaintiff and first Defendant be cancelled and set aside.

Supreme Court Judgment.

Affirmed with costs.—27th February, 1845.

13th August, 1845.

No. 12,781.

Seedower widow of Weragetty and her children... ... ... *Plaintiffs.*

Vs.

Weeragetty Coomarawalen... ... ... *Defendant.*

PRICE, Judge.

The Court is of opinion, that the Plaintiff's second marriage with Weeragetty Cartigasen is not proved. The Court is not satisfied that the usual Tamil ceremonies were performed. allowing that first Plaintiff was married prior to 1822, and if her marriage took place since that time it should have been registered.

Assessors agree.

Plaintiffs claim dismissed with costs.

Supreme Court decree. Reversed with costs, and the plaintiffs are decreed to recover the half share of the land claimed in the libel.

Registry.

The Supreme Court believes, from the early entry in the

registry of 1824, produced by the Plaintiff's first witness, and the testimoney of the other witnesses examined, that he first Plaintiff was the lawful wife of Weragetty Cartigasen, the Defendant's brother, and that the second and third Plaintiffs are children of the said Weeragetty Cartigasen, and his wife the first Plaintiff.

No. 2,526.

9th September, 1847.

Walley widow of Perian, mother and natural guardian of her daughter Warate ... *Plaintiff.*

Vs.

Cadergamar Wenasitamby and another...... *Defendants.*

PRICE, Judge.

Mother's Consent. Cancelling Registry.

The Court totally disbelieves the evidence as far as it regards Plaintiff being present and consenting to the marriage, and Waratte was under age at the time the mother's consent was necessary. The Court therefore considers, that the registry should be cancelled by an order to the Maniager; third Defendant to write cancelled against the entry.

Assessors agree in opinion.

Decreed accordingly. Defendants to pay costs.*

No. 3,118.

24th February, 1848.

Nagenader Sangrapulle... ... ... *Plaintiff.*

Vs.

Cartigaser Tiager, acting Maniager of Welane...*Defendant.*

PRICE, Judge.

Judgment.

Usual Cohabitation. Registration.

The Court is of opinion, that there is nothing to prevent Defendants registering the promise of marriage with Sinnecotty, as applied for by the libel, if he is totally ignorant of cohabitation having taken place between Plaintiff and Nagatta, for the registration of the promise does not constitute the marriage. The Court will not, however, compel Defendant to register the promise in question by an order of this Court, thereby making it the Court's act and not Defendant's.

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* At the date of trial she was found to be eighteen or twenty years old, entry of marriage was in the same year, viz. 22nd January, 1847.

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The Court has already given reasons, in several cases of this nature, for not cancelling the registeries, and feels satisfied that the moment the Court commenees cancelling them, that hundreds who have cohabited after registry of promise will by mutual consent apply to have the registries cancelled, and when it is the object of all parties, nothing will be easier than to get marriages set aside. The Court refuses to give damages, each party to pay his own costs.

The Assessors are asked to give their opinion fully and freely on this case.

The Assessors agree in the opinion of the Court; libel dismissed, parties to pay their own costs.

Supreme Court Judgment.

It is considered and adjudged that the decree of the District Court of Jaffna, of the 24th day of February, 1848, be set aside, and the Plaintiff be decreed to recover one Rix dollar damages, with costs. The Supreme Court considers that it was incumbent on the Defendant to make the necessary proclamations upon the Plaintiff's application to register his marriage with Sinnecotty, notwithstanding the previous registry of marriage with Nagatte; and that the Defendant rendered himself liable to this action under the 8th Clause of the Ordinance by his having neglected to do so, for it must be noticed that the provisions of the 9th clause regulating objections to marriage being decided on by the Court, apply to *any* objections "made between or at the period of the aforesaid proclamations."

Previous Registry.

Course to be pursued by the Registrar.

10th July, 1848.

LIFE INTEREST CASES.

No. 146.

28th August, 1821.

Marial widow of Walliar and others... .. ...*Plaintiffs.*

Vs.

Cander Sidemberan and others... ... ...*Defendants.*

LAYARD, Judge.

Having considered this case, it appears to me that there may have been great equity by the division passed by the

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umpire Mr. Rodrigo, but that it is necessary to state whether second and third Plaintiffs are not of an age that they might sooner have brought forward these claims.

Defendants were in possession for a long time, and the Plaintiffs were also sufficiently even in their minority represented by their mother, who might have, according to the Malabar law, at any time contested the Defendants' right.

Father's right to bring action.

I fear nothing can be given; that the Dower of Defendants must be made and considered a document, and the Plaintiffs' share to all therein bestowed, set aside, save the inheritance of Mothychale, if his death has been at all recent.

Parties admit Mothychale Welen died about 15 years, or more ago, they cannot state the time.

The Court asks why the Plaintiffs did not lodge their complaint sooner, to which they reply, they could not prosecute so long as the mother of first Defendant was alive, which is Law

On reference to the first Defendant, he says that the mother died but four years ago.

Mothychale Welen had two daughters and one son, first Defendant says the son of Mothychalo takes one-fourth of his property and his daughters three-fourths.

The Court considers that the property of Mothychale Welen could not have been given in dower.

The voucher therefore is not genuine. Plaintiffs brought their claim forward as soon as the law would permit, and the claim of the Defendants by virture of the voucher of 1,794, be set aside.

The first Plaintiff, as widow of Walliar, should possess the Estate of Perianachy in a proportion of one-third in right of her deceased husband.

That she is also entitled to a share in the same proportion of whatever property devolved from Mothychale Welen o Perianachy.

That equal proportion of the entire Estate of Perianachy be allotted to first Defendant as son of her deceased husband Walliar Canthan, and the remaining one-third to Koner

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Canapady and Koner Omeyal, as grand-children and heirs of Walliar Canthen by his daughter Poothathey, and that Defendant do pay the costs of this suit

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9th April, 1823.

No. 2,292.

Tirrowengeda Chettiar Muttowagtitinga Chettiar... ... ...*Plaintiff.*

Vs.

1. Ramasamey Chettiar Tirrowengedda Chettiar and son
2. Sewenandalinga Cettiar. ... ...*Defendants.*

Plaintiff complains that the first Defendant, his father, in combination with the second Defendant his, Plaintiff's, younger brother, admitted a debt of 7,000 Rds. in his the younger brother's favor, when prosecuted for it before this Court, and that by such means the first Defendant squanders away his, Plaintiff's, mother's dowry and his personal property, and therefore sues for the interference of the Court to prevent such proceedings, and to call on the first Defendant to file an Inventory of the property brought in dower by his wife, and also of his acquired property. The property is said to be worth 50,000 Rds.

The first Defendant it appears, has been only married once, his wife died 18 years ago, at Nagapatam. The Plaintiff is about 35 years of age, and married 10 years ago. The first Defendant admits that the dowry deed which his wife obtained from her parents, is filed in case 369, but he declares that it is impossible for hin now to file an account of the property acquired by him and his wife while living together as such.

Judgment.

Life interest of Father.

The Court is of opinion that the Plaintiff cannot, agreeably to the Thesawalemme, demand anything as long as the father lives. That it would be unjust in the Court to require first Defendant to file in Court a statement of the property he acquired while living with his wife, considering that she died eighteen years ago, and that the parties have been engaged in trade ever since. That the Dowry

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ola filed in this Case 396, will afford the Plaintiff full information touching the Dowry property of his mother; that nothing has been done by the first Defendant to sanction this Court interfering with him or his property, and that Plaintiff must do as well as he can until his father dies, consequently,

It is Decreed, that Plaintiff's Libel be dismissed with costs.

Judgment of High Court of Appeal.

Upon reading the Petition of Appeal and the Certificate from the Provincial Court of Jaffnapatam, bearing date the 3rd day of May last, and the copy of the decree and summary of the grounds of decision of the Provincial Court, It is ordered that the Appeal be rejected. No grounds for Appeal appearing in the Petition of the Appellant.

Dated Colombo, 18th June, 1823.

No. 2,607.

18th April, 1823.

Suppremania Swamenathen Chetty... ... ... *Plaintiff.*

Vs.

Velayelara Mudliar Cartigasen and others ... *Defendants.*

Scott, Judge.

Father's life interest.

The Plaintiff now admits that her mother is alive, and she cannot marry a second time. The Plaintiff is above twenty-five years of age. It is Decreed that Plaintiff's Libel be dismissed; with permission to his mother to institute this action if she deems fit, as by the country law it is her property as long as she continues unmarried, and the Plaintiff has no claim to it till the mother dies, unless she is pleased to put him in possession of it. Plaintiff to pay costs.

No. 839.

9th March, 1825.

Cander Sooper... ... ... *Plaintiff.*

Vs.

Naranar Alwayenan... ... ... *Defendant.*

Toussaint, Judge.

The Court considering the case with the vouchers and evidences produced, is of opinion that there is no proof whatever before the Court for the eight three quarters, claim-

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ed by Plaintiff as profit of the last season for the ottyed lands; that as the voucher dated 19th July, 1815, is in favor of Plaintiff's mother, and not in favor of Plaintiff himself, and there being no proof whatever before the C ourt that the said Deed has been transferred to Plaintiff by his said mother, and as that paragraph relative to this redemption stated in the Deed, dated 2nd August, 1817, appears to have been scratched and erased, and that as the testimony of the evidences as to this point are contradicted and are very little to be relied upon, the Court is of opinion that the Plaintiff has no right whatever to prefer any claim on the Bonds dated 19th July, 1815, as his mother is still alive, and as the debt of 19 Rds. contracted in the Bond dated 2nd August, 1817, is admitted by Defendant.

Mother's life interest.

It is decreed that Defendant is entitled to recover from Defendant the sum of 19 Rds., with costs of suit in the second class.

Year 1825.

No. 3,268.

Sooper Coornaden... ... ... *Plaintiff.*

Vs.

Cadregamer Sooper... ... ... *Defendant.*

Forbes, Judge.

Father's right of action.

Plaintiff's father being still alive, the latter must, according to the Thesawalemme, sue for the land in question. Plaintiffs claim is therefore dismissed with costs, and Plaintiff's father is recommended to institute his claim.

Year 1825.

No. 3,712.

Madever Swaminader... ... ... *Plaintiff.*

Vs.

Wayrwial widow of Ayen... ... ... *Defendant.*

Forbes, Judge.

Father's life interest.

Plaintiff's father is alive, and is not married a second time; he appears in Court. Plaintiff's father being alive, Plaintiff cannot claim the property until his death; Plaintiff's claim, which also appears a bad one, is consequently dismissed with costs of suit.

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No. 1,041.

17th August, 1825.

Cander Aronasalem... ... ... *Plaintiff.*

Vs.

Poody Sinnapodier... ... . *Defendant.*

TOUSSAIANT, Judge.

Mother's life interest.

As the Plaintiff's mother is alive, the Court can give no decision in the case, in favor of Plaintiff, as she is the proper person to come forward if the Plaintiff's mother (if she chooses to do so) is to appear either personally or by proxy on the 22nd instant, and apply to be a joint or first Plaintiff in the case, when a decision will be giving or else the case will be struck off.

Defendant also to appear on that day.

No. 3,941.

Year 1826.

Ponnambalam Winnasitamby ... ... *Plaintiff.*

Vs.

Pooner Wayrewen... ... ... *Defendant.*

WRIGHT, Judge.

Son's right of action father being alive.

Held that it was not competent for a Son to bring an action to recover property donated to the mother, during the lifetime of the father, and that the father was the fitter person to do so.

No. 3,952.

31st August, 1826.

Sooper Wayrewanpeder ... ... *Plaintiff.*

Vs.

Cartigaser Caderitamby and others ... ... *Defendants.*

WRIGHT, Judge.

The Plaintiff admits the existence of his mother, brother, and four sisters.

Son has no claim whilst the mother is alive.

The Plaintiff having no right, under the existing law and customs of the country, to sue for any part of his father's estate during the life of his mother, his claim is dismissed with costs.

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15th Septr, 1826.

No. 1094.

Amblewaner Ponamblem... ... ... *Plaintiff.*

Vs.

Cander Amblemen and others ... ... *Defendants.*

LAYARD, Judge.

Plaintiff's mother, an aged woman, appears in Court, and states she never gave Defendants this land in Dower.

Son cannot claim whilst Mother is alive.

It is decreed that Defendants having failed to prove any right to the land in question, as their Dower, but as Plaintiff had no right to claim the same as his father's inheritance, pending his mother's life, that each party should pay his own costs.

Costs divided in consequence of appearance of Plaintiff's mother.

Year 1826.

No. 4,054.

Cannewaddy Weelen... ... ... *Plaintiff.*

Vs.

Candy, wife of Soopen, and others, ... *Defendants.*

WRIGHT, Judge.

Father. 2nd Marriage. Right of action.

It appearing that the father of the parties is still living, without having entered into any second marriage, the Plaintiff can have no right to institute any claim to any part of his father's estate, any more than the Defendants have to appropriate the same to themselves on the plea of an illegal Dowry, and an unfounded and unauthorized gift.

It is therefore decreed, that the claim of the Plaintiff to six and a half Lachams of the Land Siwelkenori, situated at Wadababepalle, be dismissed, and that parties do bear their own costs.

Year 1826.

No. 4,081.

Winayger Ponnambelem, and others ... ... *Plaintiffs.*

Vs.

Sidembrettie, daughter of Litter, and son, ...*Defendants.*

WRIGHT, Judge.

It is decreed that first Defendant be the lawful wife of Ponnar Cadergamer deceased, and that second Defendant is

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their heir (at present a minor) to the estate of the deceased, and that in conformity with the country law the said estate, as mentioned in the division ola, filed and dated 12th April, 1799, and in the sale deed of the 29th August, 1814, also filed, as well as any other property which may have belonged to him at the time of his death be held by the first Defendant on behalf of her son, during her continuance in widowhood, and that the Plaintiffs do pay the costs of this suit.

Widower's life interest.

No. 4,542.

Year 1826.

Ladonader Cappen, and others ... ... *Plaintiffs.*

Vs.

Caderasy, widow of Sadanader, and others ...*Defendants.*

Wright, Judge.

Point raised.

Widow waisting property.

Son's right to take possession

If the mother wastes away property belonging to the estate of her husband in which she has a life interest, can the sons who have reversioning rights, take possession of the property on condition to support the mother. Case amicably settled in the following manner, by the sons taking charge and possession of the property, on condition to support the mother, and in failure of performing this engagement, the mother was at liberty to take over again and possess the lands.

No. 4,770.

Year 1827.

Oomarevaler Sooper... ... ... *Plaintiff.*

Vs.

Modelitamby Wayremotte and others... ... *Defendants.*

Brownrigg, Judge.

The division Deed dated 23rd March, 1826, being on a stamp of 2½ Rds. only, is contrary to the provisions of the several Stamp Regulations and must be set aside.

Widower's life interest.

2nd Marriage, Division of property.

The Court further considers that, according to the Thesawaleme, the Plaintiff is entitled as long as he remain without contracting a second marriage to the possession of the whole estate of himself and his late wife, and that if he marries, the legal division of the estate, as directed by the Thesawa-

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leme. should take place. It is therefore decreed that Plaintiff be established in the peaceable possession of the three lands claimed. Costs by the first and second Defendants.

Year 1821.

No. 5196.

Wallianachy daughter of Cadergaman. ... ... *Plaintiff.*

Vs.

Her father Alwar Cadergaman and others ... *Defendants.*

Brownrigg, Judge.

Father's life interest.

It appears from the statement of Plaintiff, that her father, first Defendant, is not married for the second time, nor has any purpose of such marriage, that under the Thessawalemme he is entitled to hold his late wife's dowry and acquired property while he remains unmarried, and therefore the libel is dismissed with costs.

Year 1829.

No. 5,528.

Cadergama Canoler... ... ... *Plaintiff.*

Vs.

Walley widow of Weelen, and son... ... ...*Defendants.*

Brownrigg, Judge.

Mother's property.

The Court considers that the claim of the Plaintiff in this case cannot be maintained, as his mother through whom only he could derive any title to the land claimed in the libel, is still alive, and has intervened in this case.

19th October, 1829.

No. 5,740.

Murger Sanmogam... ... ... *Plaintiff.*

Vs.

Aromogetar Cander and others. .... *Defendants.*

Price, Judge.

Plaintiff states his father to be alive and unmarried for the second time, and further, that he has five brothers and sisters living, who are not joint Plaintiffs in this case.

Father the natural guardian.

It appearing to the Court (agreeable to the Thasawalemme) that Plaintiff's father should be prosecutor (as natural guardian of his children) unless he contracts a second marriage, which does not here appear to be the case, Plaintiff's claim is dismissed with costs.

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No. 6,361.

28th January, 1831.

Caderasy widow of Welayder ... ... *Plaintiff.*

Vs.

Her sons, Welayder Ayempulle and Cadergamor... ... ... *Defendants.*

PRICE, Judge.

Mother's life interest.

It is decreed that all the property in the possession of the Defendants, left by their late father Nallas Welayden, be given up to Plaintiff their mother, to be held by her during her life, particularly the lands mentioned in the libel. Defendants to pay costs.

26th April, 1832.

No. 7,282.

Aromogam Modilitamby ... ... *Plaintiff.*

Vs.

The Plaintiff's grandmother Podatte, widow of Cander ... ... *Defendant.*

Son cannot claim anything as long as Mother remains unmarried.

Plaintiff present; states he is under age, unmarried, and has not married for the second time.

Under these circumstances Plaintiff's claim is dismissed with costs.*

No. 7,497.

13th Decr., 1832.

Siwegamy wife of Maden... ... ...*Plaintiff.*

Vs.

Parian Wayrawen and others... ... ...*Defendants.*

PRICE, Judge.

The Court does not think it necessary to proceed further

* Libel says that, Defendant's son Cander Aromogam, father of Plaintiff, was entitled to one-third of the estate of Defendant's husband by the modisum, and half of the acquisition, which share is devolveable to Plaintiff after the Defendant's death, according to Thesawaleme. That, however, Defendant has already sold, as also mortgaged part of the said Estate, and spent the amount for her other children, leaving Plaintiff destitute. Plaintiff prays to order an Inventory of the said Estate, worth £52 10s., to be made out, and the same secured to prevent further ruin, for the benefit of the Plaintiff and the other Heirs. No evidence was taken, and Defendant did not file any answer, she declined to file one.

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in the case as Plaintiff admits her mother to be alive, and that the Land she now claims, does not form any part of her (the Plaintiff's) Dowry property, and the Plaintiff's mother still remains unmarried.

Mother's life interest.

As the property of Plaintiff's late father should remain with the Plaintiff's mother during her life, Plaintiff's claim is dismissed with costs.

31st July, 1833.

No. 7,647.

Sadopulle daughter of Ayethar... ... .*Plaintiff.*

Vs.

Sidemberam widow of Ayethar and her son, and another daughter... ....*Defendants.*

PRICE, Judge.

Daughter no right to claim property whilst Mother is alive.

Plaintiff states, first Defendant is her mother, and that she is now suing her for the share of her estate and that of her late husband, that Plaintiff would be entitled to them in event of her death.

Plaintiff can have no claim during the lifetime of her mother upon any part of the estate, unless regularly given to her in Dower.

Plaintiff's claim is therefore dismissed with costs.

18th Decr., 1833.

No. 4,330.

Cander Sinneven... ... ...*Plaintiff.*

Vs.

Swanal widow of Sinneven.... ... ... *Defendant.*

PRICE, Judge.

Son no right to bring action while mother is living.

By the answer it appears that the mother of Plaintiff is still alive, by whom the action ought, by rights, to have been brought.

Plaintiff further admits that Plaintiff's brother is still living. This suit is therefore dismissed with costs, reserving to Plaintff's mother the right of instituting another action if she chooses.

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No. 142.

1st March, 1834.

Comarevalue Cander... ... ...*Plaintiff.*

Vs.

Ponner Walayder... ... ...*Defendant.*

SPELDEWINDE, Judge.

Mother's right of action.

It appearing to the Court that Plaintiff's mother is the proper person to bring forward the case, and that in the present state it is not maintainable by him, as long as his mother is alive, this case, in the present shape, is dismissed.

No. 1,222.

27th Septr., 1834.

Gaspar Solomon and Maria Mootto widow of Janapregasam,... ....,..*Plaintiffs.*

Vs.

Walleamey *alias* Kitto, widow of Sidemberen Morugar.... ....*Defendant.*

PRICE, Judge.

Payment of Son's debt.

Defendant having paid the debt of one of her sons out of his share, the other sons (Plaintiffs) claim also. Held

The Clauses 10 and 11 of the first section of the Thesawaleme quoted by the Plaintiffs, do not at all bear on the point in question.

Son's cannot claim anything while mother is alive and unmarried a second time.

The 9th clause of the same section, distinctly states, that sons may not demand anything from their mother as long as she lives and remains unmarried.

I am therefore, of opinion, that the Plaintiffs' claim should be dismissed with costs.

The Assesors agree in the opinion of the Court.

Case struck off with costs.

No. 29.

18th Novr., 1834.

Wettiwalo Soopremaniar and his son Canagasame ... ... *Plaintiffs.*

Vs.

Caderatti, widow of Caylayer, her daughter, and her gallant... ... ... *Defendants.*

TOUSSAINT, Judge.

The Court is of opinion that, according to the claim, first Defendant who has contracted no second marriage, is not

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Account of property acquired during Marriage.

bound to render now any account to the Plaintiffs, of the acquired property of herself, and her deceased husband; but that Plaintiff must be satisfied, after first Defendant's death to receive whatever is left by her for her children, provided first Plaintiff's wife is not one that was married out with Dower, as the first Plaintiff endeavoured to prove, but there is very little ground to believe that he obtained no Dower, for it appears strongly proved by Defendants, that there was a Dowry Deed granted, and the properties given, except 50 Rds., so that Plaintiffs' claim is an ungrounded one.

The Assessors agree in opinion with the Court. It is decreed that Plaintiffs' claim be dismissed, and pay Defendants costs of suit.

17th Novr., 1836.

No. 2,359.

Nagapper Naweweerasingam and others... ...*Plaintiffs.*

Vs.

Sinneven Casey and others... ... ...*Defendants.*

PRICE, Judge.

The Court and Assessors consider the present claim should be dismissed, on the grounds that the plaintiffs had no power to come to the amicable settlement filed in the case 1,238, and that each party should pay their own costs of suit.

Amicable settlement.

The Court and Assessors having reason to believe that Defendants came to the amicable settlement with the plaintiffs with some improper view, they well knowing that second plaintiff's father was alive.

Ordered accordingly.

15th Decr., 1836.

No. 2,599.

Nagamotto, wife of Soopayer, for herself and her children. ... ... *Plaintiff.*

Vs.

Cadergama Sinnatamby, and others. ... ... *Defendants.*

PRICE, Judge.

The Court is of opinion that, allowing the marriage of plaintiff with Soopayer had been proved, still the Court would have been unable to pass a Decree in her favor for the Land in question, and it also appears by the evidence of

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plaintiff's witnesses, that first and second Defendants mother was alive at the time of the sale, and unmarried for the second time, and was therefore the proper person for making a legal transfer of the Land; the Court, however, cannot now decide upon the Bond in question, in the absence of Soopemaniar, and therefore, is of opinion that plaintiff's claim should be dismissed with costs, she having failed to prove that she was lawfully married to Soopayer. The Assessors agree in the opinion of the Court. Ordered accordingly.

Mother the proper person to convey property.

No. 3,204.

23rd Septr., 1837.

Peromeynar Sinnatamby. ... ... *Plaintiff.*

Vs.

Aromogam Muttokomaro, and others. ... *Defendants.*

Burleigh, Judge.

It appears to me, that this case should be dismissed without entering into the evidence of witnesses, the wife of the plaintiff should have been made a joint plaintiff, because the Land is said by plaintiff to belong to her father, the fourth Defendant; even then, I consider that she would have had no right to prosecute the Defendants; the father is still alive, and I am of opinion that she cannot lay claim to his property (in the absence of a Dowry) until after his death; the father states that he has already sold the Land, the plaintiff maintains that he only ottied it, even if this was so, the father cannot be compelled to redeem it, and certainly the plaintiff cannot claim the right of redeeming it.

Wife joint Plaintiff.

Father's right to otty. Redemption.

Assessors agree.

The Plaintiff's claim is dismissed with costs. Appeal withdrawn, property in question was the plaintiff's wife's Father's hereditary property.

No. 2,356.

17th October, 1837.

Caderen Soopen... ... ... *Plaintiff.*

Vs.

Valley, daughter of Caderen, and others... ...*Defendants.*

Mootiah, Judge.

I am of opinion that the Plaintiff has no right to bring this case as his mother is alive (who is second Defendant),

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Son's right of action, Mother being alive.

under the Thesawalemme or special Law of this province, in which it provides that a widow, as long as she remains unmarried for the second time, should continue in the possession of the estate of her late husband, and that of her own, and the second Defendant is admitted by the Plaintiff to be unmarried for the second time.

The Assessors agree. It is decreed that the Plaintiff's case be dismissed with costs.

17th May, 1838.

No. 3,749.

Welen Sinnaven... ... ...*Plaintiff*

Vs.

Perian Soopen, and wife Wally... .. ... *Defendants.*

PRICE, Judge.

By the Court to Plaintiff:—

"My mother is alive, and has notmade a second marriage."

Children not entitled to any share of Parents' property if Survivor remain unmarried.

The Court is of opinion that this case should be dismissed with costs, as agreeably to the Country Law, children are not entitled to any share of their parents' property, as long as they remain unmarried for the second time, and there is nothing in the proceedings to shew that Plaintiff's mother has made over any part of the property to Plaintiff. The Assessors agree in this opinion. Case struck off with costs.

15th Feby., 1839.

No. 5,192.

Sewegamytaay, widow of Muttoo Waytilingem, and others. ... ... *Plaintiffs*

Vs.

Ramasamy Chetty, Tiroovenga Chetty, and others. *Defts.*

PRICE, Judge.

Deceased wife's Heirs: their right to call upon widower to give security.

Plaintiffs by their Libel claim that the sum of Rds. 5,404. 8. 2., being one-fourth share of the Dowry and acquired property belonging to first Defendant and his late wife, should be paid over to Plaintiffs, or held in security to satisfy the claim of Plaintiffs, on the Estate of first Defendant's late wife, and further, that the costs in case No. 4,056 and the present costs be decreed in their favor. It appear

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by the order of the late High Court of Appeal, dated 17th December, 1827, in which case the present second Defendant was Plaintiff, and first Defendant the Defendant, and first Plaintiff's late husband, intervenient, that security for the above sum was ordered to be given by the first Defendant in the present case, in the terms decided by Mr. Wright. The terms of Mr. Wright's decree were as follows:—

Security.

Defendant (meaning first Defendant in this case) is called upon to produce securities for one-fourth share of the property in the account he has filed, which account is dated 24th July, 1826, for Rds. 21,618. 6. vizt, Rds. 5,404. 8. 2.

It appears that the said order made by Mr. Wright, was not complied with, and that Mr. Brownrigg by letter, dated 23rd June, 1829, reported the circumstance to the late High Court of Appeal, on the 6th July, 1829, that the execution in favor of the present first Defendant, should no longer be stayed, but be issued immediately, against the property of the present first Defendant, and that ¼ of the proceeds of the property levied under the execution, be paid into the Provincial Court, to abide the decision of the Court in respect to the claim of the Intervenient meaning, first Plaintiff's late husband, and that an early day be fixed by the Provincial Court for the Intervenient to substantiate his claim, and if Intervenient does not establish his said claim within the time limited by the Court, then that Plaintiff be allowed to receive the sum that may have been deposited under the provisions of this Ordinance, unless the Judgment shall have been otherwise satisfied.

It does not appear that the intervenient, first Plaintiff's late husband, took any steps after this order, to substantiate his claim, and nothing is done until the suit No. 4,056 was instituted by the present Plaintiffs against the present Defendant, on the 27th January, 1837. Ordered that the order of the late High Court of Appeal, dated 6th July, 1829, should be enforced, but that security should be given in the sum of Rds. 5404 8. 2.

To this recommendation the Honorable the Supreme Court acceded, by order dated 21st March, 1838, and the

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first Defendant was eventually, viz., on the 12th February, 1838, ordered to give security for that amount; first Defendant being unable to give the required security, his property was sequestered, and subsequently the present action was brought. The Court on reference to the list dated 24th July, 1826, filed in the Case No. 2,229, finds property enumerated to the value of Rds. 21,618 6.; of this sum Rds. 18,029 appears to be the value of the purchased property of the present first Defendant, and Rds. 5,589. 6. appears to be the value of the dowry property of his late wife. It therefore rests with first Defendant to show in what way the above property has been disposed of, in order to see whether the right of the present Plaintiff in the said property, has been injured or not.

First Defendant, by his answer, admits having sold the dowry lands of his late wife jointly with first Plaintiff's late husband, for the purpose of satisfying a debt due by the first Plaintiff's late husband to Government, and that another dowry land was sold by first Defendant jointly with the second Plaintiff, in 1834 or 1835, and that the proceeds of this land have been divided in equal shares between second Plaintiff and second Defendant, and that no other dowry property was sold after the death of first Plaintiff's late husband.

That Plaintiff's deceased husband, while under the guardianship of first Defendant, purchased in 1804 up to 1816 the salt rent and many other rents, and upon his request the first Defendant became security, thereby his lands, dowry lands, gold joys, &c., were sold in satisfaction of the amounts due to Government by the said first Plaintiff, deceased, and for the balance still due, and on account of the money pressure of Mr. Mooyart, the first Defendant was under the necessity of borrowing Rds. 7,000 on interest, from the second Defendant, for which a notarial Bond was granted, giving in mortgage some lands; to this Bond, first Plaintiff's late husband was a witness.

Defendant's Proctor now states that none of the lands mentioned in the list dated 24th July, 1826, have been sold

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to satisfy the debt due to Government, on account of the salt rent, and that all the lands and other property mentioned in the said list, are now in possession of first Defendant, with the exception of four pieces of lands situated at Vannarponne, viz.

Kidawibandawil.........	$166\frac{1}{2}$ Lachams.
Do. Totom.........	$76\frac{3}{8}$ „
Cherembergel............	75 „
Omeaddy and other parcels..................	141 „

which are especially mortgaged to second Defendant, for the debt due to him by the first Defendant, for Rds. 7,000 and interest.

The only points therefore, now left for the Court to decide, are, first, whether agreeably to the *Country Law*, the first Defendant can under the circumstances of the case, be called upon to give security for the quarter share of the property mentioned in his list dated 24th July, 1826, and secondly, whether the debt of Rds. 7,000 due by first to second Defendant, was a bona fide debt, and whether the four pieces of lands situate at Vannarponne, (and mentioned in the list) were liable for the said debt. With regard to the first point, the Court is of opinion, that there is every reason to believe, although there is nothing in the pleadings positive to this fact, and there has been an endeavour on the part of first Defendant to injure the Intervenient, widow of his late son, as regards the disposal of the dowry property of his late wife, and the acquired property, and therefore considers that first Defendant should be called upon to give security for a quarter share of the dowry, and acquired property remaining.

Security for child's share.

With regard to the second point, it is alleged in Defendant's answer, that first Plaintiff's late husband was a witness to the debt Bond of Rds. 7,000, granted by first Defendant in favor of the second; this is neither denied nor admitted by the replication, and the only evidence touching the fact is the deposition of Mr. A. L. De Niese, Notary of Jaffna, who deposed in the Case No. 2,292, on the 12th June, 1822,

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that the first Plaintiff's late husband was a witness to the bond granted by first Defendant in favor of the second.

Defendant's Proctor states that the other witness to the Bond was dead at the time the Notary's evidence was taken: from the evidence of the Notary, the Court must consider in the absence of evidence to the contrary, that the debt of Rds. 7,000 was a bona fide transaction, and therefore the amount of the value of the four lands given in security for the debt, and which are stated in the list dated 24th July, 1826, to be worth Rds. 10,500 should be deducted from the total amount of the said list, namely, Rds. 21,618 6., and that first Defendant should be required to give security for one fourth of the balance Rds. 11,118 and 6., viz. Rds. 2,779. 7. 2., and that the parties do bear their own costs in this case, and in the connected case No. 4,056, with the exception of the costs of second Defendant, to be borne by Plaintiff.

The Assessors agree in the opinion of the Court.

Ordered accordingly.

16th Decr., 1839.

No. 2,665.

Wayravey Coornadey... ... ...*Plaintiff.*

Vs.

Perianachy, widow of Wayrawey, and others...*Defendants.*

Burleigh, Judge.

Son can claim nothing till Mother dies.

This appears to me a vexatious claim, and, in fact, the Plaintiff has no claim on the property (even if it was not dowried to his sisters) until the mother's death, according to the Thesawalemme. I am of opinion that the claim should be dismissed with costs.

The Assessors agree.

It is decreed that the claim of Plaintiff be dismissed with costs.

The Proctor to pay the costs, if Plaintiff is unable to do so, for having reported that the Plaintiff had a good cause of action, when it is clear he had not.

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No. 6,608.

29th October, 1840.

Cadraser Cod elonger... ... ...*Plaintiff.*

Vs.

Canegesooria Modliar, Welayden, and others...*Defendants.*

Price, Judge.

Son can claim nothing as long as Mother is unmarried a second time.

Agreeable to the Country Law, a son cannot claim any share of his late mother's estate as long as his father remains unmarried for the second time, and we have no evidence of a second marriage.

The lands in question appear to have been mortgaged by the first Defendant, and his son (Plaintiff's debtor) to the second Defendant, and they have in the suit 5,274, admitted the mortgage Deed in favor of the second Defendant.

The Court is therefore of opinion, that the Plaintiff can have no claim on the Lands in question, which are mortgaged to the second Defendant, and that Plaintiff's claim should be dismissed with costs.

The Assessors agree in the opinion of the Court. Plaintiff's claim dismissed with costs.

Judgment affirmed in Appeal, 27th February, 1841.

No. 3,446.

4th May, 1841.

Sellatte, widow of Mootucomaren, and son Aromogam... ... ...*Plaintiffs.*

Vs.

Tayelmotto, wife of Sinnatamby, and others...*Defendants.*

Mootiah, Judge.

Insanity.

The second Plaintiff now states that his mother, the absent Plaintiff, is now become deranged in mind, and that the Land, the subject of this suit, is the acquired property of her at the lifetime of her husband, and that she is a widow.

The Court is of opinion that this suit should be dismissed, as the second Plaintiff has no right to any part of the Land as long as his mother, the first plaintiff, is alive, according to the special Law of the Country called the Thesawaleme, and as she is now deranged in mind, she cannot conduct a case either in person or by proxy, unless recovered from it,

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and each party should be decreed to pay their costs. The Assessors agree.

Plaintiff's* claim is dismissed, and each party do bear his own costs.

27th May, 1841.

No. 3171.

District Court, Islands.

Madewer Somanaden ... ... *Plaintiff.*

Vs.

Wisentipulle Mathes, Odear of Carembеn and Alsandro Soose ... ... *Defendant.*

MOOTIAH, Judge.

On reading the Pleadings, Documents and Evidence in this case, as well as in those of the connected cases, the Court is of opinion, that the lands claimed in the libel, should be made liable to be sold under Writ No. 4,453, in favor of the second Defendant, against Plaintiff's son Somanaden Waytianader, as far as his share goes in them from the estate of his deceased mother Wallamme, setting aside the objection made by Plaintiff at the Fiscal's sale, and that the Plaintiff should be condemned to pay the costs of suit, as it appears that he has no right whatever to retain the share of his son Somanaden Waytianaden, from the estate of his late mother, the moment *after he was married*, (because he is become entitled to half the disposing power of it on his marriage) particularly so as he appears to have been married, according to the admission of Plaintiff himself, before his having become security to the debt due to second Defendant.

Son's share sold for his debt.

Marriage of Son.

Right to take charge of Mother's property.

The Assessors agree with me in my opinion.

† It is decreed that the lands be sold, as far as the share

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* The second Plaintiff should have been appointed Curator, instead of dismissing the suit for a technical defect, as the Plaintiffs' reversionary interest was likely to be injured.

† This is very questionable Law, but the ground on which the Judgment of the District Court seems to have proceeded, appears to have been the fact that the Father though not married for a second time had a mistress, and several children by her, living with him in the same house.

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of plaintiff's son Waytianaden goes in them, as the property of the plaintiff's son Somanaden Waytianaden, under Writ 4,453, issued in favor of second Defendant, the said Waytianaden himself, and Aromogam Sooporumanior, setting aside the objection made to the sale of them by plaintiff, and that Plaintiff do pay costs of suit to Defendants.

Appeal decision.

It is considered and adjudged that the Decree of the District Court of the Islands, of the 27th day of May, 1841, be affirmed, subject to the opinion of the Collective Court, as to the question whether the plaintiff's son Waytianaden has any vested share in the said lands, which can be sold under the Writ.

Decision of the Collective Court, 5th August, 1841.

The proceedings in this case having been read, it is considered and adjudged that the decree of the District Court of the Islands, of the 27th day of May, 1841, be affirmed.

No. 4,643.

31st June, 1841.

Pedro St. Diago ... ... *Plaintiff.*

Vs.

Manuel Innasitamby ... ... *Defendant.*

Burleigh, Judge.

Judgment was against the Plaintiff's Son, the property seized was his mother's property (Dowry) and Plaintiff was unmarried a second time.

Life In terest.

According to the Thesawaleme, the land in question cannot be sold until the death of the Plaintiff. Was the debt a proper one ?* I could not hesitate in ordering the land to be sold, but it appears that Defendant got a Decree on words which are not actionable.

The Assessors agree in opinion with the Court.

It is decreed that the lands in question cannot be sold. †
Defendant to pay costs.

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* Judgment inconsistent. If it cannot be sold, how can the Judge order?
† Might be subject to life interest.

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24th Septr., 1841.

No. 4,049.

C. C. Tenmorachy.

Ayely daughter of Canewedy ... ... *Plaintiff.*

Vs.

Cander Canewedy and others ... ... *Defendants.*

Wood, Judge.

Plaintiff claims one quarter share (being her share) of certain lands left behind by her late mother, the property is the modesium of her mother. The first Defendant is the father, and second and third are daughters of the first Defendant, and the fourth the son of first Defendant.

Child can claim nothing during Mother's life-time.

As the plaintiff in this case claims the land in right of inheritance, but admits that the Defendant is her father, and has not contracted a second marriage, the case cannot stand, as being against the Country Law; as no child could claim anything during the life of a surviving parent, unless the said parent contracts a second marriage, which in this case is admitted not to have been done. I am therefore of opinion that the case should be dismissed, plaintiff paying the Defendant's costs, in which opinion the Assessors concur, Plaintiff's claim is accordingly dismissed, paying the costs incurred by the Defendant.

18th October, 1841.

No. 9,726.

Pedro Sawery... ... ...*Plaintiff.*

Vs.

Anthoney Wayly and others ... ... *Defendants.*

Price, Judge.

Children cannot claim during Mother's lifetime.

It appears by the Thesawaleme or Country Law, that children cannot inherit anything from the estate of their father during the lifetime of their mother, as long as she remains unmarried for the second time, and it appears to the Court that the plaintiff's mother is still alive and unmarried, (being made the third Defendant in this case.)

The Court is therefore of opinion that the plaintiff's Libel should be dismissed with costs.

The Assessors agree in the opinion.

Judgment in favor of Defendant, with costs.

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No. 3,635.

5th November, 1841.

Catpagam, widow of Ambiger... ... ...*Plaintiff.*

Vs.

Wariar Welen and Wariar Murugaser Odear of Mesale... ... ...*Defendants.*

Wood, Judge.

Debt of Son. Mother's life interest.

The Plaintiff in this case pleads, that certain landed property belonging to her deceased husband should not be made liable to answer the debt of her son Ambien Canewedty, against whom a Writ of Execution has been issued at the instance of Waryar Welen, on the grounds that, according to the Country Law, children can claim nothing during the lifetime of a surviving parent, unless the said surviving parent should contract a second marriage, which is not even alleged in this case.

I conceive that this is a valid plea, according to the Country Law, and that the property of the Plaintiff's husband cannot be made liable for the son's debts during her lifetime, and that the Plaintiff in that case, Wariar Walen (first Defendant) did illegally in pointing out the property which has given rise to the present action, and therefore his estate ought to be liable for the costs of this suit, with the exception of those of the second Defendant which ought to be defrayed by the Plaintiff, as she has unnecessarily made him a party in this case.

The Assessors concur.

It is therefore decreed that the Lands are not liable to be sold for the debts of Ambier Canawaddy, and further, that the estate of Wariar Walen pay all the costs of this Case, with the exception of those of the second defendant, which are to be paid by Plaintiff.

No. 4,576.

Year 1841.

Sewegamme, wife of Welayden, and others ... *Plaintiffs.*

Vs.

Naraner Sooper and others... ... ...*Defendants.*

Burleigh, Judge.

First plaintiff examined by the Court.

The late first plaintiff is dead, she was my mother. I re-

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ceived a Dowry Deed as did also my sister Ramasy, she is dead, but her husband and children are alive, myself and my sister's children are entitled to a just half each of the Land in question; my father is the first defendant, he is alive; the produce of the Land in question should be enjoyed by my father during his lifetime.

JUDGMENT.

This case must be dismissed; the case was originally illegally brought, as the first plaintiff's husband (fourth defendant) was alive, and the Land must now remain in the possession of the fourth defendant during his lifetime, when it will revert to the first Co-Plaintiff and her sister's children.

Father's life Interest.

Assessors agree. Case dismissed with costs.

26th July, 1842

No. 7,916.

Maylwagenawe Casinaden, his wife and others ... *Plaintiffs.*

Vs.

Mariemootoo, the widow of Yanepregasem and others... ... ... *Defendants.*

J. PRICE, Judge.

Plaintiffs sue in Forma Pauperis, but the Defendants oppose, and adduce evidence to prove the means of the Plaintiffs.

Ramanader Waytienader affirmed, I am one of the Defendants in this case; second Plaintiff's mother and second Plaintiff's uncle, first and third Defendants in this Case, granted me an agreement for 550 Rds. promising to sell me some Land out and out; with this money second Plaintiff's mother and grand-mother directed me to pay some debts incurred by second Plaintiff's parents. I paid some of the debts and obtained receipt: after paying these debts a balance remains in my hands of Rds. 120, this sum of 120 Rds. must go to the 2nd Plaintiff's mother.

The Court and Assessors are of opinion that second Plaintiff can have no claim on the 120 Rds. during the lifetime of her mother.

Mother's life Interest.

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The Court and Assessors are of opinion that the objection raised by sixth and seventh Defendants is vexatious, and that Plaintiffs should be allowed to proceed as paupers, sixth and seventh Defendants paying the costs incurred up to this day.

In Forma Pauperis.

Ordered accordingly

LIFE INTEREST CASES.

24th October, 1842.

No. 5,126.

Pedro St. Diagoe... ... ...*Plaintiff.*

Vs.

Nicholon Porenge Katrinal widow of Allesy ...*Defendant.*

BURLEIGH, Judge.

In August, 1841, the complainant's son charged those to whom he had granted the Bonds in question, and others with Forgery. The complaint was dismissed, and he punished for having wilfully attempted to deceive the Court, having himself failed in the attempt to have these Bonds set aside. The father now tries to do so ; the Court and Assessors are of opinion that the claim of plaintiff should be dismissed. The plaintiff's son cannot touch the property during the lifetime of his father ; there is no proof that the son was deranged when the Deeds were executed, although he does not appear to be a fit person to borrow money, being a drunkard and spend-thrift ; however the creditors must look to that, he was quite sane when he made his complaint.

Father's life interest.

It is decreed that the claim of plaintiff be dismissed with costs.

20th April, 1843.

No. 1,264.

Nagapper Aromogan and others... ... ...*Plaintiffs.*

Vs.

Mayler Soopremanier and others... ... ..*Defendants.*

BURLEIGH, Judge.

It is useless to proceed on with this case. The sixth plaintiff has instituted it as the guardian of the other plain-

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Parents' management of Property.

tiffs, and it appears from his own statement their fathers are alive and unmarried a second time, and therefore they, the fathers, have the entire management of the property, whilst they are living ; this is clearly stated in the Thesawaleme, and the fathers should have brought this action if they had any grounds for it.

The Assessors agree. Decreed that plaintiffs be nonsuited with costs.*

10th May, 1843.

No. 2,736.

Nelynar Moorgen ... ... *Plaintiff.*

Vs.

Murgar Swamenathen and others ... ... *Defendants.*

Wood, Judge.

This action cannot stand: the present defendants cannot be sued in their present position; the first defendant having left heirs, the action ought to be brought against them but as they are minors the present first defendant can only be sued as their guardian, and on their, the heirs, behalf, and not on her own account, having nothing but a temporary interest in the hereditary property left by her deceased husband, the second defendant is also a minor, and as such can neither sue nor be sued in his own name, but through his guardian, whom plaintiff states to be his maternal Uncle, and if application had been made in proper time, this omission might have been rectified.

Life Interest. Hereditary Property.

Minor.

Plaintiff must therefore be non-suited with costs.

23rd May, 1844.

No 12,005.

Sinnapulle, widow of Sooper ... ... *Plaintiff.*

Vs.

Philip Fernando and others ... ... *Defendants.*

Price, Judge.

The Court is of opinion that the land in question was the property of plaintiff's late husband, and that plaintiff is en-

Mother's life Interest.

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* First Plaintiff was the step-brother of some of the Plaintiffs, and cousin of the others : sixth Plaintiff is the uncle of the other Plaintiff.

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titled to it as long as she remains unmarried for the second time.

One of the witnesses claims the land in right of otty, bu the Court cannot by this suit, decide upon his claim, as he is not a party to this suit.

I am of opinion that a Decree should go in favor of plaintiff, for the land in question, leaving the otty holder to have his action against her, if he considers he has grounds for one.

Assessors agree.

It is decreed that plaintiff be put in possession of the land Puneddy.

It is further decreed that first defendant do pay £1 value of the produce for one year, first defendant to pay plaintiff's costs, the costs of the other defendants to be borne by the plaintiff.

No. 14,602

14th Septr., 1844.

Pooder Vessowanaden ... ... *Plaintiff.*

Vs.

Cander Sangaran and three others ... ... *Defendants.*

Price, Judge.

By the proctor of the first and second defendants to the first plaintiff.

The lands we claim in the libel are the proprerty of our paren ts, the third and fourth defendants—third and fourth defen dants are alive; we are only entitled to the property after the death of our parents.

Parents' right of action.

The Court and Assessors are of opinion that the libel should be dismissed with costs, as plaintiff can have no claim on the land during the lifetime and possession by the parents.

Libel dismissed with costs.

Decree affirmed in appeal, on the 27th February, 1845.

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29th March, 1845.

No. 1910½.

Philippo Fernando and wife ... ... *Plaintiffs.*

Vs.

Gabriel Semean and others ... ... *Defendants.*

PRICE, Judge.

Dowry property.

Widower.

The land in question is said to be the dowry property of of second plaintiff's late mother; second plaintiff's father is the sub-intervenient in this case, and being unmarried for the second time, second plaintiff can have no claim on the land while he lives and remains unmarried.

The Assessors agree in the opinion of the Court.

Libel dismissed with costs.

21st April, 1845.

No. 4,428.

Wayrawar Nagaper ... ... *Plaintiff.*

Vs.

Periar Weylayden and others ... ... *Defendants.*

Soporomania Sendamane Coorokel and brother Swapaddy ... ... *Intervenients.*

PRICE, Judge.

Father's life interest.

The Court and Assessors are of opinion, that the intervention in this case, should be set aside, intervenients' proctor admitting that his clients' father is alive and unmarried for the second time. They therefore can have no claim. Ordered acordingly, intervenients paying all costs occasioned by their intervention. Property claimed by intervenients is the inheritance of intervenients' mother.

6th August, 1849.

No. 2,832.

Mootan Moorgen... .. .. *Plaintiff.*

Vs.

Mootar Sidemberen and others... ... ... *Defendants.*

Judgment.

The Assessors are of opinion that the libel is proved and that judgment should go in favor of plaintiff, as claimed by the libel, with costs.

The Court is of opinion that the one-sixth share of the

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land in question now in dispute, belongs to plaintiff, he having a life interest in it, but the Court is not satisfied with the evidence to prove that he has been disturbed in that one-sixth share; plaintiff's first witness who is related to plaintiff and fifth defendant, states, defendants and Cadergamer Cander were present when fifth defendant objected to plaintiff's taking the produce; Cadergamer Cander also a relation, denies being present at the objection; the Vidahn, who is also a witness, is related to plaintiff.

Life Interest.

The Court does not consider the objection proved, that the libel should be dismissed with costs, with the exception of the costs of the intervenient in the 2nd instance, which are to be borne by themselves.

The Assessors say they believed plaintiff's first witness, but not the second.

Libel dismissed with costs, except those of the intervenients in the second instance, which are to be borne by themselves.

Judgment of the Supreme Court.

That the Decree of the District Court of Jaffna of the 6th day of August, 1849, be set aside, and it is decreed that the plaintiff be quieted in the possession of one-sixth of the land in dispute. Plaintiff to pay his own costs, fifth defendant to pay all other costs (except those of the intervenients of the second and third instance, which are to be borne by themselves), all the defendants having admitted the claim of the plaintiff except the fifth defendant, who in his answer has denied the title of the plaintiff, and thus forced him to proceed on with their suit.

1st February, 1850.

No. 6,316.

Pooder Moorger Odear of Nonavil ... ... *Plaintiff.*

Vs.

Menyana Mahamado Nina Moorger Sangrepulle and another ... ... *Defendants.*

Report of the proctor to whom the first defendant's application to defend as a Pauper was referred.

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Debt.

Life interest.

With reference to this Pauper application, I find that according to the strict meaning of Thesawaleme the Defendant is not permitted to recover the debt due to him by Moorger Sangrepulle, from the share of his late mother's estate, as his father, the plaintiff in this case, remains unmarried for a second time lawfully enjoying the usual life interest over his late wife's property; but a collective decision of the Supreme Court in case No. 3,171 of the late District Court of the Islands, appears to have superseded the doctrine of Thesawaleme, and the said decision seems to hold, that on the marriage of a son he becomes entitled to the property left behind by his deceased mother, and property so inherited by him is futher liable to his debts.

Collective Decision.

Marriage of Son.

Maintenance.

I am of opinion, that the life interst allowed to widowers on their wife's property, is in consideration of their maintaining and supporting the children of that marriage without contracting a second marriage, and as that support is withdrawn by the father on the marriage of his children, I think that the life interest of the father also ceases with the withdrawal of his support, and I am therefore of opinion that the Applicant has a good cause of defence in this case, it having been proved that the son is already married.

14th October, 1852.

(Signed) P. Bastianpulle, Proctor.

6th Feby, 1854.

No. 6,316.

Judgment.

Mr. Advocate Mutukisna for Plaintiff.

This action is brought to get exemption from sale under Writ 5,605, in favor of first defendant, against the two pieces of lands the property of plaintiff's late wife, upon the ground that he, plaintiff, has a life interest in the estate as long as she remains unmarried for the second time; first defendant denies that the country law gives plaintiff a right to his late wife's property from the time he (second defendant) was married and left his paternal roof, and claims the right to sell one-sixth share of his, second defendant, late mother's estate. Files a decision of the late District Court of the Is-

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lands, affirmed in appeal by the Supreme Court, also claims a right of second defendant to said one-sixth share by prescription.

The reply denies the the right of second defendant, as stated.

Parents' Sons.

Clause 7th of section 1st of the Country law provides among other things that as long as the parents live the sons may not claim anything whatever, on the contrary they are bound to bring into the common estate (and there to let remain) all that they have gained or earned during the bachelorship, excepting wrought gold, &c., which have either been acquired by themselves or given to them by their parents, and that until the parents die, even if the sons have married and quitted the paternal roof, so that when the parents die the sons then first inherit the property left by their parents.

Common Estate.

Earnings of Bachelor.

Wrought Gold.

Clause 11th of the same section provides. If the mother dies first (as in this case) leaving a child or children, the father remains in full possession of the estate so long as he does not marry again, and does with his child or children and with his estate in like manner, as above stated with respect to the matter, vide Clause 9th.

The Court is therefore of opinion, that second defendant can have no claim upon the estate of his late mother as long as his father (plaintiff) is alive, and remains unmarried for the second time.

The Court refers to the case 3,171, of the late District Court of the Islands. Copies of the Judgment and decision in appeal are filed with the answer of first defendant, and which on the face of them would appear directly opposed to the above expressed opinion, but which case the Court considers differs in a material respect. In said case plaintiff, although not actually married for the second time, still it appears by the evidence, lived with his late wife's sister, and had six children by her, and the Court must believe that it was this fact that guided the late District Judge of the Islands and Assessors in the Judgment. Said case was in Appeal on Circuit, but reserved for a collective opinion, as

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"to whether plaintiff's son Waytianaden had any vested share in the Lands claimed which could be sold under the Writ."

The collective Court, by order of the 19th November, 1841, merely affirms the Judgment, without giving its opinion on the point reserved.

It is therefore decreed, that the Lands be released from sequestration, and delivered over to the plaintiff, who has a life interest in these Lands as long as he remains unmarried for the second time. First Defendant to pay all costs.

27th Septr., 1854.

No. 100-3,761.

1. Pulleynan Caderasen, Guardian of his minor children,
2. Aromogatan, and
3. Casyan... ... ...*Plaintiffs.*

Vs.

Vinayeger Caderan, and another... ... ...*Defendants.*

PRICE, Judge.

First plaintiff is the Natural guardian of his minor children.

Life Interest.

Dowry Property.

Costs.

Guardian.

The Court is of opinion that the application of second and third plaintiffs, of the 31st August last, should be rejected with costs, as first plaintiff has a life interest in the produce of his late wife's Dowry property, and that property should be held liable for the costs, should there be no other property belonging to the first plaintiff, from which the costs can be recovered, he having sued as the guardian of first and third plaintiffs.

Application rejected.

Appeal Decision.

That the Interlocutory Order of the District Court of Jaffna, of 27th September, 1854, be set aside without costs, with liberty to the plaintiffs to repeat their application should they see fit.

Infant not liable for costs.

An infant who sues by a next friend, is not liable for costs, nor can his property be seized in execution for their payment, because he cannot while under age disavow the suit; but if the infants, the second and third plaintiffs, have attain-

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ed their majority, which does not appear, and have since thought proper to proceed in the cause, they will then be liable for costs. The property however, of the first plaintiff (the next friend) is liable for costs.—Beam on Costs. Pp. 103, 107.

Property of Guardian liable for costs.

7th November, 1854.

3rd Novr., 1854.

No. 46.

Swany Vaytian and Andries Philipen... ... *Plaintiffs.*

Vs.

Soopremaniar Erregonaden, and four others ...*Defendants.*

Price, Judge.

The Court is of opinion that the Deed in favor of the late Vannichy Swany, dated 19th day of February, 1839, should be set aside, first and second Defendants having no power to transfer the Lands of their parents during their lifetime, (the mother is still alive, and a party to this suit,—third defendant) and the father appears to have died only five or six years since, long after the execution of the Deed.

Children's right to alienate.

The Deed is set aside accordingly. But the Court gives judgment in favor of first plaintiff, for one-fourth of the produce of eight Lachams (his three brothers being alive) as cultivation share, viz., 1 Rds. Costs to be paid by first and second defendants.

28th Sept., 1855.

No. 5,157.

Pedro Santiago... ... ... *Plaintiff.*

Vs.

Cathrinal widow of Alasoe, and others... ...*Defendants.*

Price, Judge.

The Court is of opinion, that Santiago Pedro, against whom the writ issued, had no right during the lifetime of his father, the late plaintiff, to any portion of the five lands in dispute, and that they were therefore not liable to be seized for his debt. It is therefore ordered and decreed, that the said five lands be released from sequestration, the estate of the late defendant, and her heirs the joint defendant, paying all costs.

Son's debt.

Security of Land for debt.

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5th September, 1856.

No. 7,302.

Tamby Chetty Sinnayah and wife Pappammal... *Plaintif.*

Vs.

Suppammal widow of Ramasamy Chettyar and son Sinnayah... ... ... *Defendants.*

PRICE, Judge.

Mother's life Interest.

By the Thasawaleme or Country Law, second plaintiff cannot claim any share of her late father's estate, as long as her mother (first defendant), who has a life interest in it, remains unmarried.

It appears by the answer, that in 1853, defendants gave second plaintiff certain lands and property in Dower. This dowry deed plaintiffs are not satisfied with, and allege that it was fradulently executed, but whether it was so or not is not one of the issues before the Court in the present suit.

Plaintiffs are non-suited with costs.

Judgment affirmed in Appeal, for the reasons given by the District Judge.

20th January, 1857.

8th October, 1856.

No. 3,170.

Court of Requests, Point Pedro.

Sandy, widow of Olagan, natural guardian of her six children... ... ... *Plaintiff.*

Vs.

Pary Sinnawen and others... ... ... *Defendants.*

LIESCHING, Judge.

Life Interest.

Marriage. Tamil Ceremonies.

Registration.

The question upon which this case rests, is simply this, was first defendant married to the woman under whom plaintiff's claim in that case, he has a life interest, otherwise non-registration would, under ordinary circumstances, set this point at rest, but the first defendant urges that he was married according to the Tamil form before the year when the ordinance was passed which necessitates Registration. The defendant has no evidence of this having taken place, and against the presumption of their being man and wife, afforded by their always living as such, Plaintiff calls attention to the fact, that in the purchase Deed filed, the alleged wife of first defendant is called not, as is usual,

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Wally wife of Sinneven. But Wally daughter of Sandy and again her son is called in his marriage Registry not Ollogan son of Sinnawen, but, Ollogan son of Wally his mother.

This is a strong presumptive evidence among Tamils, it would be overwhelming had they come together after 1822, and even as it is, in the absence of any evidence of a Tamil ceremony, it must weigh much with the Court. That respectable witness, the Maniager, says that if application had been made to him to call first plaintiff's husband the son of first defendant in the Registry, on the strength of a Tamil marriage, he would have done so, but no such application was made. On these grounds the Court must regard the first defendant as not legally married to the deceased Wally, and therefore, as not possessing a life interest in her property. It devolves therefore, on Wally's issue, one of whom was first plaintiff's husband, and he being dead his share goes to his children, who are joint plaintiffs.

Decreed that the plaintiffs be quieted in possession of an "undivided" one-third share of the land, &c., situated at Illegamo Curitchy, and that defendants pay costs.

Supreme Court Judgment.

Affirmed, for the reasons given by the Commissioner.

26th March, 1857.

No. 171.

22nd March, 1857.

Casynader Ramelingam... ... ... *Plaintiff.*

Vs.

Sedopulle, widow of Vinasetamby and others...*Defendants.*

Price, Judge.

By second defendant to plaintiff.

My father inherited the land, he is dead, he died in 1853, leaving my mother, whose name is Cadrasy, she is alive, and unmarried for the second time.

Life interest.

On hearing the statement made by the plaintiff, the Court non-suits him with costs, the mother having a life interest in the estate is the proper person to bring the action.

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3rd June, 1858.

No. 285.

Canthamaathee widow of Vilayder... ... ... *Plaintiff.*

Vs.

Muttoopulle, widow of Vayramottoe, and two others... ... ... *Defendants.*

Price, Judge.

The evidence of defendant's witness proves that the land in question was the purchased property of plaintiff's late husband, but whether before or after his marriage with plaintiff, he does not know.

Mother's life Interest.

Plaintiff has three sons now living, and she is unmarried for the second time, at least the Court must suppose so in the absence of evidence to the contrary, she therefore has a life interest in the land, and no portion of it can now be seized, and sold for debts due by the sons.

Seizure for debt due by Son.

It is ordered, that the one Lacham of the land Pandithamodatiarwallawo, situated at Nellor, seized under first and second defendants' writ 798, be released from sequestration, and the plaintiff is hereby declared to be the proprietor thereof, in right of her late husband. (Plaintiff's Proctor withdraws the case against third defendant.)

First and second defendants to pay the costs.

18th March, 1859.

No. 411.

Maylalle, widow of Mayloe, and Mayloe Aromogam... ... ... *Plaintiffs.*

Vs.

Ayan Sanmogam... ... ... *Defendant.*

Price, Judge.

Life Interest.

Defendant's Proctor moves for a non-suit, upon the grounds that second plaintiff can have no claim on the land during the lifetime of his mother, first plaintiff, who has never appeared in the case either in person or by proxy, neither has she applied to the Court that second plaintiff should be appointed to act as a substitute for her.

Plaintiff non-suited with costs.

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WIFE'S RIGHT TO SELL HER PROPERTY.

24th May, 1803.

Simon Jurgen Ondatchi Chetty of Colombo... *Plaintiff.*

Vs.

His father-in-law Don Joan Markopulle Mudliar, and others... ... ...*Defendants.*

DUNKIN, Judge.

All the parties present.—The dowry ola of Maria Anapulle dated 4th May, 1795, being put into the hands of the heads of the caste Tamoderanpulle Coomarakoollasooria Mudliar, and Veerasinga Mudliar, in order to inspect the several alterations made in it, and to give their opinion on oath, they, the said Tamoderanpulle Comarakoollasooria Mudliar and Veerasinga Mudliar being duly sworn, declare that with respect to the letter struck out, and after the title of the land "Oddepowayal," they judge from the space struck out that the word might have been "except," but that they cannot say anything positive about it before they should have examined the Bill of Sale mentioned in the said dowry ola.

With respect to the word "mother's," interlined in the said dowry ola after the sum of two hundred Rix Dollars (200) for jewels, they the said Heads of the Caste declare that the said word makes "me," and tends to confine the claim to Maria Annpulle, about her mother's joys, instead of extending it.

With respect to the three letters interlined, and struck out in the said dowry ola after the sum of one hundred Rix dollars, they, the said Heads of the caste declare that the letters are illegible, and that it signifies nothing, as the sum was not expressed in figures.

With respect to the word "hereditary," interlined in the said dowry ola after the silver Arinyaal, they the said Heads of the caste declare that it appears fully in the inventory ola Lr, D. that not only the silver Arinyaal but also the other effects mentioned in the said dowry ola are the hereditary effects of Maria Anapulle.

Question by the Court to the said Heads of the caste.

Acquired property.

Suppose a widow, who has a daughter by her late husband, and has got some accumulations by that marriage, marries

again, is the daughter entitled to the whole or any part of the accumulation ?

Widow entitled to half and Daughter to half.

The daughter is entitled to the half and the mother to the other half.—Can the mother make a donation of the whole accumulation that arose in her first husband's time to her daughter, when tho mother marries again ?

Donation.

Widow's right to Donate.

She may make a present of the accumulation to the daughter of the first bed.

Ordered that a search be made for the Bill of sale, for the inspection of the Heads of the caste.

30th Novr., 1804.

DUNKIN, Judge.

On a complaint lodged by Supermanier Cadreser, that in his absence his father-in-law Aromogam Chettiar Mootayen. had caused his wife Ponnachy to mortgage her dowry land, called " Ayalenden Rality," with Mootar Soopar for a debt contracted by the said Aromogan Chettiar Muttayen, and the facts being fully proved. It is ordered, Aromogam Chettiar Mootayen do pass a new security for one hundred and ten Rds. to Mootar Sooper, and that the security in which Ponnatchy is concerned be cancelled in open Court, and the title deed to be delivered to Ponnatchy.

Mortgage of Dowry Land to Husband.

Bond Cancelled.

27th June, 1806.

No. 422.

Nagapper Cadergamer and others... ... ... *Plaintiff.*

Vs.

Sidemberem, wife of Nagappen, and others... *Defendants.*

TRANCHELL, Judge.

It appearing upon the face of the pleadings and by the evidence given on both sides, that the lands in question were the exclusive hereditary property of the plaintiffs, devolved to them from their deceased father, and that the second and third defendants subsequently abruptively had prevailed on their mother Sidemberem, the first defendant, to sell to them the lands in question, whilst the plaintiffs were minors, and it appearing that the said Sidemberem had no right whatsoever either according to the Dutch or the Country laws to dispose of the hereditary property devolved to the said minor children.

Widow no right to dispose of Husband's heriditary property.

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It is decreed the lands "Hambansattity" and "Podokinetaddy" situated in the village "Kocovil" now possessed by the second and third defendants, are the legal property of the plaintiffs, Nagapper Cadergamer Aronasalem Welaythen and Murgasen in right of inheritance from their late father Nagappen, and that the defendants do pay the costs of suit.

No. 2,696.

14th Feby, 1834.

S. M. Point Pedro.

Knees Ayer Mootayer... ... ... *Plaintiff.*

Vs.

Cadergamer Perean... ... ... *Defendant.*

Toussaint, Judge.

Dowry.

Widow's right to sell.

Consent of Children not necessary.

Defendant asks the Court, was it right for my mother to sell her dowry property, which is the land in question, with my younger brother without my knowledge? and the Court answers, Yes. The Court considers that she had a full right to sell her dowry property with or without the concurrence of her children, as she is considered to be the owner of her dowry property during her lifetime, and not the children. It does not appear to the Court, however, that plaintiff suffered any damage.

It is therefore decreed, that defendant do make no further objection to plaintiff's sinking a well in the land Tottepay, and defendant do pay the plaintiff costs of this suit.

No.7,762.

5th August, 1833.

Provincial Court.

Sedawy wife of Senniwen ... ... *Plaintiff.*

Vs.

Nagra Sinnwen and others ... ... *Defendants.*

Price, Judge.

Acquired Property.

Dowry.

Plaintiff now states, the property she is suing for is acquired property, and not hereditary and dowry as stated in the libel. The libel is therefore dismissed with costs.

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5th January, 1838.

No. 2,430.

District Court, Islands.

Ramer Sangerepulle ... ... *Plaintiff.*

Vs.

Comary Ramer and others... ... ... *Defendants.*

Mootiah, Judge.

Plaintiff says second defendant had no right to sell the land as it was the modesium property of her late husband, nor does it appear when the debts were contracted, for which the land was sold.

Right of Widow to alienate.

The plaintiff has brought this action praying that the sale in question may be set aside, and the bill of sale in favor of the first defendant be cancelled as illegal, as the second defendant, the mother of the plaintiff, has no right to sell it to the first defendant, which point plaintiff completely failed to prove; and that the evidence of the witnesses on his part, although so much contradictory from each other that no reliance can be placed on them, goes to prove right of pre-emption of the plaintiff to the land in question, which, in point of fact, is foreign to the question, and under these circumstances I am of opinion that the plaintiff's claim should be dismissed (without hearing the first defendant's witnesses), with costs of suit incurred by defendants to be paid to them by plaintiff.

The Assessors agree with me in my opinion. Decreed that plainliff's claim be dismissed with costs.

20th May, 1839.

No. 2,774.

District Court, Islands.

Mader Santiago of Caremben ... ... *Plaintiff.*

Vs.

Isabel, wife of Santiago Anthonipulle Manueltamby, and wife Maria... ... ... *Defendants.*

Mootiah, Judge.

The Bill of sale by which the land in question appears to be purchased, is exclusively executed in favor of the first defendant as sole purchaser of it, and the possession of it as such the purchase is strongly proved by the witnesses on

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the part of the plaintiff. There is no legal separation made out between the plaintiff and the first defendant and consequently there is no right for the first defendant to alienate any part of the acquired property during her marriage with the plaintiff, with out his consent and agreement. Under these circumstances I am of opinion that the plaintiff should be confirmed, jointly with the first defendant, in the peaceable possession of the land, as described in the Bill of sale dated 13th August 1830, in favor of the first defendant; and that two-thirds of this land given in dower to third defendant by the first defendant alone, without the consent of her husband the plaintiff, by the deed dated 16th June 1836, be considered null and void. Defendants to pay costs.

Wife's right to alienate without Husband's consent.

No. 4,665.

8th July, 1841.

District Court, Walligamme.

Sower Wairewen of Sangane ... ... *Plaintiff.*

Vs.

Madewerage Mudliar Socpremaniam acting Maniagar of Valligamo, and two others ... ... *Defendants,*

BURLEIGH, Judge.

I am of opinion that a decree should pass for plaintiff who has clearly proved his possession of *twenty years*; it not frequently happens that wife is recorded when the woman is really a widow: in the plaintiff's deed no land is mentioned, but it is so in the others produced to day by the witness, and I believe according to the usual custom plaintiff would be also entitled to the trees, even allowing that the husband was alive, (which I doubt), the property of the woman is so exclusively known in this country that I consider she could make an agreement *of this sort* without the husband.

Wife for Widow in Deeds.

Wife's property

Agreement by her.

Assessors agree in opinion with the Court.

It is decreed that the plaintiff be put into possession of what he claims in the libel, second and third defendants paying costs.

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11th Sept. 1841.

No. 5,619.

District Court, Jaffna.

Podate widow of Cander ... ... *Plaintiff.*

Vs.

Variar Venasytamby and others ... ... *Defendants.*

PRICE, Judge.

Action brought upon an Otty bond granted by the first and second defendant's late father to plaintiff, but the second defendant's husband was not made a party.

Dowry. Husband's right to it.

Held,—

As a decree against the defendants in this case would effect what second defendant calls her dowry property, and to which property second defendant's husband has also a claim during his lifetime, the Court is of opinion that the present libel should be dismissed, allowing plaintiff to bring a fresh libel if she considers that she has grounds for so doing —making second defendant's husband a party. Assessors agree.—Libel dismissed with costs.

28th March, 1843.

No. 4,603.

District Court, Walligamme.

Walliamme, wife of Maylen, of Vareny Eyetalle... *Plaintiff.*

Vs.

Sandriseger Modliar Sooper and others... ... *Defendants.*

WOOD, Judge.

This action is brought by the plaintiff against the defendants, to shew cause why execution should not issue against certain lands, in a decree of the Provincial Court of Jaffna, dated the 3rd February, 1826, in favor of plaintiff's late mother, for Otty consideration and costs, who together with her sons the intervenients, assigned over their prospective interest in the result of the said case, by a deed dated 15th December 1824, in consequence of the money advanced in Otty having been raised by sale of certain of the plaintiff's dowry lands, and of her having advanced the sums necessary for the prosecution of the said case.

Dowry Lands.

This deed is admitted by the Intervinents, and the decree is also admitted by the Defendants, but first Defendant puts in three pleas.

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1st. That the amount of the decree and costs have been paid.

2nd. That the third Clause of the Ordinance No, 8 of 1834, is a bar to the action, as a period of more than 10 years have elapsed since the date of the decree; and 3rd. That the Plaintiff has brought this action not only in her own name without her husband being a joint Plaintiff, but has even made him a Defendant, which she ought not to do, and cites authorities in support of this objection. As this last objection affects Plaintiff's right to bring the action *at all*, it is necessary to consider what weight is to be attached to this plea; first.—The English and Roman Dutch Law certainly recognize a community of goods between man and wife, but the Thesawaleme or Country law, clearly recognizes a distinct and separate interest,—the husband in the property *inherited from his father*, and the wife in her *dowry* and *inheritance;* and the only property *in which both have a mutual interest, and is in common, is the property arising from each of these respective properties, or what is acquired by their own exertions during their marriage.* This is one general objection to the validity of the plea, but there is also a special one, in the present case, viz., the necessity of Plaintiff's making her husband a Defendant, arising from the act of his having been one of the original Defendants in the former case, and one *against whom the decree is given* in Plaintiff's mother's favor, plaintiff had, consequently, no alternative. The second plea depends in a great measure upon the first, namely, whether the money had been paid, and if not, why Execution under the decree has not been issued before; and these are the issues in the Case, plaintiff has clearly proved her possession of the ottied lands up to 1841, which fact, together with the close relationship of all the parties, the first and second Defendants being brothers-in-law to Plaintiff, the third her husband, the fourth and fifth her husband's Cousins, and the Intervenient her brother, at once accounts for the decree not having been acted upon as long as she (the Plaintiff) has been permitted to remain

Community.

Husband & Wife.

Hereditary and Dowry.

Acquired Property.

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in possession of the lands; but first Defendant pleads payment of the amount by his deceased mother, and the subsequent possession by the Defendant of the ottied lands, and has brought two Witnesses to prove these facts, whose evidence is unworthy of credit.

Interveneients have been premature in their Intervention, having only a prospective Interest, and have not proved the alleged combination between the parties to their detriment.

It is therefore decreed, that Execution issue against the lands called Yatey, registered &c., as per decree No. 4,147 dated 3rd February, 1826.

It is further decreed, that first Defendant do pay the costs of this suit, incurred previous to the Intervention, and that Interveneients do pay the subsequent costs.

Affirmed in Appeal, by Sir A. Oliphant, Jaffna, 10th August, 1843.

22nd June, 1843.

No. 3,851.

District Court, Waddemoratchy.

Cadergamer Murgen... ... ...*Plaintiff.*

Vs.

Walen Swammaden and other... ... ..*Defendants.*

Toussaint, Judge.

Widow's right to sell.

The plaintiff's Proctor says, considering that the Deed of December is not a legal deed, that the ninth defendant having six or seven children, could not sell only with one son, the tenth defendant her husband's share, and as this is the deed that is prejudicial to the ninth and tenth defendants and the intervenient, the Proctor withdraws his case, reserving a right to recover all losses plaintiff sustained in consequence of it, from the two witnesses just now examined.

The Assessors agree in opinion with the Court, that the deed of December 4th, 1840, is an illegal one.

It is decreed that the same be set aside, and the plaintiff is to pay the costs of the ninth defendant and the fourth defendant in this case.

The two witnessess examined were the Notary and Odear.

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No. 10,789.

District Court, Jaffna.

21st Septr., 1843.

Sanmogam Sinnepodien... ... ... *Plaintiff.*

Vs.

Sinnepulle, widow of Cander, and others ..*Defendants.*

BURLEIGH, Judge.

The old trees which appear to be Palmirah, Tamarind and Margosa, do not need watering; of these the plaintiff is unquestionably entitled to his share, but he not being satisfied with that, endeavours to get hold of a share of the house and the young fruit-bearing trees, which he is in no way entitled to, hence this action. It is proved that the first defendant had given her share away in dower to her daughters, the second and third defendants, before the institution of the case, the action is therefore illegally brought, because the first defendant should not have been made a party, and the second and third cannot appear in Court without their husbands.

Illegal to sue Wife without Husband.

Plaintiff nonsuited with costs.

No. 74,274.

District Court, Jaffna.

24th October, 1844.

Wallmachy wife of Cadergamer... .. ... *Plaintiff.*

Vs.

Sinnayer Cadergamer and others... ... ...*Defendants.*

PRICE, Judge.

By the Court to the plaintiff's Proctor. Plaintiff is the wife of the first defendant, they have not divorced. The Court is of opinion that a wife cannot maintain an action against her husband to recover her dowry property until she has obtained a divorce; if her husband refuses to maintain her, she might sue for maintenance, but in suing for the recovery of the dowry property, a divorce should be first obtained upon good and sufficient grounds.

Wife's right of action against Husband.

Dowry.

The Court is of opinion, that the Libel should be dismissed with costs.

The Assessors agree in opinion with the Court.

Libel dismissed with costs.

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2nd May, 1846.

No. 15,011.

District Court, Jaffna.

Mootar Sinnatamby, on behalf of his mother Cannatte, who is in a state *non compos mentis* ... ... *Plaintiff.*

Vs.

Periar Aronen, and others ... ... *Defendants.*

PRICE, Judge.

Wife's right to sue Husband.

Acquired Property.

The Court is of opinion that the plaintiff cannot sue separately from her husband, to recover this claim—in acquired property, the Court is of opinion that the wife cannot make a separate claim for her share, during the lifetime of her husband.*

The Assessors agree in the opinion of the Court. Plaintiff's Libel dismissed with costs.

No. 6,008.

Sidemberepulle Swaminaden ... ... *Plaintiff.*

Vs.

Ramen Madely, and others ... ... *Defendants.*

PRICE, Judge.

Plaintiff Pauper.

Wife possessed of property.

The Court is of opinion that as long as plaintiff's wife has property to enable him to carry on the suit, he should not be allowed to sue as a Pauper.

Two of the Assessors agree in the opinion of the Court. The other Assessors say, that plaintiff cannot sell his wife's property unless his wife consents.

Plaintiff is given fourteen days time to pay in the costs, in failure, plaintiff's case will be dismissed.

Plaintiff's claim is dismissed with costs.

23rd Novr., 1852.

Appeal Decision.

The Proceedings in this case having been read, it is considered and adjudged that the decree of the District Court of Jaffna, of the 23rd day of November, 1852, be set aside, and the case be remanded to the District Court of Jaffna, to take

* The plaintiff sues her husband and Otty holders, to recover her half share of Otty money, she being separated from her husband at the time.

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evidence whether, to use the words of the Rules and Orders, the plaintiff is possessed of property sufficient to pay the costs of proceedings, and on doing so the District Court will not include property which belongs to defendant's wife, and which is under her sole control.

Wife's property under her sole control.

Colombo, 8th December, 1853.

No. 2,507.

Septr. 18th, 1855.

Court of Requests, Point Pedro.

Canaweddiar Sinnatamby, and others ... *Plaintiffs.*

Vs.

Sandresegerer Alwar, and others ... *Defendants.*

STAPLES, Judge.

It is evident to the Court that second plaintiff is quite a child, and must have been about eleven years old at the time that the Otty Deed was granted by him and his mother. The Vidahn of Alwaye also appears, and states that second plaintiff lived, and does still live with first plaintiff, whom he has chosen as his Guardian, and not with his mother. The Vidahn is defendant's witness.

Minority.

Otty Deed.

Under these circumstances, second plaintiff's mother had no right to sell away the land, nor had second plaintiff, as a minor, any right to dispose of it.

Widow's right to sell.

It is therefore decreed, that second plaintiff be quieted in possession of the half undivided share of the land, and that first defendant do pay the costs of the suit.

No. 4,787.

22nd October, 1855.

Modelitamby Ponnambalem, Administrator of Modelitamby Mootatamby, deceased ... *Plaintiff.*

Vs.

Vallinasegam, widow of Mootatamby, and another ... ... *Defendants.*

PRICE, Judge.

There can be no doubt from evidence, that the land in question was appraised at double its real value. The Maniagor (appraiser) says, plaintiff pointed out the extent, but the Court much doubts their having gone to the land until or-

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dered to do so by the Court, during the investigation of this case; for Headmen accustomed to measure lands, could hardly have mistaken 31 Lachams for 61, the extent said to have been pointed out by the plaintiff, particularly had they gone round the land as they say they did, to estimate the value of the trees and house.

Acquired Property.

Husband's interest in it.

Widow's right to aleviate.

The land in question is claimed by the plaintiff as Administrator of his late brother's Estate, (first defendant's late husband), the land is admitted to have been acquired property after marriage, to half of which the deceased was entitled; first defendant had therefore no power to dispose of the portion of her late husband, together with her own share of the land. The Court is of opinion that there has been collusion between first and second defendants, to defraud the Estate of the first defendant's late husband. There appears to have been no immediate necessity for the sale; notwithstanding a sale is got up and completed in little more than a month after deceased's death. The Court refers to the Provisional Accounts filed by the plaintiff, sworn to on the 4th February, 1852, and 23rd August, 1853, by which it appears that there is Cash and property in the hands of the Administrator, to the amount of nearly £20,—£18 18s. of which is in Cash, so that there could have been no immediate necessity for the sale.

Publication.

The Court does not believe the evidence to prove that the usual publication was made; publication may have been made, but not the customary publication, for first defendant in her *viva voce* examination, says, "I went twice to the Odear to get the Schedule;" on the first occasion the Odear said he must get the publication made. The second occasion of her going was eight days after the first occasion; she then got the Schedule, so that the usual publication for three weeks could not have been made.

Deed illegal.

The Court is therefore of opinion, that the Bill of Sale in question, dated 23rd January, 1849, should be cancelled and set aside, as illegal, on the grounds that first defendant had no power to sell her late husband's share in the land, and that due publication of the sale was not made.

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It is therefore decreed that the Transfer Deed granted by first defendant in favor of the second defendant for the land Tataweddy walewoe, in extent 31 and-a-half (thirty-one and-a-half luchams) situated at Mattowil, and dated 23rd January, 1849, be cancelled, and set aside as illegal documents. Defendants paying all costs.

Judgment Affirmed in Appeal, for the reasons given by the District Judge.

20th January, 1857.

No. 9,105.

18th May, 1857.

Toslasynarne Ayer Bamasamy Ayer, Administrator of Vengadasela Ayer, Knees Ayer, deceased ...*Plaintiffs*.

Vs.

Knees Ammah, widow of Knees Ayer, and others...*Defendants*.

PRICE, Judge

The points at issue in this case are

First. Whether the half share of the land, house, and godown, claimed, belong to the Estate of the deceased, or whether it belongs to the first defendant, she having purchased *it with her own money*, during her marriage with the deceased.

Second. Whether, if it is the acquired property of both husband and wife, during marriage, first defendant is not entitled to a life interest in it, she alleging that she has a son by the deceased, who is alive.

Third. Whether second, third, fourth, fifth, sixth, and seventh defendants, jointly with the first, are liable for the rents and profits, they having, as alleged, refused to give up half to the plaintiff on demand—fourth value of produce.

With regard to the first point, whether the libel or the reply sets forth that the land, &c., in question, was the acquired property of the deceased and first defendant, during their marriage; but the answer alleges that it was purchased during their marriage and that the purchase amount was paid out of monies belonging to first defendant solely; this first defendant has entirely failed to prove, the Court must therefore conclude that it was their *jointly* acquired property.

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Widow's Life Interest.

Second. It *being* therefore jointly acquired property during marriage, first defendant could only be entitled to a life interest in it as long as she remained unmarried for the second time, and had issue living by the deceased ; first defendant alleges that there is issue living, this is denied by plaintiff, and it is not proved by first defendant.

Third. The Court is of opinion that second, third, fourth, fifth, sixth, and seventh defendants are in no way liable to the plaintiff. It would appear that since the deceased's death the property in question has been in charge of first defendant, and that by her it was rented out to the above defendants, no sufficient notice appears to have been given by plaintiff to the above defendants, to shew that he was legally appointed Administrator of the estate of the deceased, and thereby authorized in warning them to pay half the rents and profit to him.

Fourth. It is admitted in the answer that the amount of rent of the whole premises is £13 1s. 0d., half of which plaintiff as administrator is entitled to recover, viz., £6 10s. 6d.

It is decreed, that as administrator, he be put in possession of half the land, &c., which the estate of the said deceased is entitled to in right of acquisition during deceased's marriage with first defendant.

It is further decreed, that first defendant do pay to plaintiff as Administrator the value of half of the annual rents and profits from May 1853, at the rate of £6 10s. 6d. per annum, with all costs.

14th May, 1858.

No. 3,852.

Court of Requests, Point Pedro.

Walander Ramalingam ... ... *Plaintiff.*

Vs.

Caylayer Sinneppo Ramalingam ... ... *Defendant.*

HENRY DE SARAM, Judge.

The Court is of opinion that the Roman Dutch law is the law applicable to the point it has to determine.

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In case of the death of the wife without children, there is no doubt that her property goes to the heirs, to the exclusion of the husband. But during the marriage, and it can only be put an end to by a divorce in due form, the husband is entitled to possess the land in question and to have he sole management thereof.

Wife's property to her Heirs.

Husband's right to manage.

As to the deed in favor of defendant, the Court is of opinion that it does not bind the husband, as the wife had no authority to grant a deed by which the husband's marital rights are prejudiced.

Deed by Wife illegal.

It is decreed that plaintiff be quieted in possession of three-sixteenth share appearing in plaint, and that defendant do pay costs of suit.

Supreme Court Judgment.

That the decree of the Court of Requests of Point Pedro of the 14th day of May 1858, be affirmed. As the decision of the Court below decides on the principle that the wife's deed was in contravention of the marital right, it cannot be supported by the Tamil law. See appendix to Van Leuven, 757, where it is laid down "the wife being subject to the will of her husband, may not give anything away without consent of her husband."

Marital right.

Thesawaleme.

And as further in the same authority, 779, it is laid down that "the wife dying, the husband is heir to some portion of her Estate."

Colombo, 7th July, 1858.

No. 10,575.

13th August, 1860.

Kneesammah ... ... *Plaintiff.*

Vs.

Tolesinarayane Aya ... ... *Defendant.*

Present, J. Price.

1. Mr. Advocate Wyman called, being one of the Assessors specially summoned.
2. Do. Mr. Sidemberapulle Wytylingam.
3. Do. Mr. Ponambelam Sinnacutty.

The first Assessor is sworn, the other two affirmed.

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Widow no right to Husband's Property.

The Assessors having heard the arguments on both sides, tare of opinion that the issues in the case are two.

1st. Whether the plaintiff is entitled to the estate in question as the deceased's widow.

2nd. Whether she is entitled to the estate as the mother of the deceased's son.

With reference to the first, we are of opinion, that she is not entitled to the estate as deceased's widow.

With reference to the second, we refrain from giving any opinion, as there is no evidence to shew whether the son died before or after his father.

We are of opinion, that the plaintiff should be non-suited.

The first Assessor states he is not aware of any custom of the country to the effect that if the son dies after his father. and that there are no heirs of the father, that the mother inherits the property.

Second and third Assessors say that the mother will not inherit from her son any property which the son may have inherited from his father, as it would go to the father's heirs.

The Assessors are all of opinion that plaintiff should be non-suited.

The Court will read over the case and connected cases, and decide the case on Monday next.

Monday, 20th August, 1860.

No. 10,575.

Present, J. PRICE.

Defendant's Proctors and defendant present.

The second and third Assessors present.

The main point for proof in this case is, whether the son pre-deceased his father or not, of this there is no proof.

The Court sees no reason for differing in opinion with the Assessors.

Plaintiff non-suited with costs.

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INVENTORY CASES.

Civil Court of Jaffnapatam.

PRESENT.

Messrs. Galterus Cornelis De Rambelje
and
Arnoldus Johannes Mom.—*Members.*

Tissaweerasinga Mudliar of Carrroor... ... ... *Plaintiff.*

Vs.

His father-in-law Thomeypulle Anthopulle... *Defendant.*

The complainant states that his wife had died leaving a daughter, and that his father-in-law in whose possession are several of his wife's joys, would not comply with his request in making proper inventory for the benefit of his under-aged child, producing at the same time a list of the joys belonging to his wife, which being shewn to the defendant, he says that except a necklace all the rest belonged to his daughter.

Inventory.

Question by the plaintiff to his father-in-law.

Can you swear that the necklace is your property?

Ans. Yes I will.

Ques. Are you willing to deliver the remaining jewels under a proper inventory?

Ans. Yes.

The defendant says further, that he wishes to state his cause at large, which being granted, he says that several of the joys which he has given to his deceased daughter, were melted by the Complainant.

The complainant says that the joys were melted, and made new ones by his deceased wife, and should they be found to be less than the weight mentioned in the dowry ola he is willing to supply the deficiency.

Ordered that the defendant do return to the complainant all the joys, after a proper inventory be made of all the property belonging to his deceased daughter, for the benefit of his under-aged grand-child, and that the said inventory be deposited in the office of this Court.

Andiappa and Orlappa are appointed to superintend the business the 26th March, in the year 1802.

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Form of an Inventory.

Whereas the Carrea of Carreoor Don Nicholas Tisseweerasinga Modliar appeared in the committee of the Civil Court, and stated that he having been married with the daughter of the Carrea of the same place, Anthonepulle, named Baronical, and after having procreated a daughter with her, named Mariamootto, the mother departed this life, and applied to make out an inventory of the dowry and accumulation during the said marriage, which are devolveable on his said daughter, in consequence Andiappa Modliar and Ardambalam are ordered as Commissioners for that purpose.

We Commissioners, in presence of the father of the child named Tisseweerasinga Modliar, the grand-father Anthonepulle, and the husbands of the sisters of the said Baronical named Bastian Nalletamby and Puvimannasinga Modliar, having inquired and found out that the undermentioned properties contain the dowry and accumulation, and with the consent of the said persons in this inventory written as belonging to the said Mariapulle, viz., dowry properties of the said Baronical the mother of the child.

Gold Joys.
Silver Joys.
Dowry Lands, &c.
Accounts.
Dowry Goods.
Cloths.
Accumulation.

In the year 1802, the 11th June, pursuant to the order of the Civil Court, that as Thommepulle Anthopulle Carrea of Carreoor did fail to give to his daughter Baronical the cattle and slaves promised in the dowry ola. Now the cattle consisting of two pairs of Bullocks and two pairs of cows are valued at 72 Rds. and Covia slaves, one male and one female, and of the Nallava caste one male and one female, at 80 Rds., and according to the above valuation the Court ordered to pay in cash.

Thus agreed, both parties having signed the inventory."

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Inventory.

Civil Court of Jaffnapatam.
Friday, the 11th June, 1802.

PRESENT.

Lieutenant William Short
Messrs. Jurgen Arnoldus Hicken.
Galterus Cornelis De La Rambelje.

AND

Arnoldus Johannes Mom.—*Members*.

ABSENT.

Lieutenant-Colonel Burton Gage Barbut, President.
John Carnie, Esq., Vice-President.
Mr. Anthony Noel Mooyaart, Member.

Tisseweerasinga Modliar Carrea of Carreoor... *Plaintiff*.

Vs.

His father-in-law Thomeypulle Anthopulle ... *Defendant*.

Both parties present.

The Interpreter Aroelappan produced an inventory of the estate of Baronical, the plaintiff's deceased wife, taken up by order of this Court for the benefit of the plaintiffs under-aged child named Maria. Ordered that the Inventory be lodged in this Court, and that the plaintiff do give good securities for the amount of the property belonging to his under-aged child, entrusted under his charge.

Inventory.

Tisseweerasinga Modliar Carrea of Carreoor offers as securities Don Juan Poevirasinga Modliar Carrea of the same place, and Manapaelly Modliar Madapally of Madagel, which were accepted by the child's grand-father Thommepulle Anthopulle, and they enter into a recognizance.

2nd Feby., 1803.

Catpegam wife of Arulen of Anncolla... ... *Plaintiff*.

Vs.

Vissawan Walan of Navalley... ... ... *Defendant*.

DUNKIN, Judge.

Both parties present,

The defendant produces a dowry ola and an ola Bond for 50 Rds.

The plaintiff says he must have an ola Bond for 30 Rds. (thirty.)

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The defendant accepts to produce the Bond for 30 Rds.

One of the witnesses to the dowry ola has gone to Trincomalie, and the undermentioned witnesses are here, viz. Madavar Carahley of Sandelepay, Tamoderan Moorgan and Suppar Comaro.

Inventory.

Ordered that the Defendant do produce an inventory upon oath, together with the Dowry and accumulations made during the life time of his wife, and to produce the witnesses to the Dowry Ola and Bond for Rds. 30 to-morrow.

16th Feby., 1803.

Catpagam, wife of Arolen of Annacotty... ...*Plaintiff.*

Vs.

Vissawen Welen... ... ...*Defendant.*

DUNKIN, Judge.

Inventory.

The Defendant files an inventory, the inventory being read and explained to the Plaintiff, she says the Defendant must give an account for the following Otty Bonds belonging to the estate of her deceased daughter, for the benefit of the under-aged child, viz.

1 Bond for... ... ... Rds. 30
1 Do. for... ... ...Rds. 18
1 Do. for... ... ...Rds. 7

The Defendant says he has two otty olas in the name of his deceased sister, which belong to the estate, namely, one for Rds. 30, and for Rds. 18. He further says that the Bond for Rds. 7, was recovered and disposed of, during the lifetime of his deceased wife.

Ordered that the Otty Bonds and the venders thereof, be produced for further inquiry.

15th March, 1803.

Ambalavoner Supermanier of Aralley... ..*Plaintiff.*

Vs.

The Plaintiff files his replication.

The Defendant admits that over and above the articles

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mentioned in the inventory filed in this Court, the following effects are in his possession, to wit:

1 Chest
1 Desk
1 Box
1 Mamoty
1 Grinding stone
1 Pair of plough-sticks
1 Stand.

The Defendant says that the land Cottonoado belongs to the church of Amblevanar Swamy, and that the said ground was purchased by——— ———Modliar, deceased; he says the produce of the field was 45 Parrahs of paddy, and the profit of the trees are employed for his own expense.

The Plaintiff says, he is satisfied with the account of the Defendant, now given. Ordered that the Defendant do give Security for the property of his under-aged child.

Inventory and Security.

Manapulle Mudliar of Madagal... ... ... *Plaintiff.*

Vs.

Supromaniar Mudliar... ... ...*Defendant.*

18th May, 1803.

The Plaintiff attends and produces a Dowry ola together with the otty ola therein mentioned.

The Defendant files his answer, the answer being found incorrect, it is ordered that the said answer be returned to the Defendant, in order to file a proper one, together with a perfect inventory with respect to the property of the minor, on or before Monday next.

Inventory.

No. 143.

Welaythan Candapper, Attorney for Walliammay...*Pltiff.*

Vs.

7th June, 1806.

Sidemberan, widow of Candapper Mudliar ...*Defendant.*

TRANCHELL, Judge.

The parties attend.

The Plaintiff calls on Cadergamar Pooder, Muttocomaran

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Aromogam, Sidenparen Chettiar, Waytianathen Chitty, and Sangrapulle Mudliar, who are sworn, examined, cross examined by the parties, and sign their de positions

The evidence being closed,

Inventory.

It is ordered that the Defendant Sidemparan do file into this Court, a true and exact inventory of all the goods and effects moveable and immoveable, of which her late husband Candappa Mudliar died possessed of, on or before the 30th Instant.

No. 65.

To the Land Raad of Jaffna.

Tipaweerasinga Mudliar of Carreoor, guardian of his daughter Maria .. ..*Plaintiff.*

Vs.

His Father-in-law Thomeypulle Anthopulle of same place... ... ...*Defendant.*

Petition of the Plaintiff.

Sheweth,

"That the Plaintiff is the Administrator of the Estate of his deceased wife Baronical, which is devolveable on the Plaintiff's daughter, Maria, by virtue of the annexed Letters of Administration.

That the Defendant as the grand-father of the Plaintiffs, said daughter, having in the year 1802, app lied to Plaintiff to cultivate and sow the field apper taining to the said estate and to reserve the produce for the whole without any deduction or expense, together with that of the Palmira garden, for the Plaintiff 's said daughter.

Besides, the Defendant is accountable to the said estate in 152 Rds. in case, in consequence of his having failed to deliver the Dowry shares and cattle, and 324 Lachams of paddy and Warrago, being the produce of the fields belonging to the said estate, which was under the Defendant's care previous to the year 1802, and in a further sum of 22 Rds. being for the produce of the Palmira garden, as appears in the annexed copy of inventory.

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That the Defendant having gathered the produce of the paddy field and Palmira garden, from the year 1802 to this, without delivering any part thereof, nor an account of, to Plaintiff.

Now the Plaintiff's said daughter having reached her age of maturity, and Plaintiff intends to marry her out, when Plaintiff shall be bound and obliged to deliver up to his said daughter the estate of her late mother, together with the produce thereof collected.

Guardian bound to give up Property as soon as Minor arrives at majority.

The Plaintiff therefore humbly prayeth the Court will be pleased to order the Defendant to pay to the Plaintiff the said 174 Rds., with interest thereon from February, 1802, at the rate of one per cent. per mensem, together with 324 Lachams Paddy and Warrago of five measure each lacham, with profit thereof; and further, to direct the defendant to deliver in Court a true and just account of the produce of the Paddy field and Palmira garden which were collected by the defendant from the year 1802; to this, and what gain the defendant got by laying out the produce so taken by him; after which, to decree the defendant to deliver to plaintiff all the produce, either in kind or the value thereof, with costs of suit.

Jaffnapatam, 3rd March, 1812.

Answer of the Defendant.

"That when the plaintiff entered into a second marriage upwards of ten years ago, plaintiff's said daughter Maria was delivered to the care and guardianship of the defendant, agreeably to a clause of the Country Law or Thesawaleme, but part of the estate aforesaid remained with the plaintiff by the consent of the defendant.

2nd Marriage.

Guardian.

And in consequence, according to the letter and spirit of the said Thesawaleme, the rights and claims of the defendant's said grand-daughter Maria, devolve solely and absolutely on the defendant, and by no means on the plaintiff, as he erroneously presumes.

Defendant states that of the value of Paddy and Warrago, part has been received by plaintiff, and with the remaining balance and produce of the garden, &c., he caused a pair of

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gold arm rings to be made, improved the fields and garden, and provided for the support of the said child.

Grandfather entitled to Guardianship.

And as the plaintiff's first wife, deceased, is the defendant's daughter, and the plaintiff entering into second marriage is absolutely obliged to deliver to defendant the child of his first bed, together with all the property of the deceased, for which he might have got administration previously, in compliance with the clause of the Thesawaleme referring thereto.

And as the securities tendered by the plaintiff for the chief administration of the estate, are both dead, and the plaintiff on the defendant's demand for the property under his care, in order to be given to the said daughter, and to marry her out, appeased the defendant, and put off the delivery thereof, and at last now for some months ago, the plaintiff with force carried away the said daughter to his house, after she was about ten years under the care and guardianship of the defendant, with a view to injure her in her lawful property for the benefit of the children of his second bed, and under false pretence of managing the interest of the said daughter, prosecuted the defendant unjustly, contrary to Law and custom.

Therefore defendant humbly prays the Court will dismiss plaintiff's unjust claim, and order him to deliver to defendant the said daughter, together with her property in his possession, and when the daughter is to be married the plaintiff to apply to the defendant and give her as additional Dowry, a part of his modesium property, according to the clause of the Country Law or Thesawaleme, with costs of suit."

Jaffnapatam, 5th March, 1812.

Replication,

" That the defendant can by no means have the plaintiff's daughter and her estate under his charge either by the prerogative of the Country Law, or otherwise, as the defendant had already declined to take letters of administration in due time.

That the plaintiff, agreeably to the provisions of the Country Law, managed the concerns or estate of his first wife, for a period of about four years after her death, without making out any inventory of the same, or obtaining letters of administration, but afterwards having been inclined to marry a se-

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cond time, he the plaintiff, made out an inventory pursuant to the order of the late Civil Court, in presence of two Arbitrators appointed by the said Court together with the defendant and other nearest relations.

That in consequence of the defendant and other nearest relations of the plaintiff's daughter having declined to become guardians of her, the Civil Court granted Letters of Administration to plaintiff on his giving security, and the plaintiff did accordingly administer the estate for about ten years without any damage, and the plaintiff's daughter having already reached eighteen years of age, she of course is perfectly capable to manage her own concerns without the assitance of a guardian."

Judgment.

18th June, 1812.

It is decreed that the defendant is indebted to the plaintiff in the following sum, due upon an Inventory Ola made out by Order of the late Civil Court, then filed and signed by the parties and their respective relations, dated 21st March 1802, viz., for 324 Lachams of paddy the produce of the land collected by defendant from February 1798 till February 1802. In 22 Rds. the produce of the palmira garden, collected within the above period and in a further sum of Rds. 152, being the value of Covia and Nalava slaves and cattle settled and agreed upon by the Commissioners appointed by the late Civil Court, and further that the landed property Moodeycoolamwavel and Colletilewoe be forthwith delivered up to the plaintiff. The produce of which property during the possession of the defendant is considered applicable to the maintenance and support of the plaintiff's daughter Maria while living in the house of the defendant, and the costs to be paid by defendant.

Slaves.

Maintenance.

No. 1,126.

4th Novr., 1814.

Canden's wife, Sidie, of Annacotty ... ... *Plaintiff.*

Vs.

Ayen Canden Cadergama Suppremania, Maniager of Manepay, Rasavasaga Modliar, and Sinnatamby, Vidahn of Annacotty ... *Defendants.*

Custom of making an Inventory before second marriage is recognized as part of the Custom of the Country.

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Libel.

That at plaintiff's first marriage with Winnageger Sinnatamby, her father gave her 145 Rds.—independent of her Dowry—with which amount plaintiff and her said husband carried on trade, and with the profits thereof as well as with the accumulations of the Dowry property, they purchased a palmirah garden, and got the purchase Deed executed upon Plaintiff's name.

Second Marriage.

Inventory.

That after her husband's death, when she was about to contract a second marriage, the second Defendant sent the Parpatiagar to tell her that she cannot enter into a second marriage previous to making out an Inventory, upon which Plaintiff proceeded to the second Defendant's house, and he and her present husband (though then not married) were ordered to pay Rds. 10, for certain fees, for framing the Inventory, which was accordingly paid, but no Inventory has been made out.

Defendants afterwards procured an Oppum from the Kutcherry in favour of the first Defendant, as the heir and guardian of the children of the Plaintiff's, and by virtue of that oppum, they searched Plaintiff's house, and finding nothing else but some agricultural implements and thirty marcals of Paddy, they took account of it, and went away, desiring at the same time to employ the Paddy towards the maintenance of Plaintiff's children. That the Defendants afterwards, in July last, sold the palmirah fruits of Plaintiff's aforesaid garden to others, and the second Defendant appropriated that amount, and independent of this, Defendants prevented Plaintiff from taking back a chest and several vouchers in it, lodged for safety in Pooder Cadergamar's house.

Plaintiff prays to adjudge the Land to Plaintiff, and to order second Defendant to pay back the amount of Rds : 10 he has received, together with Rds : 21 the value of the palmirah fruits, and Defendants to pay the costs of suit.

24th August, 1814.

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Answer.

The Plaintiff being married for the second time without securing the share of the minor Children of the first bed, the first Defendant, as a relation to the Plaintiff's deceased husband, and for the benefit of the said minor children, obtained an oppum order from the Collector on the second and third Defendants, to sequester the Estate and property of her deceased husband, for preventing devastation, which was done accordingly.

Second Marriage without Inventory.

The second Defendant never received the Rds. 10 alluded to in Plaintiff's Petition, for framing an Inventory, nor is it a custom to pay for it.

The Rds: 21, value of Palmirah fruits, is under the second Defendant's sequestration.

And whereas now the Plaintiff instituted this suit merely to ruin her minor children, by appropriating all the property to herself.

Therefore, first Defendant* prays the Court that an inventory may be made out of all and every the property of the Plaintiff and her late husband, and that the same may remain in Court for the benefit of the said minor children, and that the share of the children be secured according to custom, and that Plaintiff's frivolous claim on them may be dismissed with costs.

9th September, 1814.

Answer filed.

Richardson, Judge.

Ordered that the Defendants do give into Court a List of all and every kind of property belonging to the Plaintiff, and now under charge of the Defendants, and that the 21 Rds for which the produce of the Palmirah fruits were sold by Defendant, be then produced.

12th Septr.

Inventory of the property not ready, 21 Rds: paid to Plaintiff in Court, further time allowed till the 14th Inst.,

* It does not appear how 1st Defendant is related to Plaintiff's late husband.

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and ordered that sequestration issued by the Collector against the property of the Plaintiff be quashed.

14th Septr., 1814

Parties present. The Defendants give into Court an Inventory of the property of Plaintiff's late husband, made out by them, which is read to plaintiff.

Plaintiff admits all the Landed property hereditary and acquired as therein mentioned, but not her Dowry property.

It is ordered that two Commissioners be appointed to ascertain and report to the Court, all and every the dowry, hereditary, and acquired property of the Plaintiff and her late husband.

4th Novr., 1814.

Parties present. The account produced, translated of the property belonging to the estate.

It is ordered the Plaintiff to be put in the possession of the property mentioned in the Inventory filed this day, and that copies be delivered to Plaintiff and her father, and that each party do pay their own costs.

Year 1821.

No. 1,777.

Maylie daughter Cay of Claly... ... ... *Plaintiff.*

Vs.

Her father Punnian Casy... ... ...*Defendant.*

Richardson, Judge.

Inventory.

The custom of making an Inventory before entering into a second marriage, is fully recognized, as the custom of the place, and part of the Thesawaleme.

22nd May, 1826.

No. 2,229.

Tirrowengeda Chelliar Sivanandalingam of Vannarpunne... ... ... *Plaintiff.*

Vs.

Tirrowengea Chelliar Moollowaytilingam... *Defendant.*

Price, Judge.

Intervenient upon reading the objections to the writ of execution issuing in favor of Plaintiff, the day filed by Intervenient, and upon referring to the Bond upon which the decree was obtained by Plaintiff in case No. 2,229 as well as to the evidence given by the Notary, by whom it was made

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out in the Case No. 2,292, it does not appear to the Court, that the Intervenient's claim is admissible, however strong the suspicion of the Court may be as to the fact of the Intervenient's signature having been truly obtained to that Bond, from the well-know circumstances of the family dissentions, which have long prevailed between him and his father, the grantee of the Bond. It is however in the power of the Court to grant an order for an account being taken of all the property which is now in the possession of the Defendant, in order that he may be required to give security for one-fourth part thereof, on behalf of the Intervenient during the Defendant's lifetime, and it is ordered accordingly, and that the writ of execution do not issue until then.

Security.

Judgment of the high Court of Appeal.

It is ordered that the execution be staid until security be found by the Defendant, for the behalf of the Intervenient, in terms decided by Mr. Wright, that is, Rds. 5,404 8. 2

Given at Colombo, 17th December, 1827.

Wright, Judge.

Novr. 18th, 1826.

The Defendant having failed to furnish the security required. It is ordered that the Inventory of his property filed by him be sent to the Maniager and Odear of Vannarpunne, for the purpose of ascertaining if the property therein mentioned be in existence.

Similar orders issued to the Headmen of Kaits, and Point Pedro.

23rd June, 1829.

Registrar.

The Court forwards case with a letter to the Registrar, stating that the Defendant has failed to give security, and in fact has declared that he could not find security.

Upon reading a letter from the Provincial Judge, and the petition therein enclosed. It is ordered that the execution should no longer be stayed, but be issued immediately against the property of the Defendant, and that one-fourth of the proceeds of the property levied under the execution be paid into the Provincial Court, to abide the decision of that Court in respect to the claim of the Intervenient, and that an early day be fixed by the Provincial Court, for the Intervenient to substantiate such claim, and if the Interveni-

Deposit in Court.

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ent does not establish the said claim within the time limited by the Court, the Plaintiff be allowed to receive the sum that may have been deposited under the provisions of this order, unless the Judgment shall have been otherwise satisfied.*

Colombo, 6th July, 1829.

No. 4,811.

In the matter of the Petition of Cadergamer Canthar residing at Vanarpunne, to Inventorize the property of his deceased wife, as he is of intention to enter into a second marriage.

Sheweth,

That the Petitioner having married one Nagamatto, daughter of Ayampulle, procreated three children by her, and her two children died in 1824, leaving one child with the following property.

Lands and moveables enumerated.

Headmen and Inventory.

Therefore Petitioner most humbly prays to issue an order to the Headmen of Vannarpunne and Pungutivo, that they should make out an Inventory of the said property for the benefit of the said child according to the country law, as the Petitioner is intending to enter into a second marriage.

6th September, 1826.

Decr. 14th, 1826.

The Petitioner and guardians attend, and having inspected the Inventory of the Estate of Petitioner's late wife, say it is a correct statement, and are willing that it should remain under the charge of Petitioner with his child.

Ordered accordingly.

Inventory filed and guardians (Uncles of the deceased) allow it to be correct.

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* Claim was admitted. The only point was, is the Defendant bound to give security for the Intervenient's share.

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No. 823.

Year 1831.

Podetamby Wayrewender, and wife Modelinachy of Tillepulle ... ... *Plaintiffs.*

Vs.

Sidembrenader Sangrepulle ... ... *Defendant.*

BURLEIGH, Judge.

This is evidently a false claim, the Inventory is dated December 22nd, 1792. It is quite ridiculous to suppose that the plaintiffs would have permitted the defendant to possess so large a property for so many years, without making a claim for it long since, particularly with respect to the jewels which belonged to the mother of the 2nd plaintiff, and which are invariably (after the mother's death particularly) given to the daughter on her marriage. The Inventory states moreover, that the whole of the property mentioned *only to be held in the charge of the defendant until the second plaintiff has attained the age of puberty,* the only motive which induces a Tamil man to marry a woman is on account of her property, and of course the first plaintiff and his father took good care when the former was married to second plaintiff, to have all her mother's property made over to her. There is one very material point with respect to this Inventory. It is stated in it "The contents of this Inventory Ola have been recorded in the office of Signior "Desseve," this is dated December 26th, 1792, and it is well known that no public offices were ever open on the 26th of that month. The Dutch Government was most strict on this point, as I have understood, from the most respectable natives.

Age of Puberty.

Inventory.

I am of opinion that a Decree should pass for defendant, Plaintiffs to pay double costs (as taxed in England) for attempting to deceive the Court. Assessors agree.

Double Costs.

It is decreed that the plaintiffs claim be dismissed. Double costs to be taxed against them.

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23rd June, 1834.

No. 439.

Pariatamby Aromogam and others of Alchovaly... *Plaintiffs.*

Vs.

Sinnepulle widow of Marimootto and others ... *Defendants.*

PRICE, Judge.

Inventory.

It appears from the evidence, that an Inventory of deceased's moveable property was taken by the Police Vidahn shortly after the death of the deceased, in the presence of the parties, and that such Inventory was given in to the late Provincial Court (copy of which is filed in the case) and the original was identified to-day by the person who made it.

The Defendants have attempted to shew that a Division, of the property of the deceased has already taken place between the parties, but they have, I consider, entirely failed to prove this fact ; had any such division taken place, I consider under the circumstances, that such division should have been in writing, as it appears that deceased died possessed of immoveable property as well as moveable.

I consider that, agreeably to the Country law, a decree should go in favor of the second and third Plaintiffs, as heirs of the deceased, for half of the moveable property, or its value, viz. £8 5s. 0d, and that defendants should pay the costs.

The Assessors agree in the opinion of the Court.

Ordered accordingly.

13th March, 1838.

No. 5,101.

Aromogam Waytilingam acting Maniagar of Jaffna ... ... *Plaintiff.*

Vs.

Moorugar Sinnatamby and others ... ... *Defendants.*

PRICE, Judge.

Candan Murugan father of the Bridegroom, being the party objecting to the entry of the marriage, gives in an application to the Court.

Obligation to Marriage.

He further states that the only ground upon which he objects to the marriage of his son Moorugar Sinnatamby

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alias Wannian, with Velasy widow of Cadergamar, being registered by the acting Maniagar of Jaffna, is owing to his son not having made out an Inventory of his late wife's Estate, or made any settlement to secure the inheritance of his child by his said wife. This being the only ground of objection on the part of the father of the Bridegroom, to the registry of the second marriage of his son, the Court and Assessors consider it to be so vague and unsatisfactory that no attention can be paid to it, particularly there being reason to apprehend that the objection is merely raised to thwart the entry of the marriage, well knowing that the woman is in a very delicate state of health.

Inventory before second Marriage.

The Court and Assessors are of opinion that the acting Maniagar of Jaffna should be directed to register the marriage of the parties, the father of the Bridegroom being at liberty to bring any action he may think necessary, to secure the child's portion.

Ordered accordingly.

Judgment affirmed in Appeal, 9th April, 1838.

SONS TO PAY FATHER'S DEBT.

In the Civil Court of Jaffna, Committee meeting on Wednesday, the 10th February, 1802.

10th Feby., 1802.

Present Lieutenant William Short,

and

Mr. Jurgen Arnoldus Hicken, members.

Alvar Cadergamen Vellale of Ploley appears in Court, and states that his father, the Defendant, had died seven years ago, and that a sum of Rds. 156 and 6 fanams was paid in part payment of the debt, as per receipt dated 10th Decr., 1784, which was rejected on the part of the Plaintiff, who at the same time produced a general receipt granted to him by Mr. Vansprang, in which it appears that the Defendant has paid in part payment of the Bond in question the sum of Rds. 63.

Question by the Committee to Alvar Cadergamen.

Q. Did you not succeed to your father's estate ? A. Yes.

Son. Succession to Father's Property.

Ordered that Alvar Cadergamer, as heir of his late father

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Debt.

Weler Alvan, do pay to the Plaintiff the balance of Rds. 99 and 6 Fanams, in six days.

24th Feby., 1803.

Chinnekoramorly Goldsmith... ... ...*Plaintiff.*

Vs.

Nannepulle, widow of Perejekooromoerty... ...*Defendant.*

DUNKIN, Judge.

The following are witnesses on the part of the Defendant. Waytipulle, a Coast man, being duly sworn, declares, he knows both parties. He knows Defendant's husband. He is dead two or three months, the deponent was present at the death of the Defendant's husband when the creditors came to demand their debts from Plaintiff, who was then in the mourning house, as the next of kin to his estate on which he (the plaintiff) declared, I will neither interfore with the estate nor be answerable for the debt, let the deceased's widow who has taken care during the deceased's illness take the whole estate and answer for the debt, on which the several creditors applied to the Defendant, and asked her what she has to say on the plaintiff's declaration, and the Defendant saith I would be answerable for the debt, if the estate be made over to me.

Interference with Estate Debts.

The plaintiff declines to cross examine the witnesses.

Cawereticakachetty of Nagapatam, being duly sworn, declares, he knows the parties. He knew her late husband. He was a debtor to the deponent at the time of his death. He owed the deponent 96 Pagodas. The widow secured the deponent for that debt. Before that the deponent applied to the plaintiff for payment of the said debt, when the plaintiff was in the mourning house, on which the plaintiff said I do not know the situation of the estate of my brother, on which the deponent applied to the widow, and the widow said I will be answerable for the debt. The plaintiff did not undertake to say that he would pay the deponent after he should take notice about the estate. He further saith that the plaintiff declined to claim the estate on the woman's declaration that he would pay the debts of her husband.

Question by the plaintiff to the witness.

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Q. Did I not observe at the woman's declaration that he would pay the debt, if the estate be given up to her that she may do so, if it is agreeable with the Country Law? A. No.

Chiwasarren Chetty, a Chetty of Trichonopolly being duly sworn, declares, he knows both parties. That when the deponent was at the mourning house of the Defendant's late husband, the creditors of the deceased came there and asked the plaintiff who would be answerable for the debts, on which he the plaintiff declined to interfere with the estate or to pay the debts, on that the woman said when the creditors applied to her in consequence of the plaintiff's refusal, I will answer for the debt, if the estate will be left to me.

Questions by the Plaintiff.

Q Did I not say at that time, you may do so hereafter if it is agreeable to the Malabar Law? A No, I did not hear it.—The Plaintiff prays that the witnesses in this cause may be sworn in the Temple, according to the rites of their case.

The Court rejects the Plaintiff's claim, and orders him to pay the costs of suit. The Court orders that the witnesses in the above cause do swear in the Temple, according to the rites of their caste in confirmation of the evidence given by them, respecting this case.

5th June, 1806.

Illengeadigara Modliar Caderetamby ... ...*Plaintiff.*

Vs

Caderasy, widow of Illenganayaga Modliar Cander...*Deft.*

TRANCHELL, Judge.

The parties attend.

The plaintiff's Petition is read and explained to the Defendant, and the ola Bond exhibit A. and Transfer B. Defendant undertakes to pay the debt of her husband, as she has taken possession contumaciously of the estate and property of which her said late husband died possessed.

Widow's Debts.

It is decreed that the Defendant is indebted to the plaintiff in the sum of Rds. 200, with Interest at the rate of one per cent. per mensem from the 1st May, 1803, till the day of payment on an ola Bond bearing that date, executed by her late husband Illengenayaga Modliar Cander,

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exhibit A. 216 transferred to the said plaintiff by the creditor Vissearetana Modliar by an assignment dated 18th February. Exhibit B. 216 and costs of suit, and it is ordered that on the payment of the said debt the Vouchers mortgaged for the same be delivered to Defendant.

6th August, 1808.

No. 1,818.

Welar Periatamby... ... ...*Plaintiff.*

Vs.

Sidemberan Mady and Sidemberan Candy ... *Defendants.*

MIETFIELD, Judge.

The Plaintiff claims 48 Rds. from the Defendants, under an Otty ola executed by the Defendants' brother Sidemberen Wayraven, deceased, dated the 25th June, 1805, whereby he gave in Otty the Dowry Land of his mother, situate at Allawatty.

Sister Heir to Brother's Property.

She must pay Brother's Debts

The deceased not having been married, but died without wife or children, his sister became the successor to his property, and consequently, according to the Country Law, liable to his debts.

It is ordered that the Defendants do pay Plaintiff 48 Rds. and costs, due under an Otty ola marked A. 1818, and dated the 25th July, 1808.

22nd Feby., 1813.

No. 427.

Seyvane, wife of Sandaynar... ... ...*Plaintiff.*

Vs.

Ramanader Waylen, and others... ... ...*Defendants.*

LAYARD, Judge.

Plaintiff and Defendants present.

Son. His liability.

It is decreed that the first Defendant agreeable to the true intent and meaning of the Country Law, called Thesawaleme, is indebted to the Plaintiff in the sum of Rds. 100., being the amount decreed by the sitting Magistrate of Point Pedro, under date 24th February, 1809, to be due to plaintiff upon an Otty Bond, dated 28th December, 1793, granted by the said Defendants' late father Cannagar Ramelingem or otherwise called Cannagarwi Ramanaden, with costs of suit in

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his case, as well as all costs before the said Magistrate in the said case.

No. 392.

21st January, 1819.

Paulopulle Philipopulle... ... ... *Plaintiff.*

Vs.

Pareanatchy, daughter of Cadrein and others...*Defendants.*

St. Ledger, Judge.

Marriage.

Wife suing alone.

The Defendant has subpœnaed the schoolmaster to prove her marriage, the Court does not think it necessary to examine him, as her being married cannot render her less liable to pay the amount of the Bond.

It is decreed that the Defendant is indebted to the Plaintiff in the sum of Rds. 200, on a Notarial Bond filed and dated 6th November, 1816, with interest at the rate of 12 per cent. per annum, from that day to the day of payment. The Defendants to pay the costs of suit.

Minor Court of Appeal, 13th February, 1819.

On reading the proceedings in this case, it is ordered that the Provincial Judge do take evidence to ascertain whether the Defendant is a married woman or not,

Friday, May 14th, 1819.

Nallitamby Philipo Rasinga being sworn, deposes that the marriage of Defendant with Philipen Paradine is entered in the Church Roll, it is common for these castes to intermarry.

The marriage Roll is shewn to the Court, where the entry appears, bearing date 10th August, 1814.

Venasy Santiago being sworn, deposes, that he is a washerman, he attended the marriage of Defendant as such, the Bridegroom was Philippar, the marriage took place about fourteen or fifteen years ago at Pongertievoe, in Defendant's house, that is, the house of Defendant's parents. The mother was present, not the father. Deponent does not know whether the Roman Catholic priest was there. One Nallan was there as barber.

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10th Feby., 1819.

SCOTT, Judge.

Joseph De Chikera, the Roman Catholic priest, is called up and sworn, who deposes that he knew the Defendant, upon which he produces a book, in which all marriages among his flock are duly registered.

The book is examined and the following entry is found.

On the second day of February, 1817, Sandeyar Caradasy of Pooneeran is married to Defendant, Sinneevy Madalana.

The entry in the book produced can have no reference to this suit, as the bond in which Defendant has been sued is dated in 1816.

The Defendant's husband is called up, he acknowledges that his father was a Christian, and that he, the husband, has been such from his birth.

The Defendant admits that her marriage, according to the forms observed by the Christians, did not take place till 1817, but declares that it did agreeably to the Hindoo custom.

The Court is of opinion that it is clear that the Defendant was not living with the man (now her husband) in wedlock until 1817.

Proceedings to be transmitted to the Minor Court of Appeal.

Judgment of the Minor Court of Appeal.

It is ordered that the decree of the Provincial Court, bearing date the 27th January last, be set aside.

19th April, 1819.

No. 7-579.

Sidembrenader Sinnetamby... ... ... *Plaintiff.*

Vs.

Walliar, daughter of Wayrewenader, and brother... ... ... *Defendants.*

ST. LEDGER, Judge.

Daughter. Father's Debt.

It appears to the Court, that as the debt was not originally contracted by the first Defendant herself, but by her late father, and as the Bond in question was granted by her as an heir to the estate of her said father, that estate should be made liable in the first instance for the debt, the balance, if any, to be recoverable from first Defendant. The

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second Defendant is too young for any obligation granted by him to be valid.

It is decreed that the estate of Defendant's late father is indebted to Plaintiff in the sum of Rds. 400, on a Bond dated the 27th February, 1818, granted by the heirs to the said estate, together with interest from the above date to the day of payment. Should that estate not be sufficient to cover the debt, the first Defendant to be liable for the balance. The Defendant to pay costs of suit.

No. 7-599.

16th August, 1819.

The Executor of the Estate of S. E. Raket... *Plaintiff.*

Vs.

Candeppen Ambalewanen and another... ... *Defendants.*

SCOTT, Judge.

Sons. Debts. Liability.

The first Defendant admits that he is a son of the original debtors, against whom a Writ of Execution issued; on reference to the Law, as such the first Defendant together with his brother the second, are responsible for any balance that may remain unpaid: on reference to the Writ, a balance of 245 Rds. and fannams nine, is found to be still due. Consequently it is decreed that the Defendants are jointly and severally indebted to the estate of the late S. E. Baket in the sum of Rds. 245 and fannams 9,* and costs.

No. 598.

9th Feby., 1821.

Seder Ambelawanen... ... ... *Plaintiff.*

Vs.

Cander Semby... ... ... *Defendant.*

KRICKENBECK, Judge.

It is considered from the evidence already produced by the Defendant, that she was married according to the rites of the Tamil Heathens to Rama Mapana Mudlier Alwayenar, and the Bond being of sebsequent date to the said marriage

* It is admitted that the Defendants inherited no property from their Father.

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and executed without the knowledge of the said Alwayenar, it is considered invalid, and the Plaintiff is therefore nonsuited, with order to pay Defendant the costs she has incurred in this suit.

Contract by Wife Invalid.

7th July, 1826.

No. 4,051.

Telleen Ramanaden... ... ...*Plaintiff.*

Vs.

Cander Sidembrenaden and others... ... ...*Defendants.*

WRIGHT, Judge.

The Defendant's late husband, Sandresegra, Modliar, and his brother Cander Sarrewanemootto, being brothers of first Defendant, and having borrowed jointly the sum of 100 Rds. from Plaintiff's uncle, they are equally responsible for the same; but Sarrawannemootto having died without issue, his share of the debt is to be paid by the surviving brothers or their heirs, each half, consequently first Defendant is liable only for 25 Rds., whilst his late brother's estate, and son, third Defendant, should make good the rest, being 75 Rds.

Brothers.

Uncle's Debts.

Decreed that the Plaintiff do recover from first Defendant 225 Rds. 6 faunams, with interest at 12 per cent. per annum, and that Plaintiff do recover from the estate of second Defendant's late husband, and his son, third Defendant, the sum of Rds. 205.

Defendants to pay costs of suit—first defendant half, and second and third Defendants the other half.

Affirmed by the High Court of Appeal, 28th April, 1827.

5th Decr., 1826.

No. 3,075.

Maria wife of Soosapulle... ... ... *Plaintiff.*

Vs.

Areeleppen Pedro... ... ...*Defendants.*

WRI HT, Judge.

On reading the pleadings in this case, it appears that the Plaintiff's claim to the whole of the lands mentioned in her Libel is inadmissable, because she is entitled, under the decree of this Court of the 8th August, 1820, to

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only half in right of inheritance from her father, the other half became devolvable on her brother Plippo Anthoney, and he being liable for the debts of his parents, his share of the inheritance must be answerable for the debt due to Defendant, under the decree of this Court dated 23rd July 1823, against himself, his brother, and uncle Mark Thomas, in equal proportion. The Dowry Deed filed in the case by Plaintiff being on an inadequate stamp must be set aside, but the other two Lands therein mentioned being admitted by Defendant to be the Mothisum property of the Plffs. and their uncle, by inheritance from the Plffs. paternal grand-father, it follows of course that the said uncle is heir to half, and the Plaintiffs jointly to the other half, of which half the Plaintiff Maria's share is not liable for the debt due to Defendant by his mother, which must be liquidated as before stated by the said mother, brother, and uncle, respectively.

Father's Debt.

Son's liability.

The attempt, therefore, of the mother and brother to give the whole of their four Lands in dower to the Plaintiff (Maria) is entirely fraudulent, and therefore the Court decrees that the Plaintiff in this case do pay the Defendant's costs.

No. 4,494.

Year 1826.

Modeleanachen widow of Sokkenaden... ... ...*Plaintiff.*

Vs.

Her brother Wissowen Welayden ... ...*Defendant.*

Wright, Judge.

The Father dies leaving property and debts, the Son enters into possession, and grants a bond for the debt of his father, making himself solely responsible, until the son's wife dies. Held that the son was liable to pay the amount out of his own share of the estate, and that his wife's property was not liable for the debt and that the acquired property of the son and his wife should be equally divided between him, and his late wife's heirs.

Wife's Property.

Acquired Property.

Division.

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Year 1827.

No. 4,718.

Cander Welayden... ... ...*Plaintiff.*

Vs.

Tamoderempulle Walopulle... ... ...*Defendant.*

BROWNRIGG, Judge.

Son's liability.

Held that the son was bound to pay his father's debts whether he inherited property from him or no.

8th April, 1835.

No. 1,407.

Somekander Sandresegerer and others... ... *Plaintiffs.*

Vs.

Sandresegerer Wayrew enader... ... ...*Defendant.*

PRICE, Judge.

It is decreed that the estate of the second and third plaintiffs' late father, is indebted to defendant in the sum of Rds. 370 (after deducting the sum of Rds. 5, value of Palmira trees felled by defendant) on two Bonds, viz. an Otty Bond dated 29th October, 1811, for Rds. 270, and a Mortgage Bond dated 15th December, 1813, for Rds. 100. Should the Land ottied and mortgaged be insufficient to cover the debt then the balance is to be made good from the acquisition of second and third plaintiffs' late parents.

Otty Money.

Debts how recovered.

Plaintiffs to pay the costs.

12th Septr., 1835.

No. 1,178.

Ramelinga Ayer Vessovanader Ayer... ... ...*Plaintiffs.*

Vs.

Teewige Amma, widow of Swaminada Koorukel, and others... ... ...*Defendants.*

BURLEIGH, Judge.

On considering this case with attention, I think it quite unnecessary to enter into any evidence, the Proctor for the third defendant maintains that the Land was given as a gift to the second defendant, which can be proved, I could not credit this evidence if it was brought, because on reference to the Notarial Deed, I find that it was sold to him, had it been donated, such of course could have been mentioned. I believe the second transfer to be a mere trick to deprive

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the plaintiff of his money; he obtained a Decree against first defendant, and her late husband, for Rds. 400. I believe the second Deed was executed merely to prevent his recovering from the Land; the purchaser (the third defendant) is son-in-law to the first, and I do not believe that he paid the purchase amount; second defendant is still under his mother, therefore the Land is general property according to the Thesawaleme, and is answerable for the debts contracted by the parents, indeed the third defendant's Proctor reports to this effect on the petition presented by him (third defendant) when he requested to be permitted to sue as a pauper. I am therefore of opinion that a Decree should pass that the sale to the third defendant be cancelled, and that the Land be considered general property, and answerable for the debts contracted by the first defendant and her late husband.

Property of Son still under his Parents.

The Assessors fully agree in the opinion. It is decreed that the sale of the Land be set aside, and that it may be considered answerable for the lawful debts contracted by the first defendant and her late husband. The Deed,* I believe, having been executed in the name of second defendant, with the intention of preventing this.

Judgment affirmed in Appeal, 18th November, 1835.

No. 3,278.

14th June, 1838.

District Court, W.

Annapulle, wife of Anthonipulle, and another... *Plaintiffs.*

Vs.

Pooder Moorgen and three others... ... ...*Defendants.*

BURLEIGH, Judge.

It is clear that a Decree must pass in favor of first plaintiff, in Case, No. 3,573-2,314, defendants admitted a debt jointly due to second defendant, and her husband. This would prove his death. By the Thasawaleme, the debt of the father must be paid by the sons. I am of opinion that a Decree should pass for first plaintiff. The Assessors are of the same opinion.

Father's Debt. Sons liability.

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* The Deed, by the first Defendant in favor of her son (the second Defendant) was a Transfer.

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It is decreed that first plaintiff do recover from first defendant, and from the estate of the late Cotten Vinacy, father of third and fourth defendants, the sum of £7. 10. Principal £2. 10., costs in the former case with the costs in the present case ; should the father of the second and third defendants have left no property, they are liable, according to the Thesawaleme, and half of the amount must be paid by them.

26th October, 1838.

No. 1,531.

Welayder Cander... ... ...*Plaintiff.*

Vs.

Canagaraya Modliar Ramasamy... ... ...*Defendant.*

Toussaint, Judge.

Son inheriting nothing, not liable for debts.

The Court does not think it necessary to detain this case for the evidence of the one absent witness of the defendant. There is no proof adduced that defendant inherited or received any of his deceased father's property, and in fact it appears, that he died leaving no property, as per report of the Headmen made on the Writ, which was proved by plaintiff himself. Such being the case, it is indeed hard to make the defendant sacrifice what he has acquired with his own labor and industry, for his father's debt. That although the Country Law directs that the sons are to pay the father's debt, it at the same time declares that it is a hard one. Under the foregoing circumstance and consideration, and with the opinion of the Assessors, it is decreed that plaintiff's claim be dismissed, and pay defendant's costs of suit.

24th April, 1839.

No. 1,531.

Judgment of the Supreme Court.

The appellant is a creditor of Defendant's deceased father, and he claims the amount of his debt against the son.

Son's liability whether he inherits Property or not.

He alleges that the son inherited property from the father, but he adds that whether he did or not, the mere circumstance of his being his son renders him liable for all the father's debts.

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In this demand there can be no doubt, that he is borne out by the text of the Thesawaleme, which distinctly states that "although the parents do not leave any thing, the sons are nevertheless bound to pay the debts contracted by their parents," and again " although the sons have not at the time wherewith to pay the said debt, they nevertheless remain accountable for the same."

The District Judge has, however, thrown out this action, on the ground, that " there is no proof adduced that the " Defendant inherited or received any of his deceased " father's property, and, in fact, it appears that he died " leaving no property, as per report of the Headmen made " on the Writ which was proved by Plaintiff himself; such " being the case, it is indeed hard to make the defendant " sacrifice what he has acquired with his own labour and " industry for his father's debt, that although the country " Law directs that the sons are to pay the father's debt it " at the same time declares that it is a hard one; under the " foregoing circumstances and consideration, and with the " opinion of the Assessors, it is decreed that plaintiff's claim " be dismissed, and pay defendant's costs of suit."

The Supreme Court whilst it also admits the hardship of he Law, would not have felt warranted in overlooking it on that ground alone, but as the Thesawaleme is, in fact, nothing more than a report of the customs and usages of the country, it conceived that it might occur in this, as it often has in other instances, that the usage admitted of modifications, which softened the rigour of the general principle, and reconciled it to the rules of natural equity.

For the purpose of ascertaining this point, it directed three special Assessors well acquainted with the Tamil usages, as practised at Jaffnapatam, to be selected, and it further proceeded to examine several of the most experienced among the native inhabitants, on the custom.

The following questions were then put to the latter.

1st. A father dies in debt, leaving no available property, are his sons liable to discharge his debts from the property accruing to them from their own industry, and if so, are they also liable to personal arrest for such debts.

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2nd. Are lands given in dower to daughters liable to these debts.

3rd. Was there any ancient, or is there any known form, by which after the decease of the parent the son by renouncing his right to his inheritance could exempt himself from this liability.

The answers were as follows :—

Son's liable in person and property.

Three of the witnesses, viz., Messrs. Amear Philipo Motetamby, Maylwagenam and Weylader Cartigaser, declared that the sons were liable in person and property.

Daughter. Dowry not liable to Parents debts.

That Lands given in dower to the daughters were not, and that they did not know, nor had they heard, of any form by which the sons could exempt themselves from this liability.

Mr. Mootiah, the District Judge, who was the fourth witness, gave the same answer to the two first questions, but to the last he answered that he had heard of instances and was himself aware of one in the time of Mr. Dunkin, when, on the sons' coming forward and repudiating altogether their father's inheritance, they had been exempted from the payment of his debts, and this he understood to be the present law.

Repudiating Father's inheritance.

He also quoted an instance in the High Court of Appeal, of about ten years standing, in which the sons had been exempted from liability on the grounds now taken by the District Judge, (the extreme hardship of the law), but, he added, that this precedent had never been considered law, and had been overuled by the subsequent practice.

The three Assessors concurred entirely in opinion with Mr. Mootiah, and the first Assessor stated that he had a knowledge of the case in Mr. Dunkin's time to which Mr. Mootiah referred, which he considered consonant to the usage.

It thus appears that the above passage in the Thesawaleme, though correct as far as it goes, is nothing more or less than a rule of the Civil or rather the Roman Dutch law—the Common law not only of Jaffna, but throughout the Maritime Provinces. By which law the

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Heir is responsible for the ancestor's debts, unless he has repudiated the inheritance, which he is at liberty to do whenever he is sued for any such debt, except he should in the meantime have intermitted or done any of those acts which shew that he intended to appropriate the inheritance to himself.

Heir responsible for Ancestor's Debts.

Nor has this law been in any way rescinded or modified up to this time.

Formerly, indeed where the Heir entertained a doubt whether the Estate could discharge all its liabilities, he was at liberty to apply for the benefit of an Inventory, and now he applies for Letters of Administration, the latter form, is in many respects the more convenient and consonant with our present Judicial institution, having in effect superseded the former, but this has not done away with the doctrine of intermission, or removed the responsibility of the Heir.

Letters of Administration are only requisite *for his protection*, and they are also requisite when a stranger, such as a creditor or others having claims upon a vacant Estate, are desirous of obtaining a title which will warrant them in recovering the assets and managing the property.

On these grounds the Decree of the District Court is affirmed, unless the plaintiff shall undertake to prove that the defendant has appropriated to himself any portion of the property of his deceased father without having obtained Letters of Administration. Should the plaintiff not undertake this proof, and should his debtor have actually left any property, the said plaintiff will still have his recourse against such property on taking out Letters of Administration to that Estate.

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12th Decr., 1839.

No. 3,962.

Comarevaler Sinnatamby and wife Sadopulle. *Plaintiffs.*

Vs.

Cander Aromogam and others ... ... *Defendants.*

BURLEIGH, Judge.

According to the law of the country, the debt must be recovered from the Estate of the late father of the second and fourth defendants, I am therefore of opinion that a Decree should pass accordingly.

It appears to me that the third and fourth defendants are the only ones who have made any defence on this suit, and therefore they are liable to pay the costs. They insist that this money was borrowed by the father of the second and fourth defendants to conduct this suit alluded to, where he wanted to shew that the second defendant was his Heir, and therefore entitled to his property. The third and fourth defendants (as plaintiffs) contested that he was not a legitimate child, It was decided by the Honourable the Supreme Court, that his mother was married, which made him legitimate. Even allowing that the money was borrowed for the purpose alleged, still the fourth defendant is liable for a share of the debt.—The father had full right to borrow money without consulting his son, and in this instance it appears to have been done for a very laudable purpose.

Father's right to borrow money.

Assessors agree.

It is decreed that the plaintiff do recover from the Estate of the late Sidembrenader Sangrepulle, the sum of £9 7s. 6d., with interest thereon from the 25th July 1836, at twelve per cent. annually, third and fourth defendants to pay the costs of this suit. It must be understood that the amount must be equally recovered from the property possessed by the second and fourth defendants. I think it probable that another action will be brought (from what has been stated by Proctor for third and fourth defendants) to recover from second defendant, the fourth defendant's share of their debt. The Proctor is informed by the Cout, that this case settles the point, and he must Appeal, if he considers that his clients feel aggrieved, as they cannot bring another suit.

Sons to pay Father's debts.

Decree affirmed in Appeal, 6th August, 1840.

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No. 3,317.

8th April, 1842.

Ramen Chetty Co-partner of Odeappa Chetty
and Sidembere Chitty Mottoappa Chetty... *Plaintiffs.*

Vs.

Conageraya Mudliar Ramasamy... ... ... *Defendants'*

TOUSSAINT, Judge.

The two deeds, viz. of the 25th December, 1809, and 14th January, 1839, now in the case, so well agree together with regard to the length, breadth, extent, &c., that there is not the slightest doubt in the minds of the Court, that the transfer in 1839, is for the same share purchased by defendant's father in 1809. The Court does not credit the defendant's first witness, nor does the Court believe that it is the purchased property of defendant's mother. The defendant had ample time to get his witness from the Kandyan country, if he had chosen to have him to produce the deed, but his view was to put off the case. The amount claimed is certainly large, but as there is proof (which was not in the case No. 1,531, and how that was since settled between the parties no one knows) that defendant did lay hold of some of his deceased father's property without obtaining Letters of Administration, the Court is of opinion, however trifling it may appear in evidence, that he is bound to pay until the last farthing of the claim, for who can know what else he might have laid hold of without plaintiffs' knowledge, who belong to the Coast, and not to this place. What was proved in the case No. 1,531 cannot be received as evidence in this case. This case therefore, should be decided according to evidence adduced in this case, and not otherwise.

Son's taking possession of Father's Property.

Liability to pay Father's debt.

Under all the circumstances, the Court is of opinion, that plaintiff has a right to recover from the defendant, and the estate of his deceased father, the amount claimed.

The Assessors say although the plaintiffs' claim is a true one, still that they are of opinion, that defendant is not to pay it. As the Odear reported that defendant's father possessed no property, and he in his evidence told to-day, that the share of land defendant transferred, is of his mother and

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not of his father. The Court is perfectly satisfied that the share of land defendant transferred, is of his father, by the deed in the case, and all other circumstances, it is sufficiently proved that defendant had laid hold of his father's estate, and administered it without obtaining a regular administration, and he is therefore also bound to pay his debts.

It is decreed that plaintiffs are entitled to recover from defendant, and from the estate of his deceased father, the sum of £70 17s. 3¼d. with interest at 12 per cent. per annum from the 12th March, 1829, (the interest is, however, not to exceed the principal) former costs £6 18s. 10½d., with the present costs of suit.

Judgment affirmed in Appeal. 1st August, 1842.

No. 13,440.

2nd July, 1845.

F. C. Grenier and Waitypulle Cadresen, Administrators of the late Wengadaselampulle Soopremaniapulle... ... ... *Plaintiffs.*

Vs.

Sandresegra Modliar Soosapulle and brothers Nicholas, Saverimotto and Sinnatamby... *Defendants.*

PRICE, Judge.

Sons liability to pay Father's debt.

The defendants were sued for their father's debt, as liable under the Thesewaleme. The District Judge gave judgment against the father's estate, without making the sons personally liable.

No. 6,509.

21st January, 1853.

Cartigaser Ayer Comaraswamy Ayer... ... ... *Plaintiff.*

Vs.

Velayther Amblewaner and brothers... ... ...*Defendants.*

PRICE, Judge.

Sons taking possession of Father's property to pay the debts.

Held, the sons having taken possession of their father's property, they were liable to pay his debts, and that there was no necessity for Administrators.

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No. 12,524.

27th October, 1853.

Court of Requests, Jaffna.

Arreseneleitta Mudliar Sawerymotto... ... ... *Plaintiff.*

Vs.

Jaccowapulle widow of Bastianpulle... ... ... *Defendant.*

Pole, Commissioner.

The plaintiff's Proctor calls the Commissioner's attention to the Thesewaleme or Country Law, in support of his claim, see section 9, of loans of money and interest, Clause 3rd in the said Thesewaleme. He also refers to the District Court decided case No. 6,519, and to Harrison's Digest Vol. 2nd, page 3,020, regarding *Executors de son tort.*

Widow Executrix de son tort.

The issue between the parties was clearly whether the defendant intermeddled in such a manner with the estate of her deceased husband, as to make her liable as an *de son tort,* therefore I cannot travel out of the issue, which was agreed to be tried, and I am of opinion that the section of the Thesewaleme to which the plaintiff's Proctor refers the Court, and the decision in the District Court 6,509, have no bearing whatever on the question at issue, and as there is no sufficient evidence adduced, in my opinion, to constitute the defendant an Executrix *de son tort.*

What constitutes Executrix de son tort.

The depositing of money in the Kutcherry to meet a Government debt, and the payment of defendant's husband's funeral expences, are not facts sufficient to constitute the defendant Executrix *de son tort;* as to the little pieces of furniture left behind by defendant's husband, there is no evidence that she has disposed of them.

The case is dismissed with costs.

Judgment of the Supreme Court, 25th January, 1854.

That the decree of the Court of Requests of Jaffna, of 27th October, 1853, be affirmed with costs.

Widow liable to the extent of Assets.

The evidence shews that defendant had intermeddled with the estate of her deceased husband, but her liability extends so far as she has received assets, which are available for payment of the debt of the plaintiff, who was entitled over the creditors paid, and the plaintiff has failed to prove any existing assets in her possession.

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25th April, 1856.

No. 2,861.

Court of Requests, Point Pedro,

Ramen Velappen, of Pluly ... ... *Plaintiff.*

Vs.

Pattenіar, widow of Soopremanier, Soopremanier Cadresen, and others ... *Defendants.*

Leisching, Commr.

Sons to pay Parents debts.

According to the Common Law of the Land, which must guide the Court, it is clear that although the parents do not leave anything, the sons are nevertheless bound to pay the debts contracted by their parents. The second defendant is therefore, as only son, liable (page 12 par. 7.)

Judgment for plaintiff against second defendant, £6 4*s.* 3¾*d.* and interest as in plaint, and costs.

Judgment of the Supreme Court, 28th November, 1856.

The proceedings in this case having been read, it is ordered that the decree of the Court of Requests of Point Pedro, of the 25th April, 1856, be set aside, and the case be remanded for a new trial. The Commissioner in this case relying on the authority of the Thesewaleme decided the local custom to be that, although the son have no assets from his deceased father, he is nevertheless liable to be sued for the parent's debt.

Son's liability.

However, the general proposition of the Thesewaleme is qualified in Strange's Hindoo Law, p. 347, by the remark "That to exonerate himself from payment of debts, the son must decline succession to the patrimony." The correction of the general proposition is also established by the decree No. 1,531, Wadamoratche, 24th April, 1839.

Succession to patrimony.

ADOPTION CASES.

No. 3,545.

Caderiar Candappen and his wife Nagatte of Sandanpoketty... ... ... *Plaintiffs.*

Vs.

Nager Amblewer... ... ... *Defendant.*

Libel.—That plaintiffs, who have no issue, have in terms of the Country Law, with the concurrence of relations on both

sides, adopted second plaintiff's sister's son Ayempulle, and according to Law drank saffron water, and made the usual ceremonies, and the adoption was registered by the schoolmaster in his registry.

Adoption.
Consent of Relation.
Saffron water.

Plaintiffs afterwards missed the extract of the Registry, and applied to the Collector and obtained an order on the Maniagar to have the adoption registered in the present registry, but defendant appeared and opposed the entry.

Answer.

First plaintiff's father and defendant's late father were brothers, and as first plaintiff is childless, his property after his death, is devolveable on defendant, in terms of the Country Law, and is therefore justified in making the objection.

EVIDENCE.

Aronaselam Soopremanien Odear sworn, states, he, on plaintiffs, and the invitation of the mother of Sangrepulle, attended the ceremony of adoption in 1808, when plaintiffs in presence of all their relations "drank the saffron water," and stated they adopted the said Ayempulle son of Cannewedd y as their son, the Schoolmaster of Catchay then wrote a Deed of adoption, which was executed and subscribed to by plaintiffs, plaintiffs relations, and also Deponent signed the same. Defendant is nephew of first plaintiff; defendant's father was at the ceremony of adoption; the several relations dipped their fingers in the saffron water. Ayempulle now lives with the plaintiff, and has since the adoption. Deponent did not see the *opputu* of any authority sanctioning the adoption. Barbers and washers were present.

Ceremony of Adoption.

The following persons, viz.

J. A. Dormienz, J. A. Rodrigo sworn, state it was necessary, under the *Thesewaleme*, in the Dutch time, to obtain the Commandeur's *License* to perform the ceremony of adoption, and know many instances of the like nature.

Tissaweerasinga Mudliar and Villawatarassa and Rodrigo Mudliar, sworn, state as Messrs. Dormieux and Rodrigo, and add, the License of an authority is required to sanction

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this ceremony, the former person observes that the collector's license is now granted.

13th June, 1825.

Sanction of Magistrate.

The *Thesewaleme* requiring the sanction of a magistrate, for whom it appears the authorities have been substituted, I waive Defendant's evidence's and dismiss Plaintiffs suit with costs, notwithstanding THE FORCIBLE EVIDENCE ADDUCED.

27th May, 1826.

No. 3,634.

In the matter of the Estate of Cadery, wife of Sitten and her daughter Wary, wife of Waten, Point Pedro, deceased.

Evidence.

Assembling Relations.

Adoption.

Arolambela Mudliar sworn, states,—Is not well acquainted with the parties. Is Maniagar of Point Pedro, received an order from the Cutcherry by the hands of Pooner Sitten and his wife, directing him to assemble the relations of Pooner Sitter and his wife, for the purpose of ascertaining if any objection exists as to their adoption of Sewagaway daughter of Wayratey, and if no objection, to register the the said adoption, but as the order did not specify what book it was to be registered in, and as no register was kept in the country of such transactions, he did not make any entry of it upon any book. He however assembled the parties concerned, and took their names down to the report which he made to the Cutcherry, after the ceremony had been completed. The usual forms to be used on such occasions, are, the assembly of the relations of both the adopting parties, also the family Barber, and Washerman, when the adopting parties are to present beetle leaves, and arrecanuts to their relations, the Barber, and Washerman. Then a Cup of saffron water is handed round by, and to, the same parties, for them to dip their fingers into as a token of their consent, when it is drank by the adopting and adopted parties, after which the whole party are feasted by the adopting parties, who carry off the adopted child, all these things were done in Deponents presence. It took place in October 1823, since which the adopted child has

Ceremony of Adoption.

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lived with her adopted parents. The following persons signed the report he made to the Cutcherry, and attended the ceremony of adopting, viz first, Superwalapoe Canneweddy (general attorney on behalf of Defendants), second, Sinnewen daughter of Soopen, third, Wallimachi, fourth Canderi, fifth, Wyrate, wife of Kytiar, sixth, Cadramer Velaiden (guardian of Plaintiff), seventh Sidembaren Ambian, Soopen Alwan, Nephews of ditto, ninth, Katiamme Sister of Ponner Sitter, and the adopting parties with Sewagamy the adopted child.

In the Dutch time, a Registry of adoptions used to be kept, but none has been kept since the establishment of the English Government.

Registry of Adoptions during Dutch Government. Neglected by English.

The Court has no hesitation in deciding in favor of second applicant.

It is decreed, that Siwegamy be the daughter by adoption of Ponner Sitter, and wife Cadrasy, both deceased, and as such is entitled to her inheritance from them.*

No. 7,173.

24th January, 1832.

Teywanepulle, daughter of Welayden, of Mattowil... ... ...*Plaintiff*.

Vs.

Tanmawarder Sangrepulle Amblewaner Ameypulle, and another, Intervenient... ... ...*Defendants*.

PRICE, Judge.

The Thasawaleme does not provide for this particular Case. In Cases of adoption, it is necessary for some of the nearest relations to consent, and I am of opinion that in this Case (where it appears Defendant has granted the Bond, for the purpose of depriving the lawful heirs of the property) that the next heirs should have been privy to the execution of the Bond.

Adoption. Relations. Heirs should consent to execution of Bonds.

Plaintiff's Father does not appear to have been actually married for the second time, and I think there is no doubt

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*. The adopted daughter was the niece (sister's daughter) of the deceased.

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Dowry Lands.

but the produce of Plaintiff's mother's Dowry Lands have been appropriated by her Father, for the support of himself, and children, and not by the Defendant.

Under these circumstances Plaintiff's claim is dismissed and the Bond ordered to be cancelled. Costs to be paid by the Defendant.

Judgment of the Supreme Court, 26th November, 1832.

Upon reading the Proceedings in this Case—It is ordered that the same be remanded to the Provincial Judge, to hear evidence, both as to the custom and also as in respect of the validity of the second marriage of plaintiff's father, and report the result to this Court.

30th July, 1833.

Evidence to prove marriage custom, and as to the calling in the near relations.

Ramalingam Modliar, Maniagar of Tenmoratchypatto, sworn, knows the parties--know plaintiff's father---Weylayden was married for the second time to Wallypulle, daughter of Aromogam Vellale of Caitaddey in 1822—the entry of this marriage is made in a book in my charge, the entry is as follows.—The witness who know the entry of the promise of marriage of Amblewaner Welayden Vellale, of Mattowil, for the second time with Vallipulle daughter of Aromogam Vellale, of Caitaddey, on the 26th of May 1822, are Supremanier, Ramalinger Odear of Caitaddey, Sidembrenader Modliar Sarravanamottoo Vellale of the same place, Supremanier Visowenader schoolmaster of Navelcooly, signs the entry as the schoolmaster before it was made. The witnesses have signed this entry as well as the bride and bridegroom. After Welayden's marriage, he lived for some time at Caitaddey, and then went to live at Mattowil. Plaintiff and her brother after the death of their mother went to live with defendant. A husband and wife without issue, I am of opinion, cannot contract debts without the knowledge of such of their relations, who would be their heirs in the event of their death, or the death of either of them. I think defendant on granting the bond in question ought to have consulted with his next heirs. If defendant wanted to raise a sum of 50

Husband and Wife without Children cannot contract debts.

Consent of Relations necessary.

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or 100 Rds. I don't think it would be necessary to consult the heirs, all defendants property is in security for a rent which he lately purchased from Government, valuing it at 1,500 Rds.

By Intervenient. Welayden did not take his second wife with him when he went to Mattowil, Welayden lived in the house of defendant. Defendant's wife being his sister, Welayden's second wife lives in her present house. Plaintiff's mother was sister to Welayden's second wife; in the event of plaintiff and her brother dying without issue, Welayden's second wife will be entitled to the property. Welayden's 2nd. wife being next heir to the Plaintiff and her brother, would not allow the Plaintiff and her brother with their property to be committed to the care of Defendant without having an inventory of their property made Welayden and his second wife have lived separate for the. last eight or ten years. The property pledged by Defendant to Plaintiff, is allowed by Plaintiff and her husband to be given in security to the Cutcherry for the paddy rent of Ponereen, bought by Defendant. Plaintiff and her husband have signed their names to some documents in the Cutcherry.

By the Court. The second marriage of Plaintiff's father appears in every respect regular.

Sidembernada Modliar Ramelingam, Native Notary of Navelcooly, sworn—knows the parties and Plaintiff's father Welayeden—he is married the second time to the sister of his late wife Walypulle, the marriage took place in 1822 and they lived together till within the last two or three years, after the death of Plaintiff's mother, Plaintiff and her brother went to live at Defendant's house. One Soopremanier Ramalingam had the management of it. I am a Notary, don't know a custom in which a person or perons without issue have borrowed money with the knowledge of their next heirs.

Custom as to borr-wing money.

Peeriar Weelen Vellale of Caytaddy, sworn, knew Plaintiff's father Welayden, he was married for the secund time ten or eleven years ago, after his marriage he went to live at Cay-

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taddy, after the death of Plaintiff's mother, Plaintiff went to live with Defendant, Supremanier Ramalingam Vellale, of Caytaddy, managed Plaintiff's property, he settled his account with, and signed, to the management of the property with the Defendant.

By Intervenient. Welayden's second wife lives in the same house his present wife lived in, she is entitled to a share of the house and ground.

Intervenient here admits, that Plaintiff's father married for the second time ,but states he only lived for a short time with her, and that they are at this time living separate.

Wellawadarasa Modliar Madappaly of Sanganne, sworn—according to my opinion, which I can form as I know of Thesewaleme, that a person married and without issue cannot make away with his property in donation to any person with the fradulent intention, without the approbation of the next heirs, but I think a person would be at liberty of giving his property in security for a debt due by him without the approbation of the next heirs. It is customery that a father should give over his children of his first wife with the property they are entitled to, to their guardian, before his entering into second marriage.

2nd Marriage. Inventory.

By the Intervenient. The Thesewaleme requires that a father before entering into a second marriage, should make out an inventory of the property which they be entitled to by way of their deceased mother, and commit the care of the children to a near relation with the inventory, but this rule is not strictly acted up to, no Court would approve of the marriage of a man for the second time without making over his property for the benefit of the children by the first marriage.

Sarrawannemuttoo Tilleyamblam native Notary of Welene, sworn. I am not related to the parties, I do not know of any instance in my capacity of native Notary, where a Bond has been granted by a married person, but without issue, without the approbation of his next heirs; as far as I understand the custom of the place, such a person

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may grant a Bond, if he was in want of money to maintain him, if no objection was made by the next heirs; if a person applied to pass a deed, he having no issue in favor of another person for a debt due to him, and if any person appeared as next heir and objected to the deed being passed, shewing that it was done with intent to injure the next heirs, I would refuse to pass the deed.

Sathrokelsinga Modliar, salt store Conicopulle, sworn. The Thesewaleme provides against persons without issue making away with their property in donation or otherwise, without the knowledge of their next heirs, but cannot recollect any part of the Thasawalemme which allows or disallows persons without issue contracting debts, giving their property in security for such debts.

By the intervenients. The Thesewaleme requires, that persons before entering into a second marriage, should make out an inventory of the late wife's property, and give the children's property and inventory to the person in *whose care it is agreed* to remain.

Inventory before 2nd Marriage.

Rayeratne Modliar Chetty of Mattowil, residing at Chundicully, sworn. I consider if a person who had the charge of children with the property, he would be obliged to make it good to them again, I consider that the person making away with the property, should grant a Bond for the extent of the damage done by him. I also consider that the next heirs should be made acquainted with the intention of the granting of the Bond, but whether they agreed to the quantity of it or not, under the circumstances of the present case, I consider would be very *immaterial*, as the person must make good the damage done. Some persons grant Bonds with the knowledge of the next heirs, others grant them without their knowledge.

Ordered that the further proceedings in this case be forwarded to the High Court of Appeal.

Judgment of the Supreme Court, 25th October, 1853.

The Proceedings in this case having been read and explained by the Court to the Assessors. It is considered and adjudged that the Decree of the Judge of the late Provincial

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Court of Jaffnapatam, of the 25th day of January, 1832, be *reversed*, and that the Bond granted to the Plaintiff be taken for, and considered to be a valid Bond. The additional evidence received tending to shew, to the conviction of this, the Supreme Court, first, that there was a real second marriage on the part of Defendant, and further that he granted this Bond in security for, or in payment of, a debt; there being no fixed indubitable custom binding him under such circumstances, to call in for consultation the relatives connected with him by the second marriage or others.

No fixed custom as to consent of Relations.

Decree for Plaintiff, Intervenient to pay Costs.

Translation of an Oppum.

(Signed) Chs. A. Vanderstraaten.

Order filed in Case No. 8970. D. C. J.

The 12th day of May, in the year 1840.

Order of Charles Alexander Vanderstraaten, Esq., Gentleman, Judge of the District Court of Wanney. As Dom Nicholawoe Natconesegra Modliar Vellale, of Mulletivoe, came and applied for permission that he and his wife Swanapulle may adopt their brought up child Savinepulle, born of their son Sontiagapulle, according to the Country Law. It is hereby permitted that the said Natconesegra Modliar and his wife do invite their friends, relations and domestic servants, and conduct the said ceremony of adoption (drinking of Saffron water), and further, that the Headmen of this place, Maylwagenam Modliar and Aromogetta Odear do inform by publication, that unless those relations who have any objection, should give information of such objection before the said ceremony takes place, that the said ceremony of adoption shall take place, and it is further ordered that they should also be present at the ceremony and complete the same, and after the completion thereof that they should deliver this Order into the hands of Natconesegra Modliar. (Signed) Santiagopulle Modliar (Interpreter.)

Adoption.

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BOUNDARY TREES.

No 863.

7th April, 1825.

Sitting Magistrate, Point Pedro.

Ramakitner Cartigaser and his wife Ameniamma... ... ... *Plaintiff.*

Vs.

Sawondariamma widow of Murgarser and son Seyder Ramer... ... ... *Defendants.*

TOUSSAINT, Magistrate.

The Court finds it useless to carry on this prosecution any further, for the parties admit that the Tamarind tree in dispute stands just in the middle of the Hedge which divides their lands, and which Hedge they admit to be standing since 1798, now 27 years. It appears by the decree No. 2,611 of 1809, that the parties, land should be divided according to the plaintiff's dowry deed, including the Tamarind tree by the wood, the Court must conclude that the Tamarind tree was ordered to be divided along with the land, further; according to the meaning of the country Law and the manner this tree is situated, nearly just in the middle of the Hedge which divides the parties lands for the last twenty-seven years.—The Court is of opinion, that according to the meaning of the decree No. 2,611 of the 20th March, 1809, this Tamarind tree is to be possessed by the parties half and half during the life time of the defendant. The only difference the Court discovers is, that the land is called in the dowry deed Wallepottycodeiroppo and in the decree Potticodeiroppo, but this difference the Court considers proceeded from the misrepresentation of the parties to the Court then.

Trees on the boundary limit.

Parties equally entitled.

It is therefore decreed that the Tamarind tree now standing in the Hedge which divides the lands where the parties live, called Wallepatticodieroppo, be possessed half and half, by the plaintiffs and first defendant, and parties do bear their own costs.

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12th January, 1836.

No. 754.

District Court, Point Pedro.

Wallinatchy wife of Modilitamby of Tumpale, and others... ... ... *Plaintiffs.*

Vs.

Wallinatchy wife of Wally... ... ... *Defendant.*

TOUSSAINT, Judge.

Branches overshadowing neighbour's Land.

The Court finding by the evidence of the defendant's last witness, who was engaged to cut the tree, that plaintiffs only took the branches that over-shadowed their ground, to which they were entitled according to country Law, but that is not to exclude them from the right of a half share in the stump* that stood in the limit Hedge, that divides parties' lands, so that the Court considers plaintiffs are entitled to half of the stump, or its value. The Assessors are of the same opinion. It is decreed that plaintiffs are entitled to recover from defendant six shillings and the costs of suit.

Stump.

8th June, 1837.

No. 1,751.

District Court, Chavagacherry.

Welayder Cakear... ... ... *Plaintiff.*

Vs.

Pooden Ayen of Varemy and others... ... *Defendants.*

SPELDEWINDE, Judge.

The Judge and the Assessors are of unanimous opinion that, according to the evidence of the plaintiff's own witnesses it would appear, that the Mango tree in question stood on the limits of both parties' adjoining lands, and of course they are entitled to it in two equal shares. Therefore it is decreed that the Mango tree in dispute between the parties, now under sequestration with the Police Vidahn of Vareny, valued by plaintiff at five Rds., be sold at a public outcry, and the proceeds of sale be divided by him for both plaintiff and the first defendant, and that each party do bear his or their own costs.

Mango Tree.

Limit of 2nd Land.

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* Of a Margosa tree.

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30th March, 1839.

No. 6,145.

District Court, Jaffna.

Sanmogam Sidembrepulle of Niervely... ... *Plaintiff.*

Vs.

Peter Perinpenayegam and others... ... ...*Defendants.*

PRICE, Judge.

The Assessors state they all know the custom relating to the point in question.

Trees cultivated.

The Assessors state, the fruit of such trees as are cultivated with industry and by being watered, should go to the owner of the trees, although the fruit walls on the adjoining land to that on which the tree stands—this we all know to be the custom all over the Province; the owner of the tree is to go to the adjoining land through the usual gate, sometimes the owner of the adjoining land will hand the fruit over to the owner of the tree.

Owner to go through the gate.

Judgment.

The Court is of opinion, that the wording of the third Clause of the Section 3. of the Thesawaleme was sufficiently clear to have decided the point in question, without going into evidence, but evidence of the custom was desirable as this is the first case of the kind which has come before this Court within the Court's recollection.

The third Clause of third Section of the Thesawaleme provides, "If any one plants on his own ground, near "the boundaries thereof any fruit-bearing trees which "must be cultivated with a great deal of trouble, and "if by a crooked growth, the tree or any of the branches "grow on or over the neighbour's ground, the fruit "of such tree nevertheless remain the entire property of "the planter, without his neighbour having any right to "claim the fruit of the branches which hang over his ground; "but if any trees such as Tamarinds, Illeppa, and Margosa grow of themselves without having been planted, or "any trouble having been taken, in such case the fruits' "belong to the person whose ground they overshadow.'

Tamarind. Illeppe. Margosa.

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Mango.

A Mango tree is one of those kind of trees that require trouble in the cultivation of it, requiring to be constantly watered until it gains considerable growth ; it therefore must be considered one of those kind of trees to the fruit of which the planter alone is entitled.

The Court considers that the evidence to custom is more strongly proved on the part of plaintiff, and therefore considers that the fruits which fall of themselves on an adjoining land, are nevertheless the property of the owner of the tree, but in obtaining such fruits he is not at liberty to do the owner of the ground any wilful damage.

Cocoanut trees.

Cocoanut trees are another discription of tree that requires care and trouble in growing them, and it constantly occurs that these trees by taking a crooked growth overhang the adjoining land. We have it also in evidence, that the custom also gives the cocoanuts which fall on the adjoining land to the owner of the tree.

The Court is of opinion that the entire right to the fruit of the tree in question, is in the plaintiff, and that a decree should go in his favor for the sum of Rds. 5, being the value of the produce objected to by the defendants, and that defendants do pay the costs.

The Assessors agree in opinion with the Court.

It is decreed that defendants are indebted to plaintiff in the sum of Rds. 5, with costs.

15th Septr., 1840.

No. 3,379.

District Court, Islands.

Ramer Cander and wife Sewegamy of Tangodde *Plaintiffs.*

Vs.

Sitter Ponnen, and wife Nagey ... ... *Defendants.*

MOOTIAH, Judge.

Mango.

Branches.

The witnesses produced speak with regard to one of the Mango trees which appear to stand within the plaintiffs share of the land, but the branches of it hang over the parties land almost equally, however it is clear that the Mango tree now in question, stands within the plaintiffs' land, from the evidence of most of the witnesses on the part of the

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plaintiff, and from that of some of those produced by defendants themselves, and that consequently a decree should go in favor of the plaintiffs, considering the Mango tree now in question, to stand within their land, and that defendants have no right to take the produce of those branches of it hanging over their share of the land, by climbing up from the bottom of the trees, but they have a right to take it from their own land, and that each party should be decreed to pay each their own costs of suit. The Assessors agree with me in my opinion.

Right to fruits on branches overhanging.

It is decreed that one of the two Mango trees be considered to stand on the south-east side of plaintiff's land, and that the defendants have no right to climb up it by the bottom of that tree and collect the produce of those branches of it which overhangs their land, and which they do however gather from their own land, and that each party do bear his own costs.*

No. 4,952.

31st August, 1842.

District Court, Waligamo.

Colende widow of Cander of Batticotta... ... *Plaintiff.*

Vs.

Wayrewanadar Egamberam and wife ... ... *Defendants.*

Burleigh, Judge.

The real object of the plaintiff I suppose to be this, there are some Margosa and Illeppe trees on the limit which separates the land marked A. from that marked D., according to the custom of the country those trees should be held jointly by both parties.

Margosa and Illeppe.

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* The land belonged to the common ancestor of the Plaintiff and Defendants, and the tree seems to have been planted by him, otherwise the planter would have been entitled to the whole of the tree though the branches might overhang the land of another.

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No. 5,150.

District Court, Waligamo.

Colonde widow of Cander ... ... *Plaintiff.*

Vs.

Vanyerawen Ayen and wife Cadere ... ... *Defendants.*

Libel.

I am entitled to two parcels of the land Patchandey, adjoining each other, in extent 10¾ lachams W. C., the land of the defendants adjoins mine on the west side, on the limit there are two Margosa trees and within my land four Illeppey trees near the limit, there is one Illeppey tree in the land of the defendants near the limit, the branches of which I am entitled to and have long possessed, the defendants after the decision of Case No. 4,952 unlawfully opposed my possessing the trees and branches above mentioned.

2nd Novr., 1842.

Judgment.

I am of opinion that both parties are in the wrong as regards the Illeppey trees. Plaintiff should take the fruit which falls into her land according to the custom of the country; with regard to the lane, it is clearly proved that it has been in existence for many years, the Plaintiff has therefore no right to prevent the Defendants from passing through it to their land, it being the established passage: here is no proof as regards the other trees mentioned in the libel.

Illeppe. Fruit falling on the Land.

The Assessors say

It is clearly proved that the lane has existed for many years, we therefore think that it should be continued as a passage in the manner it was before, both parties taking the produce of the Illeppey trees which falls in the lane.

It is Decreed that the claim of Plaintiff as regards the trespass, be dismissed, but that she be entitled to take a moiety of the produce from the 4 Illeppey trees in question, which falls in the lane alluded to by the witnesses, and which there can be no doubt the Defendants are entitled to use.

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The Court and Assessors further consider that each party should pay its own cost.

It is therefore so Decreed.

No. 5,883.

11th April, 1851.

District Court, Jaffna.

Cander Veeregetty of Elale... ... ...*Plaintiff*

Vs.

Veeregetty Cander and others... ... ...*Defendants.*

Price, Judge.

Plaintiff's Advocate, and Defendants and their proctor, have come to the following amicable settlement.

Overhanging Branches.

" A fence to be put up on the North side bordering the " two Illeppey trees, dividing the land D. into two parts, the " portion north of the fence including the palmirah tree, " to be Defendant's, the portion south of the fence, including " the two Illeppey trees to be the plaintiff's.—Defendants to " enjoy the produce of the over-hanging branches of the " said two Illeppey trees. Each party to bear their own " costs."

It is therefore ordered and decreed accordingly.

No. 23,915.

8th April, 1859.

Court of Requests, Jaffna.

Vayraiven Mutten of Colombotone... ... ... *Plaintiff.*

Vs.

Sinnan Sangaren and wife Sidemberem... ...*Defendants.*

Mutukisna, Judge.

Tamarind fruit on limit.

Plaintiff claims 7s. 6d. value of Tamarind* fruits unlawfully removed away by the Defendants in January 1856.

Parties present. By mutual consent Judgment for plaintiff for 2s. Costs divided.

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* Tamarind tree standing on the limit of their Land.

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DONATION CASES.

Year 1801.

An order filed in No. 998.
By Order of Coloned Barbet
Translation of an Oppum.

April 18, 1801. Order by Colonel B.G. Barbet, Collector of Revenue. Whereas Nager Wayrawen Carrea of Point Pedro has complained that his brother Nager Sillear, who has no children, possesses Lands. . . .under Ploly, and that he, without the knowledge of the complainant, is about to give away the Land to Condate wife of Wallian in Donation, whereas these Lands are hereafter devolvable on the complainant,

Donation without the consent of Heirs.

It is ordered, that the Complainant Candate and witnesses should appear before the Cutcherry, when they have accordingly appeared, the Case was inquired there, and finding that the Donation was made of the above land contrary to the Thesawaleme, and the witnesses having at the same time disagreed with each other, the Donation Deed has been in consequence cancelled, and, in future, without the knowledge of the Complainant no transfer of properties or donations are allowed. (Signed) Knees Ayer.

(Counter-signed) B. G. B.

28th Feby., 1825.

No. 3,520.

Aronaselam widow of Pooder... ... ...*Plaintiff.*

Vs.

Somenader Passassaddy ... ...*Defendant,*

The Donation was made by the Plaintiff to her son, six or seven years before the Judgment. Theproperty was mortgaged it appears, evidently with her knowledge, it does not appear whether he was married or not.

Judgment.

Property not liable for debts.

Dismissed Plaintiff's claim, it being the opinion of the Court from the evidence, that the Land Puttywayel of 30 Lachams in extent, is the plaintiff's son Pooden Moorgen's donation property.

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No. 1,212.

19th April, 1859.

Modalitamby Wayramotto... ... ...*Plaintiff.*

Vs.

Canegasooria Mudr. Welayder and Welayder Canagasooriar ... ...*Defendants.*

Cavaloe Chettea Waylitinga Chettear ... *Intervenient.*

Donation.

The claim in the case is formded upon a Donation Deed dated so long back as the 10th August, 1818, granted by Plaintiff and his late wife Tangam, in favor of the Temple of the Deity Wissovalinga Waytesoparen, whereby they gave certain Lands (one of which is now in question) to the said Temple, reserving to themselves a life interest in them, it is also claimed by virtue of an amicable settlement dated 25th November, 1833, and possession on said Donation and settlement.

The Court on passing its last Decree, considered the amicable Settlement was intended by itself to convey a title to the Land, but on reperusal it merely seems to give effect to the Donation Deed, and to be an application in a pending suit. As proof of possession Plaintiff has produced two Deeds, one of 1819, and the other of 1832, in which the boundaries of the Lands sold are given, in those two Deeds the Temple Land in question seems to have been given as one of the boundaries in the name of the Deity Waytesoparen. In addition to this, you have oral testimony of possession for ten years and upwards by Plaintiff, he giving a certain quantity of paddy annually to the Temple Defendant's late father, also, in his viva voce Examination in the case 14,531, states, that he managed the land, giving a share of the profits to the Temple.

Of Defendant's witnesses, one only speaks of a possession by Defendant's father for ten or eleven years. Evidence to prove the Donation Deed was not necessary, as it is not denied.

This Court is of opinion that the Libel is proved, and that Judgment should go in favor of Intervenient as manager of the Temple for the Land in dispute, reserving, however,

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the right of Plaintiff to a life interest in the said land, and that all costs should be borne by Defendant.

Assessors agree.

It is therefore decreed that Plaintiff be put in possession of the Land, which said Land is the property of the Deity Waytesoparen, as appears by Donation Deed, dated 10th August, 1818, and possession, but in which plaintiff has a life interest.

All costs by defendants.

Judgment affirmed in Appeal. 25th January, 1851.*

No. 4,347.

14th June, 1850.

Sangarer Sidemberam, father and natural guardian of his minor son... ... ...*Plaintiff.*

Vs.

Walen Ayempulle and wife... ... ...*Defendants.*

Price, Judge.

Donation by Father to Son. Consent of Relations.

All the Assessors say that donation Deeds of the nature of that in question, viz., granted by the father to the son, a minor, and under the father's care are usual. Some grant the Donations with the consent of the relations, and some grant them without, it is usual for parents to grant Donations to the minor sons out of affection.

The Court does not recollect a similar point ever having been argued before this Court before, and would suggest to the parties that special Assessors chosen by themselves, who are willing to sit in the case, should give an opinion on the point.

Mr. Advocate Mutukisna agrees to this, but not so the plaintiff's Proctor.

In the case quoted by Mr. Advocate Mutukisna, 1863, fraud was alleged, not so in this case. The Assessors say that Donations of the nature of that in question are

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* Point raised as to the right of Plaintiff and his late wife to give the Donation without the consent of their Heirs, whom the Defendants are, but not decided.

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customary. The Court is therefore of opinion, that the Demurrer is bad and that the case should be proceeded with; during its progress fraud may be shewn, which would completely alter the case.

Demurrer set aside with costs.

Appeal decision.

The proceedings in this case having been read and explained by the Court to the Assessors. It is considered and adjudged that the order of the District Court of Jaffna, of the 14th day of June, 1850, be affirmed, except as to costs, and it is decreed that the costs of the Demurrer, awarded in the District Court, do stand over. Each party to pay his own costs of Appeal.

By the Roman Dutch Law, parents cannot legally make a donation in favor of children who are still minors and under their tutelage, but from the statement of the Assessors that such donations are made, it should be open for the plaintiff, should he be so advised, to shew at the hearing of the case, that there exists a local customary law superseding the Roman Dutch Law, upon the subject Vanderlinden 214 Grotius 284. Voet B. 29. P. 5. S. 6-1. Domat 186.

Donation. Roman Dutch Law. Minors. Social customs supersede Dutch Law.

25th February, 1851.*

No. 7,929.

Bearnhard Adrian Toussaint ... ... *Plaintiff.*

Vs.

Phillipo Vesentepulle and others ... ... *Defendants.*

Catto wife of Gaspar ... ... *Claimant.*

6th June, 1856.

Although the Donation of £10, a portion of which is in question, appears by the wording of the Will to have been left to the Claimant, in consideration of past services, still the Court does not consider that it was left in payment for past services, but as a free gift, in consideration of the good feeling deceased entertained towards Claimant in consideration of her long and faithful services.

* The case is not decided yet on the merits.

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It appears by the evidence of one of the Executors, that the Applicant was paid her full wages for past services, and in conformity with the will, an additional month's wages was also given to her. On gifts of *money* to husband or wife, the Thesawaleme is silent, but the 3rd clause, section 4, provides, that if husband or wife receives a present or gift of a garden from another person, so much of such gift or present as is in existence on the death of one of them when the property is divided, remains to the side of the husband or wife to whom the present was made, without any compensation being claimable for any part of the gift that may have been alienated, but the proceeds thereof acquired during marriage, must be added to the acquired property.

Gift to Wife.

Land.

Money.

The Court is of opinion, that the same custom which applies to land as shewn above, would apply to money donated in the absence of any other law or custom to the contrary—should any of the money be expended during the lifetime of the husband and wife, the Donee at the husband's death would only be entitled to that balance, if any remained, and that she could have no claim upon her husband's Estate for any sum out of the Donation which might have been expended.

Wife entitled to compensation.

Profits from Property Donated.

The Court is of opinion, that only profits arising out of the Donation, could be considered as acquired property, and to which the husband would be entitled to half, for instance, if it could be shewn that any interest is due on the money in question, half the interest might be claimed as the acquired property of the husband. Motion of the 28th ultimo, rejected with costs.

Plaintiff appeals on the grounds

First.—That the amount in question should be considered as the acquired property of the seventh defendant, and his wife the Respondent (Claimant) during marriage, and is therefore liable for the debt in question.

Second.—That the amount in question does not come under the 3rd Clause of the 4th section of the Thesawaleme, which speaks of "a present or gift of a garden," and of a present of a slave, cow, sheep or anything else that

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may be increased by *procreation*, and is therefore liable for the debt in question.

Third.—That the said clause of the Thesawaleme speaks as to how said gifts of " garden and slave, cow, sheep" or anything else that may be increased by *procreation*, should be divided on the *death* of the husband or wife, but does not say that such gift should be considered as the sole and exclusive property of the Donee during the life-time of husband and wife.

Whereupon the appellant prays this Honourable Court that inasmuch as the legacy of money does not fall under the 3rd clause of the 4th section of the Thesawaleme, the amount in question should not be considered as the absolute property of Respondent (Claimant), but as her acquired property during coverture, as the wife of the seventh defendant, legated to her in consideration of her faithful and long services, and to set aside the said Decree of the 6th instant with costs, ordering that the amount in deposit be paid to the appellant in part payment of the money he is entitled to in this case.

Legacy.

3rd Clause of 4th Section of Thesawaleme.

June 7th, 1856.

Judgment of the Supreme Court. That the Decree of the District Court of Jaffna, of the 6th day of June 1856, be set aside. The Supreme Court being of opinion that the money may be lawfully drawn by the Appellant.

July 5th, 1856.

The Editor appeared in this Case for the Appellant, and referred to the 3rd Clause of the 4th section of the Thesawaleme, to shew that alienation of property given in Donation, was clearly contemplated, and to the Dutch law, Voet liber 23-Tit 2-Section 69. Vanderlinden page 87.

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OTTY CASES.

Civil Court of Jaffnapatam.

9th Feby., 1802.

Present.

John Carnie Esq., Vice-President.

Lieutenant William Short,—Messrs. A. N. Mooyaart,—J. A. Hicken, G. C. De La Rambelje, and J. A. Mom,—Members.

Absent.

Lieutenant Colonel B. G. Barbert—President.

Mr. W. C. Driemondt—Member.

Kanden Wilen Madapaly of Polikandy... ... *Plaintiff.*

Vs.

Caderen Canden... ... ... *Defendant.*

Sale set aside for the present, being in Otty.

The Court observing that no sale can take place respecting landed property mortgaged in Otty, before it is duly redeemed, orders the Ola of sale granted in favor of the Plaintiff be cancelled.

4th Septr., 1804.

No. 6.

Ponner Paramen of Ploly... ... ... *Plaintiff.*

Vs.

Velaither Murgappen .. .. *Defendant.*

DUNKIN, Judge.

Joint Otty Holders.

Ordered that the Plaintiff on behalf of his wife named Vayrewil, and the Defendant, do enter upon the land in question, and cultivate it as joint mortgagees, or Otty holders, and that if either of them with the consent of the other do enter and cultivate the land called "Pircolamcarrewayel" solely, the person so cultivating the said land shall give to the other her full share or proportion of the properties, after deducting all expenses of cultivation.

The Court further orders that each party do take a Title Deed of their respective moiety.

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No. 61-748.

29th August, 1817.

Point Pedro.

Sandresegra Mapana Modliar, Swamenaden of Odoputty... ... ... *Plaintiff.*

Vs.

Sandy wife of Magaly, and husband Sandrawen Magaly... ... ... *Defendants.*

VANDERLINDEN, Judge.

Ordered, Defendants at the expiration of the season, redeem their mortgaged land, by paying to Plaintiff his 28 Rds., and one year's produce, with costs.

Affirmed by the Minor Court of Appeal.

Affirmed by the Minor Court of Appeal.

10th August, 1819.

No. 7-270.

13th October 1818.

Cander Morogen of Sandilipay... ... ... *Plaintiff.*

Vs.

Ayempulle Muttoe and wife... ... ... *Defendants.*

ST. LEGER, Judge.

It is ordered that the Defendant do make oath in the most solemn and binding manner, that he has not, nor never has had, the 200 Rds. claimed by Plaintiff, and that the Otty amount on the land Pataplo, was never paid off, and that the Otty on the said land made part of the dowry of his daughter, Plaintiff's late wife. The standing Commissioners to see the oath duly administered and make their report to this Court on the 24th instant.

Otty.

Oath.

We the undersigned Commissioners do hereby certify to the Court, that the oath directed by the Court to be made by Defendant was duly administered to him, and that the said Defendant did swear by stepping over the body of his child, that he has not nor never has had the 200 Rds. claimed by Plaintiff, and that the Otty amount on the Land Pataplo was never paid off, and that the Otty on the said Land made part of the Dowry of his daughter, Plaintiff's late wife.

22nd October, 1818.

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8th January, 1819.

No. 7,520.

Senegr Sinnetamby of Sirrowolan... ... ...*Plaintiff.*

Vs.

Caylen Tamen... ... ...*Defendant.*

St. Leger, Judge.

When Land redeemed.

The Plaintiff admits that he did not offer the amount of the Otty to Defendant till after the Lands had been sown, which, under the Thesawaleme, prevents having a claim to the Land being given up to him during that year; the Plaintiff also has suffered no loss by the Land not being given up to him, as he has retained possession of the money lent on the Land, the interest on which is to be considered equal to the produce of the Land. The Plaintiff further admits that after the Land had been sown by Defendant with his own paddy, Defendant offered to give up the Land on condition of receiving one-half the produce, which offer, in the opinion of the Court, is a very reasonable one, was refused by Plaintiff. The Court is further of opinion that the best way of proceeding under the present circumstances, is for the Plaintiff to give the necessary notice to the Mortgagee, leaving one year, and to redeem his Land in the usual manner before the ensuing season.

The admissions made by Plaintiff are sufficient in the opinion of the Court, without the examination of witnesses.

Under these circumstances, it is decreed that the Plaintiff's suit be dismissed with Costs.

24th July, 1819.

No. 7,403.

Cadergamer Modelynan of Caretivoe... ... ...*Plaintiff.*

Vs.

Nalletamby Rasingam, Schoolmaster, and others...*Defts.*

Scott, Judge.

The Defendants are the Heirs of the granters of the Otty, and Plaintiff the re-otty purchaser of the Land ottied from the Heirs of the Otty holder.

The Court having read the pleadings, and carefully examined the three Vouchers filed by plaintiff, the defendants are asked whether they admit that plaintiff is now in pos-

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session of the Land in question. It being generally admitted that he is.

It is decreed that plaintiff do remain in the quiet possession of the Land Madelewatte, situated on the Island of Pougodotwoe east, in right of Otty, until the Otty Bond is fully redeemed.

Otty holder's right to possession.

The defendants are warned not to disturb him in such possession, nor will the Court allow of his being disturbed by any person or persons until the Otty Bond is redeemed; each party to bear their own costs.

No. 900.

Year 1820.

Mapam Modliar Ponnen of Calepoomy... ... *Plaintiff.*

Vs.

Ayempermal Amblewen of Do.... ... ...*Defendant.*

LAYARD, Judge.

The Court is of opinion that as the receipt is to all appearance penned by this very defendant, and he has also neglected to furnish himself with a Title Deed as the Dutch Government required, that the Land can only be considered his in the light of Otty, and on the plaintiff paying back to him the amount according to evidence, and the defendants receipt conveys to have been all that was paid, viz. Rds. Forty, fanams two, that plaintiff be put in possession of his Land Paltetotam, and that the defendant do pay the costs of this suit.

The Court considers well the plea of prescription, which the Defendant puts in, but also that the said Plea is never put in as to the otty lands, that he has been benefited much, by long possession on so trifling a share of what was to have been the purchase amount, and therefore makes Defendant pay the costs which it would otherwise have divided.

Judgment reversed with full costs, by the Minor Court of Appeal.*

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* The Appeal Court set aside the judgment, but states no grounds; but from some remarks in Pencil, I infer that the Minor Court of Appeal did not consider the otty proved.

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17th Novr., 1820.

No. 797.

Point Pedro.

Walen Ramen Carrea of Point Pedro ... ...*Plaintiff*.

Vs.

Podier Canden Poder ... ...*Defendant*.

KRICKENBECK, Judge.

Interest on Otty money.

No interest being stipulated, but it being an otty Bond, it is decreed that Defendant do pay Plaintiff 48 Rds., and costs of suit, and the Plaintiff to deliver up the ottied Land if in his possession.

15th March, 1821.

No. 1,651.

Tillewanatal wife of Sidowen, of Tangode ... ...*Plaintiff*.

Vs.

Tellier Amblewanem and wife Pateny ... ...*Defendants*.

LAYARD, Judge.

Widower's right to alienate.

Daughter to support Father.

A. has a son and daughter, after the death of the mother A., the father, otties certain property purchased by him, and his wife jointly.—Held that he had a right to do so, and that the son cannot object to it, but that the daughter in possession of the otty Lands was bound to support her aged and infirm father.

18th Feby., 18.3.

No. 2,389.

Canney widow of Waarey, and others, of Awerankel... ... ...*Plaintiffs*.

Vs.

Madake Modliar Wayrewenaden and others...*Defendants*.

SCOTT, Judge.

The Court, on reference to the decree of this Court dated 16th August. 1821, is of opinion that the case has been so far settled that the 1st Defendant's title is only admitted to be that of an otty holder, and that on receiving the sum of 45 Rds. he is to relinquish possession of the land decreed to be the property of Plaintiff.

Crops on otty Land.

The Court cannot consider Plaintiff entitled to the crops, as the sum of 45 Rds. has not yet been paid to 1st Defendant, until the amount is paid Plaintiff cannot even claim the Land. The parties to pay their own costs.

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No. 2,778.

21st August, 1823.

Canerajasinga Modliar Alweynar... ... ... *Plaintiff.*

Vs.

Rasanayega Mudliar Ponner of Carrevetty and others... ... ... *Defendants.*

FARRELL, Judge.

The Court is of opinion, that the land was originally purchased by Poodonatchen, mother of Plaintiff and second Defendant, and Sedemberan from first Defendant—that she ottied one-fourth of it to her son Sedemberan's wife Natchen in 1797, who holds the same from that time until now, that second Defendant has been in possession of the other three-quarters of the land since 1808, by redeeming the same from the person to whom it had been ottied by Poodonatchen.

Division of Otty Land amongst Heirs.

As second Defendant persists in denying that he redeemed the land he holds from otty, the Court, though satisfied that he became possessed of it by that means, cannot allow him the benefit of recovering such otty amount, the same also not being exactly known, before the land in question is divided amongst the heirs, and orders the division of the land as if there was no otty upon it, but that held by Sedemberen's wife Natchen which is admitted by the Court. It is therefore decreed, that the land belongs one-quarter to Plaintiff, one-quarter to second Defendant, and one-quarter to Sidemberen's wife Natchen and her children, and that the other one-quarter of the said land is to be held by Sedemberen's wife Natchen, until redeemed from otty by Plaintiff, and second Defendant by each of them paying the said Natchen, and her children Rds. 30, total 60 Rds., when their respective share of one-third each of the said one-quarter (Natchen keeping the other one-third of the one-quarter ottied to her as her own share) is to be delivered up to them by Natchen, and her children—Defendants to pay costs.

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27th July, 1824.

No. 694.

Point Pedro.

Wayraven Murgen of Point Pedro... ... ... *Plaintiff.*

Vs.

Patten Alwan and others... ... ...*Defendants.*

Meybrink, Judge.

Plaintiff claims Rds. 9 for value of Cocoanuts appropriated by Defendants, from the thirteen Cocoanut trees.

Alwar Walen of Warany, sworn, and says, that I recollect having ottied the land Kerilo to Defendant, upon a written proof for 12 Rds.; half of 7½ Parapos, I sold in otty; the bond is read to Deponent, he admits the same, of having signed and granted to Defendants.

Otty Sale.

The above witness having admitted the otty sale by him to Defendants. It is ordered that the Plaintiff's suit against the Defendant, be dismissed. He having full right to bring a case against the otty seller to Defendant. The Plaintiff to pay cost of suit.*

27th July, 1824.

No. 700.

Point Pedro.

Anthonypulle Pauloe of Ploly... ... ... *Plaintiff.*

Vs.

Cander Cadergamer... ... ... *Defendant.*

Meybrink, Judge.

Plaintiff claims Rds. 8 upon Bond dated 22nd June, 1822, the defendant admits the Bond, and says the land ought to be redeemed in November, according to Thesawaleme.

Redemption of Otty in November.

Ordered that the defendant do *leave* him in the possession of the otty trees until November this year, when the defendant is to pay 8 Rds. otty amount, and redeem the otty trees. Plaintiff is to bear his costs.

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* "Capital" this is neither Law nor "Wallamme." Had witness any right to sell this land?

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18th October, 1824.

Sitting Magistrate's Court, Poneereen.

Vissowenathen Sathen of Chettiacoorichy... ...*Plaintiff.*

Vs.

Pranar Veregettiar... ... ...*Defendant.*

LEEMBREEGGEN, Judge.

Parties present.

Plaintiff says that his deceased uncle mortgaged a piece of ground to some one who also died, and as the plaintiff was to redeen the mortgage, the defendant prevented claiming the ground belonging to him.

Brother no right to bring an action when deceased's Children are alive.

Plaintiff says that the children of his said uncle are alive.

Therefore, it is decreed that plaintiff's claim may be dismissed with costs.

10th May, 1825.

No. 3,492.

Maylie widow of Caderen of Mattowil ... ... *Plaintiff.*

Vs.

Marial wife of Santiago and Amblewaner Ayempulle Parpatiar of Mattowil ... ... *Defendants.*

FORBES, Judge.

Interest on Otty money.

Plaintiff having admitted the receipt of forty-six years interest, in cash and paddy, annually, that is, her ancestors and herself on the advance of Rds. 25 for interest in the otty Bond the 25th July 1776, which said interest amounting to Rds. 138, and exceeding the principal amount by Rds. 113, the latter sum deducting the Rds. 25 interest leaving a balance of Rds. 88, the said 88 Rds. must be taken from the otty amount of Rds. 200, so that plantiff is accordingly entitled to Rds. 112. It is therefore decreed that plaintiff is to recover Rds. 112, being a balance due on the otty Bond of the 25th July 1776, (her brother Winasy Pooden disclaiming all right to his father's estate from the estate of the first defendant's late father Wary Innasy,) cost to be borne by first defendant and other heirs of the said estate.

Affirmed by the Minor Court of Appeal, 31st October, 1826.

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23rd March, 1826.

No. 1,184.

Cander Sinnatamby ... ... *Plaintiff.*

Vs.

Sidemberen Cander and others ... ... *Defendants.*

TOUSSAINT, Judge.

Transfer Deed invalid pending Otty.

It is decreed that any transfer Deeds that might have been passed before this, for the 60 pattis of the lands called Teggediwarewe, in otty to plaintiff's father-in-law Caderen Cannegen, as per Deed dated 6th April, 1804, admitted by second defendant, be considered invalid, until the present otty shall regularly be redeemed, and until the same be redeemed that plaintiff do remain in possession of the land. (That by a criminal case had in December last, about the transfer of the very land as it appeared to Court, that the first defendant gave a schedule without regular publication.) It is further decreed that first and second defendants do jointly pay the plaintiff's costs of suit.

No. 4,850.

9th March, 1827.

Cander Cardergamer of Alwaye ... ... *Plaintiff.*

Vs

Cadergamesegera Modliar Casieraden and brothers... *Defts.*

BROWNRIGG, Judge.

It is decreed that defendants do pay to plaintiff 100 Rds., being the amount for which the land was ottied to him, but as under the first Clause of the 5th section of the Country law, the sellers in otty, are entitled to one year's produce of the land, on redeeming the otty, the plaintiff's claim for produce is dismissed.

One Year's produce.

Defendants to pay costs.

No. 4,917.

9th April, 1827.

Naraner Tirromali, heir of the deceased Rengappa Veerepatteren of Vannerponne ... ... *Plaintiff.*

Vs.

Carlaaperlle Tiager ... ... *Defendant.*

BROWNRIGG, Judge.

Defendant admits the otty, but states that plaintiff is in possession of the otty land.

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It is ordered that the defendant do repay to the plaintiff the amount borrowed by him, before the end of the month of December next, allowing the defendant, according to the Thesawalemme, the benefit of this year's produce of the palmirah trees. Defendant to pay costs.

One Year's produce.

No. 4,798.

29th April, 1828.

Andries Santiago of Alevetty ... ... *Plaintiff.*

Vs.

Amerecoolsooria Modliar and others ... ... *Defendants.*

Brownrigg, Judge.

The Court considers that with the exception of the redemption of the portion of the land pledged to the fourth defendant, the plaintiff appears by the documents and evidence produced in this case, to have fulfilled the conditions of the Bond dated 29th January 1821, and therefore considers him entitled to the benefit of it.

With respect to the portion of land pledged to the fourth defendant, the Court considers that the plaintiff has totally failed to prove his having paid any portion of the otty money, and believes that he never has paid any part whatever of it—the Court therefore is of opinion that the third defendant, as grandson of the original otty seller, had a right to redeem the land and re-otty to fifth defendant.

Grandson of Otty seller and redemption of Land.

It is decreed that the plaintiff is entitled to recover from the first and second defendants the sum of Rds. 650 or £48 15s., for which the lands are ottied to him, with interest for one year at nine per cent. per annum, that until the payment of the said otty amount in terms of the Thesawaleme, the defendant do refrain from interrupting the possession of the lands by the plaintiff or those persons holding in re-otty from him, and that in failure of so doing they continue to pay interest at nine per cent. per annum: costs to be paid by first, second, and third defendants, except those of fourth and fifth defendants, which are to be paid by plaintiff; and the 20 lachams of the land formerly ottied to the fourth defendant, and redeemed from otty by third defendant in his wife's name, to remain in his posses-

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sion, and that of the fifth defendant by whom it has since been ottied.

16th July, 1828.

No. 1,892.

Point Pedro.

Collesegra Malleweraya Modliar ... ... *Plaintiff.*

Vs.

Walliar Sidemberen ... ... *Defendant.*

Toussaint, Judge.

Warning to Otty holder.

The Court considering what has just now been stated by the plaintiff, and proved by his two witnesses, find no sufficient belief that a warning has been given to defendant in March last, as required by the country law, and therefore first defendant has every right to enjoy the harvest of the ensuing season for the labor he has done in it : plaintiff is directed to wait until the n xt harvest is over to redeem the otty in question, and this case ordered to be dismissed with costs of suit.

1st April, 1829.

No. 2,047.

Walli Walli ... ... *Plaintiff.*

Vs.

Cander Wayrewenaden and another ... ... *Defendants.*

Toussaint, Judge.

Warning when to be given.

By the whole circumstances of the case and evidence produced, the Court must conclude that the five Beds in question are the second defendant's parent's property, and that the second defendant and his brothers and sisters enjoyed the lands share of it through the first defendant, and who undoubtedly is now the instigator of this case ; as it appears in evidence of the two last winesses that the plaintiff was warned in February last year, by the second defendant and his brother, (which is immediately after the Crop was reaped) not to have anything more to do in the lands, the Court considers that plaintiff had no right to manure the ground again, and must therefore exclude him from all right of claiming anything for his labor.

It is decreed that plaintiff's claim be dismissed, and t hat plaintiff do pay the second defendant's costs of this suit.

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No. 2,008

Point Pedro.

29th April, 1829.

Sedowy wido w of Soopen ... ... *Plaintiff.*

Vs.

Cander Moten and others ... ... *Defendants.*

Toussaint, Judge.

The Court considers that the evidence of the two witnesses are not sufficiently to be credited so as to believe that there was an actual objection, to give a decree for the immediate recovery of the otty amount. The Court therefore enquires from plaintiffs Proctor, whether he wishes to remain in his otty possession or to recover the amount according to the terms of the Country law. He answers that he prefers to have the otty amount. It is decreed that plaintiff is to give up immediate possession of the lands in otty to her to the defendant (as per otty deed dated 17th June 1827) and recover on or after the 29th April next the otty amonnt £6 7s. 6d., and that plaintiff do bear her own costs of suit.

Delivery of possession.

Payment of Otty money.

No. 7,105.

22nd December, 1831.

Cander Valliar of Plowly ... ... *Plaintiff.*

Vs.

Amblewaner Pulleynar, and son Sitten... ...*Defendants.*

Price, Judge.

It is decreed that defendants are indebted to the plaintiff in the sum of Rds. 255, on an otty Bond dated 30th November 1816, but that he is not to recover the same until 12 (twelve) months from this date. Plaintiff to pay costs.

A year's time given to pay Otty consideration.

No. 2,655.

Point Pedro.

6th April, 1832.

Muttopulle widow of Cander and children ... *Plaintiffs.*

Vs.

Walen Nagra ... ... *Defendant.*

Toussaint, Judge.

Plaintiffs file two copies, one of marriage registry, and the other of Church Roll, duly translated. On a refer-

* Plaintiff failed to prove the objection of the otty land.

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Widow of Otty seller, Son &c. Right of redemption.

ence to them, the Court is of opinion that there *is* every reason to believe that first plaintiff as the widow of one of the otty seller's sons, has a full right to redeem the otty in question.

As it appears that the land Asterampulam is the only land in otty to defendant's mother.

It is decreed that plaintiffs have a right to redeem the said otty from defendant, and parties to bear their own costs.

23rd October, 1832.

No. 7,634.

Tilliambelam Soopremanier of Tolporain ... *Plaintiff.*

Vs.

Sewagamitay widow of Vinasitamby ... ... *Defendant.*

Price, Judge.

From defendant's own statements, it appears that she has objected to the plaintiff's possession of the land in question.

Interest forfeited by delay.

The Court conceiving the Bond dated the 12th July, 1828, fully proved, but that plaintiff has no claim to interest in consequence of his not having brought forward the the case earlier. It is therefore decreed that Defendant do pay to Plaintiff the sum of £12, with costs.

3rd August, 1833.

No. 8,148.

Sinnepulle, widow of Canneweddy of Batticotta ·· *Plaintiff.*

Vs.

Vissowenader Amblewaner and wife Siwagamy.... *Defts.*

Price, Judge.

The Court does not consider the evidence on the part of the plaintiff sufficient to prove that the Otty Land was given over to defendants in the month of July, last year, as attempted to be proved.

Otty money.

It is therefore decreed that Defendants are indebted to Plaintiff, in the sum of Rds. 120, on an Otty Bond, dated 6th October, 1831, Plaintiff to pay the costs. This Decree not to take effect until the expiration of one year from this date.

Payment after a year.

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No. 6,186.

25th November, 1833.

Oropullesinga Sanederaya Modliar Sangerapulle of Tillepalle... ... ... *Plaintiff.*

Vs.

Vissowenader Casinaden.. .... *Defendant.*

BURLEIGH, Judge.

Van Lenwen's Laws are not in this Court, but from what the District Judge can recollect, he thinks that it is somewhere mentioned in them, that a person *can* prove *within* one or two years, that a sum of money has been paid by him although he produces no receipt for the same. It is most improbable, that defendant would allow so considerable a sum of money to remain in the hands of any one, and for such a length of time without obtaining a receipt. The opinion of the District Judge is, that a Decree should go for plaintiff. The defendant to pay Costs.

The Assessors are of the same opinion, and further, that the defendant should have brought an action against plaintiff, when his brother died, if he really had given him the money.

Decreed, defendant do pay plaintiff the sum of £6. 15s. with costs, redeeming the 10 Lachams of Otty Land according to the Bonds.

12th February, 1834.

Judgment of the Supreme Court.

It is ordered that the proceedings be referred back to the District Court of Waligammo, with directions to the Judge of the said Court to take evidence as to the possession of the Land in question, and to allow the Appellant to prove the facts stated in his Petition of Appeal.

23rd April, 1834.

Possession of Otty Land.

BURLEIGH, Judge.

It appears evident that the plaintiff has not possessed the Land, by the Country Law he ought to have done so, I am of opinion that the Defendant did not pay the sum of 90 Rds. to the plaintiff's deceased mother.

The Assessors agree.

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Proceedings are sent to the Honorable the Supreme Court.

24th May, 1834.

Second judgment of the Supreme Court.

That the Decree of the District Court of Waligamo, of the 25th November, 1833, be affirmed.

31st November, 1833.

No, 6,054.

Waligamo.

Tillewanam, wife of Waitienaden... ... ...*Plaintiff.*

Vs.

Welaider Candappen... ... ...*Defendant.*

Burleigh, Judge.

Plaintiff claims under Otty, but it was proved that defendant was in possession.

Judgment.

Immediate possession of Otty Lands.

The Country Law says, "There has been of old, since the pagan times, a proverb, Ottisom (Otties) Chidanamoeur (Dowry) Pattyal," which signifies, Dowry and Pawns must be immediately taken possession of. This proverb does not appear to be a *Law*, but it is the general custom in the Northern Malabar Provinces.

(Here the District Judge disbelieves the genuiness of the Otty Bond alleged to have been granted to plaintiff by defendant.)

The third witness states, that he is distantly related to plaintiff, and he also proves *that defendant cultivated* the Land last year, assisted by plaintiff's step-father and another, but merely as cultivators.

Plaintiff's claim dismissed with costs. She is strongly recommended to Appeal.

Judgment affirmed in Appeal, 11th February, 1831.

9th December, 1833.

No. 27.

Point Pedro.

Sinnetambiar Alwar of Alwaye... ... ... *Plaintiff.*

Vs.

Nagen Sanden... ... ...*Defendant.*

Toussaint, Judge.

Defendant admits the Otty, and says, the plaintiff never gave up to me possession of the Lands. Plaintiff being

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asked, says, I gave up possession in January, the present year. That as the ottied Land is a field, the Assessors concur in opinion in the case, that January was not a proper time to give up possession, for it should have been given up before the sowing time. That plaintiff therefore is only entitled to recover the Otty money 12 months after prosecution.

When Otty Land to be given up.

It is decreed, that plaintiff is entitled to recover from defendant the Otty money, Two pounds and four shillings, on or after the 19th December next, with the costs of this suit.

No. 3,078.

3rd March, 1834.

Point Pedro.

Walliar Alwan and brother... ... ... *Plaintiffs.*

Vs.

Cadergamer Sidemberen and others.... ...*Defendants.*

Toussaint, Judge.

The Assessors having heard the whole case, the evidence, and the Court's opinion, say, we concur with the opinion of the Court, that plaintiff is entitled to recover from defendants Otty money and costs; the produce cannot be allowed, as the objection was made in proper time, undertaking to pay Otty amount.

Produce and time of objection.

Decreed accordingly.

No. 30.

20th March, 1834.

Point Pedro.

Alwar Candappen of Ploly... ... ... *Plaintiff.*

Vs.

Perranatchy, wife of Cadergamer, or widow of Velappen ... ... *Defendant.*

Toussaint, Judge.

It is decreed that plaintiff is to give up possession of the Otty Land to the heirs of the deceased Cadergamer Welappen (who appears to be the defendant and her son) and recover on or after *the 20th March*, 1835, from the estate of the said deceased Cadergamer Welappen, Otty money Six pounds and fifteen shillings, with the costs of this suit.

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26th March, 1834.

No 126.

Point Pedro.

Olleger Nitsinger Alwaye ... ... *Plaintiff.*

Vs.

Waler Vinayeger and wife ... ... *Defendants.*

TOUSSAINT, Judge.

Defendants admit the Otty Deed, and say, plaintiff is in possession of the Land. It is true we have mortgaged the Lands to Government for rent, but specified the Otty to plaintiff; should plaintiff demand money, the usual time should be given for payment.

Mortgage pending Otty.

The Assessors concur in opinion with the Court, that defendants had no right, after giving the Land in Otty to plaintiff, to pledge it again to Government, and that plaintiff has therefore a right to recover his money without any time being allowed.

Decreed that plaintiff is entitled to recover from defendant Otty money £4 17*s.* 6*d.* with the costs of suit.

15th Sept., 1834.

No. 770.

Chavagacherry.

Conjen Nielen of Eledomattoval ... ... *Plaintiff.*

Vs.

Sidowy, widow of Walen ... ... *Defendant.*

SPELDEWINDE, Judge.

Time for redemption.

The Court, on referring to the Country Law, it appears that the time allowed to affect a redemption is . . . in the months of July and August, but as a considerable time till this day has expired, the Judge and Assessors consider that in the event, a Decree be passed in favor of plaintiff, it will tend to the greatest loss of defendant, for plaintiff must have taken the precaution to have commenced a prosecution early in July, but as he withheld doing so till the 5th of August, the day he appeared and applied for a summons, the Judge and Assessors have come to the following determination.

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It is decreed that defendant do restore to plaintiff, in July 1835, the otty bond of certain Lands ottied to her late husband by the plaintiff, on his paying the consideration thereof, said to be three pounds and three shillings sterling, to defendant; as his widow plaintiff, to bear his cost of suit.

No. 42.

8th August, 1834.

Tonmerachy and Patchelepulle.

Punnyen Nagen, and Sidowey Widow of Ayen ...*Plaintiffs.*

Vs.

Tawasiar Tilliamblam, and Cadrawaler Sidambrepulle ... ... *Defendants.*

SPELDEWINDE, Judge.

Otty Bond and delivery before payment.

The Judge is of opinion, that the first plaintiff had no right whatever to have delivered up to the first defendant the otty Bond in question, and await for the payment of its considerations, nor had he any reason to have summoned defendants, without first desiring first defendant for the payment of the same, although he admits in his Libel that he did repeatedly demand it from the first defendant, but in vain, whereas the first defendant has on the contrary fully substantiated the payment thereof by two crediable witnesses, and consequently the Judge conceives that plaintiffs claim against defendants should be dismissed, to which opinion the Assessors agree.

Therefore it is decreed that the plaintiffs claim on the defts., especially against the first defendant, for the recovery of the otty consideration of certain Bond (now not forthcoming) for the Land called Nallepanbeyadey, be dismissed, and that they do jointly and severally pay defendants costs incurred in this case.

Judgment affirmed by the Supreme Court in Appeal, 2nd February, 1835.

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21st March, 1835.

No. 1516.

Wayrewen Mitchen of Sunnapen ... ... *Plaintiff.*

Vs.

Wayrewen Ayen, and others ... ... *Defendants.*

PRICE, Judge.

By the Court to plaintiff.

Plaintiff states, his witnesses are to prove possession of the Land, by his late Father, in otty.

Otty money given in time.

Defendant admits this fact, plaintiff further states that his witnesses are also to prove that the full amount of the otty Bond was given to his Sister Sidowy, in Dower by his late Father. Sidowy died without issue. Sidowy had a sister but she died previous to Sidowy, she was married but had no issue; plaintiff and three defendants (who is plaintiff's brothers) were married at the time of Sidowy's death.

On hearing this statement of the plaintiff, the Court and Assessors are of opinion that the present Libel should be dismissed, as it appears from plaintiff's statement to-day, that the otty amount in question formed part of the estate of his late sister Sidowy, and not part of the estate of his late Father, as mentioned in the Libel.

Plaintiff to pay costs.

8th October, 1835.

No. 1827.

Pooder Ayenpulle of Colombotorre ... ... *Plaintiff.*

Vs.

Seeman Welen, and others ... ... *Defendants.*

PRICE, Judge.

Sea ground. Otty.

The Court and Assessors are of opinion, that the first defendant has entirely failed to prove the otty of the sea ground in question, to Nager Walen fourth defendant's late father) and he has entirely failed to prove possession by himself; there is no evidence to show that first defendant's late father, between 20 and 30 years since, held the Land, but it also appears he ceased holding it for about 15 years before his death.

Fourth and fifth defendants have proved their having ottied the Land to Canden Ayen in 1800, and the land was

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redeemed by fourth defendant in 1835, from Canden Ayen's son Tawesy.

The Court and Assessors therefore consider plaintiff should be put in possession of the sea ground in question, which he is entitled to in right of otty as per Bond dated 4th April, 1834, and that first defendant should pay him value of the fish taken, viz. 7s. 6d. The costs to be paid by the three first defendants.

Ordered accordingly.

Affirmed, except as to the costs, the plaintiff to pay the costs of the fourth and fifth defendants as having been unnecessarily sued. The first defendant to pay the costs of the plaintiff and of the second and third defendants who, (as he admits in his petition of Appeal,) were acting under his directions, and who disclaimed in Court all title to the Land.

No. 1,546.

30th October, 1835.

Chavagacherry.

Wallier, widow of Canneweddiar and son Vanasytamby of Mirsowil ... ... *Plaintiffs.*

Vs.

Somer Cadergamer, and Caylayer Cadergamer...*Defendants.*

Mootiah, Judge.

Half the value of produce payable to Otty holders if possession is taken by force.

The Assessors agree in opinion with me that the plaintiffs are entitled to a decree for the otty money due upon an otty bond filed and dated 15th June, 1813, granted by Omeotte daughter of Sidembrem, and wife of Velaider vellale of Mirsowil and her son Sidembren, both since died, in favor of first plaintiff's late husband Comaravalen Canneweddiar, and that the defendants are liable to pay the value of the produce of half of the Land if ottied, they having entered in the possession of it by force before paying the otty money to plaintiff, being Rds. 4 together with costs, as the evidence of the witnesses they have produced to prove the offer of the otty money to the first plaintiff is so contradictory in many points, that no credit can be given to it: allowing the defendants have succeeded to establish that point by witnesses, yet there is no reason why they should

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take possession by force, before paying the amount for which the lands are held in otty, and in the event of Plaintiff refusing to receive the money, it was the business of the Defendants that they should apply to Courts of Justiec for redress. It is therefore decreed, that the Plaintiff's are entitled to recover from the estate of Onegatte, daughter of Sidembernaden, and wife of Velaider and her son Sidembrenaden, deceased, the sum of Rds. 71, due to the 1st. Plaintiff's late husband Comarevaler Cannemeddiar, upon an Otty bond filed and dated the 15th June, 1813, and that the Defendants do pay to Plaintiffs the sum of Rds. 4, being the value of half of the produce of the lands so Ottied, they having entered into the possession of it by force, before the payment of the Otty money, together with costs of suit.

No. 733.

13th Novr., 1835.

Point Pedro.

Sandrewer Comeren of Tonnale... ... ...*Plaintiff.*

Vs.

Nagey widow of Walliar ... ...*Defendant.*

Toussaint, Judge.

As the Otty is admitted, and Plaintiff it appears has a dislike to hold the otty any longer, it would be advisable to allow Defendants time to raise money and redeem the Otty. The Assessors agree in opinion.

Six months' time for paying Otty money.

It is decreed that Defendants are to pay Plaintiff otty money £4 5s. 6d. within the 13th May next, should they not, that the Plaintiff, after that, shall be entitled to recover the said amount, with costs.

No. 776.

9th February, 1836.

Point Pedro.

Siwegamy widow of Sangerer of Tonnale... ...*Plaintiff.*

Vs.

Sader Amblewaner and others... ... ...*Defendants.*

Toussaint, Judge.

The Assessors agree in opinion with the Court, that the objection is not credible, and that it should be left to the

wish of the Plaintiff whether to go in possession of the Land, or recover otty money in terms of the Country Law. Plaintiff says, I wish to have my otty money.

Objection. Failure of proof.

It is Decreed that Plaintiff is to give up possession of the lands to the first Defendant, and recover from him, *twelve* months after this date, otty money £2 5s., with such costs she shall be obliged to go to in recovering the said amount from him; the three last Defendants' costs are to be paid by the Plaintiffs.

23rd February, 1836.

No. 916.

Point Pedro.

Coonginatchen widow of Colendetamby ... ...*Plaintiff.*

Vs.

Colendear widow of Welayden and others ...*Defendants.*

Toussaint, Judge.

It is decreed that Plaintiff do give up possession of the Ottied land to the first Defendant, and recover from her otty money £9 7s. 6d., twelve months after the date thereof, according to Country Law, with costs of suit.

Twelve months time for payment of Otty money.

15th June, 1836.

No. 965.

Point Pedro.

Canden Tandawen of Carneway ... ...*Plaintiff.*

Vs.

Setter Walen and wife Sidowen... ... ...*Defendants.*

Toussaint, Judge.

The Assessors say that although the Country Law directs that Otty and Dower should be taken possession of immediately, they suppose that Plaintiff's father must have neglected to do so, through ignorance, but the Court says that he, in this case, should not have neglected to take a contract, or agreement in writing.

Immediate possession of Otty money.

Decreed that the Otty Deed be set aside, and Plaintiff's claim be dismissed with costs.

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15th Sept., 1836.

Appeal Decision.

Reversed, as the Supreme Court concurs with the Assessors in believing the Otty Deed, and the witnesses called to prove it, and the delivery of Paddy to the Plaintiff and his father.

10th January, 1837.

No. 603.

Point Pedro.

Paromeate widow of Walliar... ... ...*Plaintiff*.

Vs.

Nagemaniar Cadrawaloe and another ... ...*Defendants*.

TOUSSAINT, Judge.

Otty &c. Schedule.

The Court is of opinion that the Otty Deed in favor of Plaintiff's husband, granted by the debtor, is not a regular one, so far as it regards the land now in dispute, as, it appears, that for the Land Annewolonden, regular schedule was given and publication made according to the usual custom in the district, but this was not observed with the Lands Welemwenplo, which shews the great trick of the Odear with the seller of the otty.

The Assessors agree in opinion with the Court that the share in the land Welemwenplo, objected to by the objector, cannot be allowed to be sold in satisfaction of the debt due by debtor to Plaintiff.

Decreed accordingly; objector's costs to be paid by the creditor.

7th June, 1837.

No. 926.

Wademorachy

Cander Waler of Alwaye ... ... *Plaintiff*.

Vs.

Muttopulle widow of Cander and Children... ...*Defendants.*

TOUSSAINT, Judge.

When produce not equal to interest.

As the Plaintiff in his Libel prays that the produce of the lands not being sufficient to pay the interest of the money advanced, to decree Defendants, who are Heirs to the Otty sellers, to pay otty money, the country law under the head mortgages provides that the mortgagee must keep the land for himself, that as the Plaintiff does

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not complain in his Libel that he has been interrupted in his possession by the Defendant, the Court don't think it right to compel Defendants to pay otty money, but that the Plaintiff must be satisfied with his otty possession. The Assessors say that they are of the same opinion.

Case dismissed with costs of suit.

No. 2,441

5th July, 1837.

District Court, Islands.

Casey Amblewen of Tangoe ... ... *Plaintiff.*

Vs.

Mana Modr. Sanmogane ... ... *Defendant.*

WALKER, Judge.

The Court is of opinion that the Defendant's evidence is insufficient to rebut that of the Plaintiff's, and in fact his (defendant's) first witness says that although Defendant did take possession of this land in Feburary last, he had no right to do so unless the plaintiff had previously given up his possession of it.

Otty holder going into possession before redemption.

It is therefore decreed, that Defendant do pay to plaintiff the sum of £6 being otty money for which he ottied to plaintiff the land Tillewayel: defendant to pay costs of suit.

No. 2,395

14th Sept., 1837.

District Court, Islands.

Yakerwader Waytilingam of Tangode. ... ... *Plaintiff.*

Vs.

Cornader Sinnatamby and others... ... ... *Defendants.*

MOOTIAH, Judge.

It appears to the Court that the Defendants acted legally in preventing the plaintiff from possessing the field, ottied to him, in the month of August 1836, undertaking to pay the otty money agreeably to the provisions laid down on that head in the Thesawaleme or the special law of this province, acted upon invariably in Cases of like nature in the Courts of Justice, and enforced by the Regulation of this Government, No. 18 of 1806, clause 6: this provision is to

Objection in August legal.

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be seen in the section which treats upon mortgages. Plaintiff appears to have admitted the receipt of the otty money and 5 Rds. besides, from the second defendant, which was since advanced to him by plaintiff, together with that share of Costs which was due by the first and second Defendants, and states that there is still due to him by all the Defendants £1 1s., being the damage incurred by him in consequence of the prevention of the cultivation of the Land, and Costs of suit incurred on behalf of all the other Defendants, except the first and second Defendants, as already noticed to have paid their costs.

Under these circumstances I am of opinion that the Plaintiff's present claim should be dismissed, without hearing witnesses, as unreasonable, because defendants have done nothing more than what is allowed by the Thesawaleme as to the mode of redeeming the Land from otty, more especially so as the Plaintiff himself admits that the defendants have done nothing than prevented him from possessing, the Land in the time limited for that purpose, undertaking, to pay the otty money.

The Assessors unanimously concur in opinion. It is decreed that Plaintiff's present claim be dismissed.—Parties to bear their own costs.

19th Decr., 1837.

No. 3,006.

Waligamme, Nicholan Anthony and wife
Estrasy of Chillale ... ... *Plaintiffs.*

Vs.

Visentipulle Anthony ... ... *Defendant.*

BURLEIGH, Judge.

Notice to Otty holder.

In this Case the only point at issue is whether the 2nd Plaintiff gave due notice to the Defendant, that he was not to cultivate the Land after February. It was necessary for both the Plaintiffs to have given the notice, and not one only; there is some contradiction between the second Plaintiff and her first witness, which makes the Court disbelieve the evidence of the witness, indeed it believes that the second Plaintiff would have taken some relations with her, and not have left this necessary custom to chance;

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as this is the only witness who speaks touching the only point that ought to have been proved, the Court will say nothing respecting the others and their contradictions. The Court is of opinion that a Decree should pass for Defendant.

The Assessors agree in opinion.

It is Decreed that Plaintiff's claim be dismissed with costs. Plaintiff redeeming the Land after the next crop has been reaped, according to custom.

No. 2,966.

District Court, Islands.

29th Sept., 1838.

Amblawana Condappen of Caremben... ... *Plaintiff.*

Vs.

Paramander Anthony and others ... ... *Defendants.*

Mootiah, Judge.

It appears to the Court that the two first Defendants have no right to prevent the Plaintiff from possessing the 13 Palmirah trees standing on the Land Parrewepullam, for the purpose of paying the otty money to plaintiff as the nearest relation to the original Otty sellers, Santiago Adrian and wife Cadrasy, without the consent of Santiago Adrian who is now alive, as appears in evidence; and in the second place they have no right to prevent the plaintiff from enjoying the produce of the trees, in the month of August, against the provision in that part of the Thesawaleme which regulates as to the redemption of Lands and gardens from mortgage, and in which it is clearly laid down that Palmirah gardens should be redeemed in the month of November, and under these reasons I am of opinion that the plaintiff is entitled to a Decree.

Palmirah Garden and time for redemption.

Decreed that plaintiff be quieted in possession of 13 Palmirah trees standing on the Land Parrewepullam until they be duly redeemed from him; the two first defendants to pay costs.

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21st Novr., 1838.

No. 3,719.

District Court, Waligammo.

Poodonachy, widow of Sidembrenader of Palaly, on behalf of her minor Children... ... *Plaintiff.*

Vs.

Cadergamer Sandrawer and wife Coonjuneeley... *Defendants.*

Burleigh, Judge.

It almost always occurs in such cases, that an opposition is made after the offer of money to redeem the Land; the defendants say in their answer, that they offered one third of the amount from £1. 7s. to the plaintiff to redeem their share, and they have proved that they offered the full Otty amount.

Objection. Costs.

I believe that an objection was made, and that therefore defendants should pay the costs. The Assessors are of the same opinion.

It is decreed that the plaintiff do recover from the Otty Land 18 Rds. Defendants paying the costs.

11th January, 1839.

No. 3,838.

District Court, Waligamo.

Mandlenayega Modliar Seevaretnam and wife, of Mallagam... ... ... *Plaintiffs.*

Vs.

Walliamme, widow of Rasenayega Modliar and sons.... *Dfts.*

Burleigh, Judge.

In this case it is quite unnecessary to enter into any evidence. It appears that the husband of the first defendant (who is dead) and father to the others, granted the Bond to the second plaintiff, who was his grand-daughter, and before her marriage. I imagine that the Land mentioned in the Deed cannot be worth as much as the sum claimed. I believe this from the tenor of the answer, in which defendants want to force the plaintiffs to take the Land in lieu of the money. The Country Law in this respect is thus, if the Otty sellers cannot redeem the Land, that is, if they are incapable of doing so from want of means, the Otty holders must receive the Land, and this is where money is borrowed. In

Otty seller unable to redeem Otty, purchaser must take the Land.

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the present case money is promised as dower, and the Land given in pledge, the defendants are rich and respectable people, and I am rather surprised at their defending the case. I think a Decree should pass for plaintiffs.

The Assessors concur, and say, they think money should be recovered.

It is decreed that defendants do pay to plaintiff £9. 7*s*. 6*d*. an d costs.

No. 3,540.

14th June, 1839.

District Court, Waligamo.

Cander Veeregetty of Tillepalle... ... ... *Plaintiff.*

Vs.

Sinnetambyar Mottooanandeperumal and others ... *Defts.*

Burleigh, Judge.

The first and second defendants say that the very mention of the Land having been ottied by the father to the daughter and son-in-law is highly suspicious. It is not at all so, because it is very common for Parents to grant Lands in otty to their married daughters and husbands, in fact, on transfer of Lands, thé heirs of the seller (by Thasaweleme) have the first right of pre-emption.

Otty to Daughter and Son-in-law.

Heirs. Pre-emption.

It is usually the custom for the original proprietors of land to witness re-otty Deeds, but the Thesawaleme does not command it to be done ; it does not allude to re-otties.

Affirmed in Appeal, 24th February, 1840.

No. 2,661.

24th June, 1839.

District Court, Waligammo.

Amerecoolasooria Mudliar, Jeniasitamby and two others of Alewetty ... ... *Plaintiffs.*

Vs.

Swampulle Soosepulle and another ... *Defendants.*

Burleigh Judge.

If Plaintiffs promised to transfer the Land to first Defendant, there ought to have been a Deed executed according to the Ordinance.

I am of opinion that the first Defendant should have

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Otty money. Pre-emption.

received the otty amount, according to the Country law; if he considered that he had a right of pre-emption he should have brought an action to prove it. I consider that a Decree should pass for the Plaintiffs, the otty amount had no concern with the right of pre-emption.

Assessors agree in opinion.

Decreed that the first Defendants do receive back the otty amount 8 Rds., returning the Land, and pay yearly the costs. He may bring another action to prove his right to Pre-emption.

5th Sept., 1839.

No. 2,999.

District Court, Islands.

Ayal, widow of Caderen, and others ... *Plaintiffs.*

Vs.

Casy Amblewen, and others ... ... *Defendants.*

PRICE, Judge.

There is no doubt in this Case, as to the first Plaintiff being entitled to recover the otty money, and the offer of that money made to her on the part of the first Defendant, either in the month of August or September; but the main part to be established in this Case is, that notice was given to the Plaintiffs of the intention of paying the otty money in the month of August or September, as soon as the harvest is over, in order to prevent the otty holder incurring any expense in manuring and preparing the Land for cultivation. The harvest of Paddy crops always takes place in this part of the Province in the months of January, February, and March. I do not believe the evidence produced to prove this point.

Notice of redemption.

Harvest season.

It is Decreed that the first Plaintiff is entitled to recover from the first Defendant the sum of £11 5s. otty money, due upon the Bond dated 19th September, 1829, and a further sum of 5 Rds. as the expenses defrayed by them in manuring and sowing the otty Land, and that each party do bear their own costs.

Expenses of Manuring.

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No 2,603.

24th October, 1839.

District Court, Waligammo.

Caleamme, widow of Mapaner, and Son Caderga-men, of Tayetty ... ... *Plaintiffs.*

Vs.

Wessowenader Modliar Motetamby and wife... *Defendants.*

BURLEIGH, Judge.

It is my opinion that the Land was transferred to the Father of the Defendant, and not ottied to him. I disbelieve the two witnesses as to their having witnessed the otty Bond, which they say is improbable and contrary to the usual custom of the Tamils. They both say they were not related to Kaleamme, and that none of her relations were present; it is the usual custom for women to have their relations with them when such transactions occur, and always for relations to attest the Deeds as witnesses. The three witnesses say that when the Land was ottied it was worth 150 Rds. and now it is worth 300. From the statement of the fifth witness it would appear that the Land is now worth 330 Rds., taking the value of each lacham at 15 Rds. Otty Lands are never improved in this manner, and for a very good cause the owners would permit the improvement (which here costs much) and afterwards pay the otty money and turn them out: the fourth witness says that the father of the defendants *purchased* the land; he afterwards contradicts himself by saying he does not know. I am of opinion that a decree should pass for defendants. I do not believe the witnesses.

Relations subscribing witnesses.

Improvement of Otty Lands.

The Assessors agree.

Decreed that plaintiffs claim be dismissed with costs.

Affirmed in Appeal. 31st October, 1840.

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9th March, 1840.

No. 2,675.

District Court, Islands.

Erambe Ayer Morgase Ayer and wife Lanageyamma, of Nallore... ... ... *Plaintiffs.*

Vs.

Ayemperomal Aromogam Odear of Pungertivo East, and others... ... ... *Defendants.*

Mootiah, Judge.

It is clear from the pleadings and proceedings in this case, as well as from the statement of the defendant, that the second plaintiff's father held this land as his otty property from second defendant's late husband, fora length of time, and that he has afterwards given it in dower to setond plaintiff amongst other property, upon a regular Nocorial Deed bearing date the 10th May, 1808, to which second defendant's late husband appears to have subscribed as one of the witnesses, and the plaintiffs also appear to hold this land ever since up to this day, without any interruption, and under these circumstances it is to be presumed that the defendants, in combination, together caused the land to be sold upon the application of the second defendant, and purchased by the third defendant at a very reduced price, with a view unjustly to deprive the plaintiffs of their otty money.

I am, under these reasons, of opinion that the sale of the land in question to third defendant, under the Certificate of the Licensed Auctioneer, Mr. John Speldewinde, dated 20th July, 1837, be set aside and cancelled as illegal, and that the plaintiffs should be put in possession of the same until the due payment of the otty money, and that the first defendant should be condemned to pay all costs to plaintiffs, as well as to the second and third defendants, as this case has arisen by the fraudulent conduct on the part of the first defendant.

Fraudulent conduct of Odear.

The Assessors agree with me in my opinion.

Decreed accordingly.

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No. 6,488.

25th January, 1841.

Wedawanam Wedaranien of Odowil... ... ... *Plaintiff.*

Vs.

Mana Modliar Welayden and others... ... ... *Defendants.*

PRICE, Judge.

The Court and Assessors are of opinion that a decree should go in favor of plaintiff, against the third defendant, for the sum of £10 10s. but without interest, as it is always supposed the person taking the land in otty possesses it and takes the produce in lieu of interest.

Produce instead of interest.

Costs of plaintiff and second defendant to be paid by the third defendant, costs of fourth, fifth, and sixth defendants to be borne by plaintiff, as they have been unnecessarily prosecuted.

Ordered accordingly.

No. 3,429.

25th May, 1841.

District Court, Islands.

Sinnewen Sittrer and wife Cannnegam, of Carembén ... ... *Plaintiffs.*

Vs.

Domingo Manuel and brother Angustino ... *Defendants.*

MOOTIAH, Judge

The Court is of opinion on reading the pleadings and the evidence in this case, that there is no sufficient evidence to prove that the first defendant has cultivated this land, the last harvest, without receiving the otty money actually offered to him, or that the plaintiffs objected to the land being manured and cultivated by him, undertaking to pay the otty money in the month of July following, and as the defendants however admit of their holding five-eights of the land under an otty bond in favour of their late mother, they are under the obligation of returning the said share of the Land to Plaintiffs, on their paying their share of the otty money, which according to the provision in the Country Law, they are to pay at the expiration of an year from the date of the possession being given ; first defendant should be con-

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Otty money cannot be demanded without notice.

demned to pay the costs of suit on the ground of their demanding the otty money without allowing the time as prescribed in the said Thesawaleme. The Assessors agree with me in opinion.

Decreed accordingly.

31st May, 1841.

No. 3,226.

District Court, Islands.

Sawerasy widow of Ensenipulle and others ... *Plaintiffs.*

Vs.

Muttocomawe Modliar and Sons. ... ... *Defendants.*

Otty money acquired during 1st Marriage.

It is clear that the first defendant had received the otty money which was due to him upon the Land Talamputty, as he has admitted it, and signed his admission on the 23rd August, 1839, and that the second and third defendants have entirely failed to prove that they have desired the first Plaintiff in 1837 not to pay the otty money to their Father, the first defendant, deceased, as the otty should go to them as the acquisition of him during his first marriage with their late mother; and, under these circumstances, I am of opinion that Plaintiffs should be confirmed in the quiet possession of the Land, and that the second and third defendants should be condemned to pay the value of the produce of this Land for the last two years, being £1 4s. and costs of suit; reserving, however, a right to bring an action for the recovery of this amount from the estate of their late father, deceased, as the acquisition made by him during the life time of their late mother if they choose.

The Assessors agree in opinion.

Decreed accordingly.

1st July, 1841.

No. 3,042

District Court, Wademorachy.

Aromogetar Nawesiwayen and wife Sewagamen, of alwaye ... ... *Plaintiffs.*

Vs.

Cadergamer Soopen ... ... *Defendants.*

Toussaint, Judge.

Minor.

Held that an otty deed executed by a minor is invalid, and should be set aside.

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No. 4,226.

19th Novr., 1841.

District Court, Tenmorachy.

Cadergamer Vissowenader of Carembacoorichy ... *Plaintiff.*

Vs.

Nagamanier Caderen and others ... ... *Defendants.*

WOOD, Judge.

It is clear that first defendant has promised to pay the otty consideration of the trees in dispute, and his having failed to do so has no doubt given cause for the present action, but as the interest of the other defendants are involved as well as his own, I think that, according to the tenor of the Country Law, as he has enjoyed the produce for so long a period of years, and as the apparent cause of Plaintiff recovering the otty money, namely six, of the trees having been blown down, that the Plaintiff should have the single tree remaining transferred to him in full for his otty consideration, and that first defendant should pay the costs. The Assessors concur.

Otty purchaser must buy out and out if seller unable to redeem.

Decreed that defendants do transfer over in full to the Plaintiff the single remaining cocoanut tree ottied to him, in consideration of the said otty amount, according to the tenor of the Country Law, and further that first defendant do pay the costs of the suit.

No. 3,208.

4th Jany., 1842.

District Court Wademorachy.

Meenatchy, widow of Ramopulle ... ... *Plaintiff.*

Vs.

Colendear Nawesiwayen ... ... *Defendant.*

TOUSSAINT, Judge.

There appears doubts to believe the evidence of the defendant's witnesses, for the first one says that no name of Land was mentioned, and both the witnesses say, that neither the amount nor the time for payment was mentioned, although it appears that plaintiff went and made the demand while she was much in need of money, and the defendant in his answer says that he agreed to pay in July next (twelve months after), so that that could not have answered the purpose for which plaintiff wanted to give up the produce or fruits that

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were then on the trees, and for which she might have immediately got, as per evidence, £0 15*s.* 7½*d.*

One year's produce.

It is true that the Country Law says that when the mortgagee wishes to have the land redeemed that a season's produce should be given up to the otty seller, and recover the otty money twelve months after, * that is, when the produce does not pay the Interest, but in this case it appears that the produce is worth 50 per cent. more than the interest. The Assessors agree in opinion with the Court, and say that they believe the objection, and estimate the damage at an average to be worth 9s. 4½d. It is decreed that plaintiff is entitled to recover from defendant for objected produce 9s 4d., with costs of suit.

Produce exceeding Interest.

Judgment affirmed in Appeal, 30th July, 1842.

2nd March, 1842.

No. 4,399.

Chavagacherry.

Siwezamy, widow of Sinnewer ... ... *Plaintiff.*

Vs.

Wenayezer Cadresen, and others ... ... *Defendants.*

WOOD, Judge.

It is admitted by both parties that the land in dispute has been in otty, but it does not appear clear who redeemed it; plaintiff has totally failed in proving his statement that the land was given to her in dowery, yet it appears she has been living on the land. I think, under the circumstances, that the plaintiff should be non-suited, as she has no doubt a right to a child's share in right of inheritance from her father; but as the defendants have also failed in proving redemption of the otty, as alleged, they ought to pay their own costs, in which opinion the Assessors concur.

Redemption of Otty.

It is therefore decreed, that plaintiff be non-suited, and that defendants bear their own costs.

* This doctrine is not supported by the Country Law.

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No. 3,399.

Wademorachy.

3rd October, 1842.

Natchen, widow of Caderen, and others of Tonnale ... ... *Plaintiffs.*

Vs.

Chinny, daughter of Welen, and others ... *Defendants.*

TOUSSAINT, Judge.

Schedule.

The Court is of opinion that the Otty Deed of the 6th March last year, deserves no notice, for it was not executed in that public manner with Schedule and publication, as it is required to be done in this part of the district, nor does it look much in its favor, that while they had two Notaries in their own village they came to another village to get it attested. The other case, No. 3,099, having been withdrawn before the trial was finally closed, does not show reasons to doubt the plaintiff's purchase deed, and as that is the deed upon which the grounds of this case rests (and on the former otty deed filed in the case No. 3,099, dated 5th July, 1797,) the Court asks the Assessors their opinion with regard to those deeds, (as the Court sees no reasons to doubt them.)

The Assessors say that they are of opinion that they are true deeds, and believe the plaintiffs' claim.

It is decreed that first plaintiff is entitled to two-fifths share in the land Kotagamuripon, as per purchase deed dated 10th March, 1803, and entitled to recover from defendants costs of this suit. *

Judgment of the Supreme Court.

The proceedings having been read, &c., It is ordered that the said proceedings be remanded back to the District Court of Wademoractchy, to examine the Attesting witness to the dowry deed of 5th August 1801. *Ellear Alwar*, who is stated by the first witness of the Plaintiff to be still alive who has not been examined, and the District Judge will, moreover, explain upon what ground he has stated that the Defendant's otty deed of 6th March, 1841, was not executed with Schedule and publication.

* First Defendant granted the Otty Deed to the second defendant.

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15th March, 1813.

With reference to the order of the Supreme Court, the witness is examined.

Deed and statement of publication.

The District Judge has the honor to state that as it does not appear in the deed itself, that a schedule was taken from the odear and published, as required by the Country Law, and the odear did not witness the deed, as is usually done when Schedules are taken and published, the Court in its opinion said, that it is not done in the manner as it is required to be done in this district.

Odear subscribing witness.

Ordered the Case to be transmitted to the Supreme Court for final decision.

Second Judgment of the Supreme Court.

The Proceedings in this Case are read and explained by the Court to the Assessors.

The District Court has not stated whether the examination of the witness, whose testimony was directed to be taken by the Supreme Court, will have any effect in inducing it to depart from the decree already made. It is therefore remanded back to the District Court for the purpose of altering or amending the former Judgment, if necessary.

On reading the order of the Supreme Court, dated 17th August, 1843, this Case is read and explained to the Assessors, they agree in opinion with the Court that there is no reason to alter or amend the decree dated 3rd October, 1842, which must therefore remain in force.

Third Judgment of the Supreme Court.

17th August, 1843

The Proceedings having been read and explained, &c., It is considered and adjudged that the decree of the District Court of Wademorachy, of the 15th day of September, 1843, be *reversed*, but without costs.

24th October, 1842.

No. 3,605.

Wademorachy.

Pokeniar Cadergamer, and wife Caderatte of Ploly... ... ... *Plaintiffs*

Vs.

Sandresegerer Cadergamer, and wife... ... ...*Defendants.*

Toussaint, Judge.

The Court does not believe the Plaintiffs two first wit-

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nesses, nor does it appear proved that Plaintiffs delivered possession of the Land to Defendants in October last as stated in the Liblel, nor does the Court believe that the trees cut down are from the Defendants share. The Assessors fully agree in opinion with the Court that Plaintiffs statement, that possession was given up in October last, is no true.

Delivery of Otty Lands.

It is decreed that Defendants do take immediate possession of the Lands, and pay ott y money to Plaintiffs, twelve months after this day, as per Country Law, nam ely £5. 5 and that Defendant's costs be paid by Plaintiffs.

No. 3,544

1st February, 1843.

Islands.

Nicholan Philippen of Kaits ... ... *Plaintiff.*

Vs.

Davido Philipo and three others ... ...*Defendants.*

Burleigh, Judge.

The Court and Assessors are of opinion, that the plaintiff should recover on the otty deed filed by him, the sum of £7 10s., as they believe that it was granted to him by the first and second Defendants. It is therefore decreed, that the Plaintiff do recover from the otty lands specified in the otty bond marked B. the sum of £7 10s. and the costs incurred by himself, the other parties bearing their own costs.

There can be no doubt whatever that the Otty and Rent Bonds in the question are geniune Documents, plaintiff's otty is inserted in the stamped list of paddy assessments, although an attempt has been made to erase the writing. The Otty Bond filed in case No. 5,106 is admitted by the third defendant, and this Document refers to the plaint iffs, Otty. It is necessary to state that the translation of this Deed is erroneous. By the Thesawaleme the plaintiff is entitled to recover the Otty amount from the Lands, and

Otty money to be recovered from Otty Lands.

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it would be extremely unjust to deprive the plaintiff of his right, because the grantors committed a fraud by subsequently giving some of the Lands in dower to their daughter, the fourth defendant.

Judgment affirmed in Appeal

21st June, 1843.

No. 12,115.

District Court, Islands.

Maylen Ammekodien of Manipay ... ... *Plaintiff.*

Vs.

Maylen Casinaden and wife ... ... *Defendants.*

Burleigh, Judge.

Plaintiff examined by the Court.

The Land was sold to me in Otty, in November 1841, while there were crops on the ground. When the Crop was cut, the defendants gave me two-thirds of the produce. In March following, when I went to enter into possession, the defendants promised to pay me the Otty amount in July following, and did not possess the Land. First defendant is my Brother—(date of *Otty Deed*, 26th November, 1841.)

Immediate possession of Otty Lands.

According to the Thesawaleme, the plaintiff should have taken immediate possession of the Otty Lands, which he did not do. He has failed to prove payment of the Otty amount, which he ought to have done in a case of this nature, and the Court doubts much that he paid anything. The case appears very like a collusion between the brothers to take the Land from the second defendant, who, there can be no doubt, was not of sound mind in 1841. The Deed was no doubt granted, but the question is whether the second defendant was of sound mind when she put her mark to it,—the act of mortgaging her only property for nearly the full value of it, does not seem a very sensible act.

The Court and Assessors on giving mature consideration to this case, are of opinion that the claim of plaintiff should be dismissed with costs.

Ordered accordingly.

Judgment affirmed in Appeal

9th August, 1843.

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No. 11,563.

26th June, 1843.

District Court, Islands.

Andelcader Pagardeen Wawa ... ... *Plaintiff.*

Vs.

Sinnetamby Vissowenaden and others... ... *Defendants.*

BURLEIGH, Judge

The Court and Assessors consider it satisfactorily proved that the first plaintiff took the produce of the Otty Land up to February 1842, and according to the Thesawaleme, Section 5, Clause 1st, the plaintiffs have brought the action too soon ; they should have waited one year from the time they wished to deliver up possession of the Land. They took the produce in Februaray 1842, and brought the action in May following. The death of the Otty seller did not alter the position of the plaintiffs as regards the possession of the Land. The plaintiffs have attempted to prove a false claim, and on that account especially they ought to pay the costs.

Money recovered one year after delivery of possession.

It is decre ed that the plaintiffs are entitled to recover the Otty amount, £11 12s. 6d., according to the Thesawaleme, they paying the costs of this suit—in this also the Assessors agree in opinion with the Court.

No. 7,859.

26th October, 1843.

District Court, Islands.

Santiago Waitie, wife Sidowy, and son Waitier, of Chundicooly ... ... *Plaintiffs*

Vs.

Maden Santiago and wife Savorial... ... ... *Defendants.*

BURLEIGH, Judge.

The Court and Assessors are of opinion that a decree should pass for plaintiffs. The defendants were in no way justified in turning the plaintiffs out of possession of the Otty Land several years before the Otty amount was tendered.

Otty sellers no right to turn Otty holders out of possession.

It is decreed that the plaintiffs do remain in possession of the Otty Land until legally redeemed by the defendants. The defendants to pay plaintiffs value of produce for four years, at 6s. a year, and the costs of suit.

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It is thought better, to prevent another action, to Decree the defendants to pay the value of produce since the commencement of this suit, as the plaintiffs are unquestionably entitled to it.

No. 5,052.

28th Decr., 1843.

Chavagacherry.

Cander Sidemberepulle of Carembacoorichy ... *Plaintiff.*

Vs.

Wariar Nawesiwayen and two others ... ... *Defendants.*

Wood, Judge,

Otty seller's right to transfer away to Otty holders instead of redeeming.

It is decreed that plaintiff do receive from defendants the sum of £3 15s., being Otty consideration, reserving however to the said defendants the option of executing a proper transfer of the said Land in favor of the plaintiff, in terms of the country Law, for the Otty consideration; and further, it is decreed that defendants do pay the costs of the present suit.

No. 3,980.

28th Feby., 1844.

Islands.

Mottocomaroe Modliar Amblewanar and Brother Canagasawe of Caremben ... ... *Plaintiffs.*

Vs.

Wayrawanader Candappen and others ... ... *Defendants.*

Ambalawanam, Judge.

Sale pending. Otty illegal.

The District Judge is of opinion that the Transfer Deed dated 27th May, 1842, is illegal, as it appears that it was executed while a part of the Land mentioned in it was possessed by the plaintiffs in right of Otty, which fact is admitted by the first defendant. The second defendant also states that plaintiffs are in possession of the Land in right of Otty. This Transfer is quite contrary to the customs of the country.*

It is also proved that plaintiffs possessed the Land, therefore the District Judge considers it proper to cancel the

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* See extract of a Letter dated 4th June, 1707, at the end of the Thesawaleme.

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Deed marked A, and to confirm the plaintiffs in possession of the land in right of otty; the first, second and fourth defendants paying the costs of this suit. The Assessors agree.

Decreed accordingly.*

Judgment of the Supreme Court.

That the Judgment of the District Court of the Islands be *reversed,* except so much thereof as confirms the plaintiff in the possession of the 5½ lachams of Land, and it is further decreed that the plaintiff do pay the fourth defendants costs, the second and third defendants do pay their own, and the first defendant pay all other costs of suit.

No. 5,556.

1st April, 1844.

Waligamo.

Veeryer Veeroyrger of Till epulle ... ... *Plaintiff.*

Vs.

Calpy widow of Sangarru and others ... ... *Defendants.*

Burleigh, Judge.

If the plaintiff had really been aware that his Father *ottied* the Land, how comes it that he attempted to sell it without in the first instance redeeming it from otty, as required by the Thesawaleme in cases of this nature it would be the height of injustice to take this Land from the defendants after a possession of 35 or 40 years, unless the plaintiff had clearly proved his Libel.

Plaintiff's claim dismissed with costs.

No. 1,957.

9th January, 1847.

District Court, Islands.

Caderen Veelen and wife Poodial of Maudovil ... *Plaintiffs.*

Vs.

Tiager Sarrawannemotto and wife Sempate ... *Defendants.*

Wood, Judge.

The Court is of opinion that Judgment should go in

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* The Transfer should have been upheld, subject to the otty, if no fraud was proved.

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favour of plaintiffs for the amount of their claim and costs, as the Court considers that the plaintiff had every right to claim of the defendant the otty consideration *immediately* after the notice to give up the possession of the Land was communicated to the plaintiff by the defendant, and therefore the plaintiff had no *occasion to wait for a year*. The Assessors agree in opinion.

Otty holder's right to claim Otty money immediately after notice to deliver up possession.

Judgment for plaintiffs against the defendants for seven pounds and ten shillings sterling, with interest at nine per Cent. per annum, from 20th October, 1846 and costs of suit.

16th March, 1847.

No. 2,036.

District Court, Islands.

Cadergamer Sinnatamby of Cokovel ... ... *Plaintiffs.*

Vs.

Arianasegam widow of Mapaier and others ... *Defendants.*

PRICE, Judge.

The Court having explained the case to the Assessors, they are of opinion with the Court, that the plaintiff is entitled to recover the amount of the otty Bond and costs of suit. The defendants having had no right to enter on the land until they first paid the amount of the debt.

Entering into possession before payment of Otty money.

It has been urged by the defendants Proctor, that inasmuch as the amount had been paid into Court at the time the Defendants answer was filed, they are not liable to costs, but in consequence of the illegal act of the defendannts in taking possession of the Land, as they did, the Court considers they should pay the full costs, and the Assessors concur in that opinion.

Judgment accordingly for plaintiff, £16 2s. 6d., and Costs.

15th April, 1847.

No. 1,928.

District Court, Islands.

Nagy Canden of Warany Yatale ... ... *Plaintiff.*

Vs.

Canny widow of Soopen and others ... ... *Defendants.*

PRICE, Judge.

The Assessors are asked by the Court what the custom

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is with respect to the paying of the tax, as in this instance, where the land was ottied in December, 1833, the Crops then on the ground and to be reaped in 1844, having been cultivated by the owner of the land.

Payment of tax.

They say the owner must pay the tax of those crops, and the person to whom the land is ottied, is entitled to the ground share only, in that year.

The plaintiff seeks to recover the value of the Crop in 184 5, as the defendants took it, and paid the tax in that year also, which accounts for their having the tax receipts.

The Assessors agree with the Court, in considering that, the otty Deed has been proved, and also that the circumstance of the title Deed not being in the plaintiff's possession has been satisfactorily accounted for; under all the circumstances the Court and Assessors are of opinion, that the plaintiff is entitled to judgment.

It is therefore adjudged that the defendants do pay plaintiff £9 15s., being the amount of Otty money, and £3. being the value of the crops of the years 1845, and costs of suit.

No. 3,534.

8th May, 1849.

Soopen Mootan, and wife Sadey, of Sangana ... *Plaintiffs.*

Vs.

Sadocawala Senaderaya Mudliar, Amblewaner and others ... ... *Defendants.*

PRICE, Judge.

The Assessors are of opinion that it is *not* proved, that 10 lachams out of the 15 lachams sold by the Fiscal were given in Otty to the plaintiffs, but that there is proof of the possession of Nasegam, and in consequence fourth defendant should be paid the amount due to him out of the proceeds of the sale of the 10 lachams.

The Court agrees in the opinion of the Assessors. The land in the Otty Bond is said to be the *Dowry* and hereditary property of the grantors, which is denied by the fourth defendant, and there is no attempt to prove that it was first deft.'s late wife's Dowry property. The Court is of opinion that it is prov-

Dowry and Heriditary property.

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ed that Nasegam,* fourth defendant's debtor, has been in long possession of the land, and that plaintiffs claim for the amount in deposit should be dismissed with costs. It is therefore decreed that plaintiff's claim on the sum of £11 5s., now in deposit under Writ 3,592, be dismissed with costs.

Judgment affirmed in Appeal.

9th August, 1849.

No. 4,018,

Andelcadar Madar Saiboe, administrator of the Estate of the late Sinnepullen Mahamaddoe Meeranachia ... ... *Plaintiff*

Vs.

Meeraninapulle Sago Andelpulle, and wife, of Vannarponne ... ... *Defendants.*

PRICE, Judge.

Thesawaleme. Moors. Otty.

Plaintiff's Proctor states, the Country Law relating to Otties ought not to guide the Court in the decision of this case, as the Country Law only relates to Tamils, and not Moors.

The Court is of opinion that in the absence of any other law on the subject, the Country Law which has been in force for many years in the District, and appears reasonable, should be acted upon in this instance, which requires, should the mortgagee wish to get rid of the land, that one year's notice should be given ; or rather, that he should wait for his money for one year after the lands have been given up. Vide Sec 5, Clause 1, Country Law.

Assessors agree in opinion,

The Court is of opinion that Judgment should go in favor of plaintiff as administrator, for the sum of £9 7s. 6d., due on an Otty Bond, dated 20th September, 1843. Costs to be paid by the Estate. The amount to be paid on or before the end of March, 1850.

Decreed accordingly. Judgment affirmed in Appeal.

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* Fourth Defendant claims under a Mortgage from Nasegam.

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No, 3,094.

14th January, 1852.

Ponnambelam Sinnatamy of Sooliporam ... *Plaintiff.*

Vs.

Tangamuttoe, widow of Canneweddipulle, and Sons ... ... *Defendants.*

PRICE, Judge.

The Court and Assessors are of opinion, that Judgment should go in favor of plaintiff against the estate of the late Winasitamby Canneweddipulle for the Otty amount, but that the costs should be borne by plaintiff; the Country Law providing (Sec. v. Cl. 1.) that the Otty holder should wait a year for his money when he conceives a dislike to the land, and gives up possession (which the Court and Assessors must consider was the case in this instance.)

One year must elapse before action.

The land was given up in March 1847, and the action brought in November the same year; this action was therefore premature.

Action within eight months premature.

The plaintiff claims £3 7s. 6d., for damages, which, under the circumstances, the Court and Assessors consider he is no entitled to.

Judgment in favor of plaintiff, against the estate of the late Winasitamby Canneweddipulle for £11 5s. sterling, due on an Otty Bond, dated 1st October, 1840. Plaintiff to pay the costs.

24th July, 1852.

Judgment of the Supreme Court.

It is considered and adjudged that the decree of the District Court of Jaffna, of the 14th day of January, 1852, be affirmed, with this alteration, that the second and third Defendants do pay costs. The Supreme Court being of opinion, that neither from the Libel nor from the evidence does it appear, that the Plaintiff had *conceived any dislike to the lands, or wished to get rid of the same*, as the Country Laws express it; but, on the contrary, as appears from the evidence, a case of disturbance by at least the second and third Defendants.

Dislike to Otty Land.

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13th Jany., 1853.

No. 1,245.

Court of Requests, Point Pedro.

Valer Cadergamer and his wife Teywane of Tompaley ... ...*Plaintiffs.*

Vs.

Cadergamer Cander ... ...*Defendant.*

LEISCHING, Judge.

Otty. Re-otty.

The Court has nothing to do now with any thing Plaintiff may have said to the original Otty holder or Candattey, and in fact the Plaintiff has every right to ignore the knowledge of the first Plaintiff, because all he has to do in the matter is by private arrangements with Candattey. The first Plaintiff is asked if he can prove that Candattey renounced the profits of the land for one season, First Plaintiff says, I cannot do so. *.

Renouncing the Profits for a season.

As first Plaintiff is unable to prove that the Defendant has been allowed the usual privilege the custom of the country allows, this case is dismissed with costs.

13th January, 1853.

No. 1,246.

Court of Requests, Point Pedro.

Valer Cadergamer, and wife Teywane, of Tumpale ... ...*Plaintiffs.*

Vs.

Parpaddy, daughter of Ponner ... ... *Defendant.*

LEISCHING, Judge.

First Plaintiff moves to summon witnesses to prove he has not enjoyed the land. The Court is not enquiring whether first plaintiff enjoys the land, but whether Candattey and her husband who received it in Otty, have restored it to defendant, and given her the benefit of the produce for one season before demanding the Otty money, as required by custom.

Re-delivery of Otty Lands.

The Plaintiffs private arrangement with the second Plaintiff's parents, is a matter with which defendant has nothing to do. She looks to the original Otty holders to call on her

* Candattey re-ottied the land to Plaintiffs. Defendant is the Otty seller.

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to redeem the land, and as the only surviving one denies that the usages of the country have been followed by her and plaintiffs have failed to shew that statement is false, this Case is dismissed with costs.

No. 11.

23rd July, 1853.

Court of Requests, Mallagam.

Casy Sangery, and another of Elale ... ... *Plaintiffs.*

Vs.

Mootar Mather, and another ... ... *Defendants.*

Birch, Judge.

The Commissioner inspected the land himself on the 22nd, and looking at the contradictory statement of the Defendants, that there was no other land named "Nemittan" near, and by their denial of their having gone to the Notary he Court disbelieves the defence.

Verbal Otty.

The Court is of opinion that the defendants got the land in a verbal Otty, and now try to make out possession.

It is decreed that plaintiffs be quieted in possession of the land, and that defendants do pay the cost of suit.

Judgment affirmed in Appeal, 4th October, 1853.

No. 5,011.

12th Sept., 1853.

District Court, Islands.

Winasitamby Cadergamer, Administrator of the Estate of Walliar, wife of Swaminaden ... *Plaintiff.*

Vs.

Modelitamby Cadergamer and others ... ... *Defendants.*

Price, Judge.

This action is brought by Plaintiff, as administrator of the estate of the late Walliar, wife of Swaminaden, to recover £3 15s., share of the Otty amount due by Defendants to the said estate. The Otty Bond is filed in this case by the Plaintiff, and is dated 26th June, 1845, in favor of deceased's husband Swaminaden for £7 10s., and the amount of £3 15s., is claimed as deceased's share, the land being acquisition (which it is alleged to be in the Libel, and not denied by the defendants.)

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By the affidavit of death in the Testamentary case 4,202, it appears that deceased died in or about the month of August, 1848, and application for administration is filed on the 23rd August, 1848, (plaintiff's proctor accounts for this delay by saying that his client could not apply before, as Swaminaden did not marry for the second time till Aug. 1849.)

The List of Appraisement is filed on the 18th September, 1849, and Administration granted on the 16th November, the same year.

The Receipt filed by defendants, and which is not denied, is dated 1st September, 1849.

The second witness in his evidence states, the appraisement was made on the 1st September, 1849, and that defendants were present, that he told them that out of the amount of £7. 10s., being the Otty consideration of the Land Martanny, the children of the deceased were entitled to half; inasmuch as the husband of the deceased had married for the second time, this Otty purchase being acquisition of the first marriage, there is no note to this effect at the foot of the Appraisement, and the Court disbelieves the second witness's evidence to this fact.

Acquired Property.

The Otty Bond being in favor of Swaminaden alone and not jointly with Walliar, the Court is of opinion that defendants were justified in paying the Otty consideration to Swaminaden, as there is nothing in the Otty Bond to shew that the Land was the acquisition of Swaminaden and Walliar.

Plaintiff's Libel is therefore dismissed with costs.*

25th Novr., 1853.

No. 1,518.

Court of Requests, Point Pedro.

Cadergamer Cartigaser of Alway .. ..*Plaintiff.*

Vs.

Paramer Aromogam, and others... ... ...*Defendants.*

Leisching, Judge.

Mr. P. F. Toussaint for plaintiff.

Mr. Advt. Mutukisna for defendants.

On plaintiff's motion, plaint amended, that instead of

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* Surely if the Otty Bond was executed during the lifetime of first wife, it must be presumed to have been acquired property, its being in the name of Swaminaden alone would make no difference.

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"Lands were delivered over to the defendants who are heirs-at-law" is written, "Lands were delivered to first defendant who, along with the other defendants, is the Heir-at-law."

Mr. Mutukisna moves for a non-suit, because according to local Law, the delivery of an Otty Land should be made to the owner or his *Heirs-at-law* when the Otty amount is to be recovered, whereas according to the Plaint as amended by plaintiff, it has only been delivered over to *one* of the Heirs-at-Law, viz., first defendant, which is not a complete delivery.

Delivery of Otty Lands to owners or Heirs-at-law.

Mr. Toussaint withdraws his action against the other defendants, and moves to proceed against the 1st defendant only.

Allowed: plaintiff to pay their costs.

Mr. Mutukisna urges that the first defendant can only be held liable for the amount of his share of this Land, as he was not in a position to make any such promise as is alleged in the plaint; assuming that he did make such a promise, (which is not admitted), and such promise would be null and void unless in writing.

Heir liable only for his share.

Mr. Toussaint contends that inasmuch as the first defendant took possession of the Land on a promise to pay the full amount of the Otty money, he is liable to pay it to plaintiff and to recover from the other heirs.

Under the 21 Cl. of the Ordinance No. 7. of 1840, 2nd paragraph, any agreement charging a person with the debt of another must be in writing, first defendant by plaintiff's statement comes under that clause, unless, therefore, plaintiff can produce a written agreement, he must be non-suited. Plaintiff may, however, still bring an action against the first defendant for ejectment or restoration of property, when the absence of a written agreement will tell in his favor, provided he can prove the Otty in like manner as it now operates against him.

Plaintiff nonsuited with costs.*

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* The Commissioner ought to have given Judgment against Defendant for a proportionate share.

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10th January, 1854.

No. 6,677.

District Court, Islands.

Kadrasy, widow of Welayder of Tillepalle ... ...*Plaintiff.*

Vs.

Mootenachy, widow of Cander, and others ... *Defendants.*

PRICE, Judge.

Plaintiff claims £7. 10s. from defendants, and alleges that she was enjoying the produce of the Land in lieu of interest, but the defendants gave notice of their intention to redeem the Land from Otty, and prevented her possession, also claims Interest at 12 Rds. from the date of objection.

Objection.

Although there is no proof of the notice, still the Court is of opinion that the objection to plaintiff's son ploughing the Land in January, 1852, is proved.

It is therefore decreed, that defendants are indebted to plaintiff in the sum of £7 10s., due on an Otty Bond dated 5th August, 1851, with interest at 9 Rds. per annum from 1st January, 1852. Second defendant paying all costs.

31st March, 1854.

No. 1,591.

Court of Requests, Point Pedro.

Valer Ayamootto and wife and another ... ...*Plaintiffs.*

Vs.

Waler Nieler and others ... ... *Defendants.*

LEISCHING, Judge.

First plaintiff says, at this moment I am still enjoying the produce of the Land in question. By the Tamil Law I should have given up the Land for a season, before I demand the Otty money; the Magistrate, in two Criminal Cases the second and fourth defendants brought against us, suggested that we should bring Civil actions, so we did. Second and third plaintiffs say we are still enjoying the produce.

Restoration of Land before an action for Otty money.

The Court sees no course open but to nonsuit the plaintiffs. They admit that by the Tamil Law a Land held in Otty must be given over for one season before the Otty money is claimed, if the Otty holder is forcibly ejected by the Ottier, he has a right to recover the money at once, but

Forcible ejectment.

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if the plaintiffs have gone on enjoying the produce of the Land up to this day, as they state, they cannot sue for the Otty amount without having quitted the Land for the usual time.

Plaintiff nonsuited with costs.

14th January, 1855.

No. 7,223.

District Court, Islands.

Ponnamblom Sinnetamby of Sooliporam ... ...*Plaintiff.*

Vs.

Canneweddepulle Sanmugelingam and brother Aromogam... ... ...*Defendants*

Price, Judge.

The Court refers to the connected case, No. 3,094, by which it appears that plaintiff got Judgment for the Otty money on the 14th January, 1852 : under the circumstances of the case, the Court did not give Judgment for the damages claimed, the Court considering there had been no disturbance. In Appeal, the Supreme Court reversed the Decree with reference to the costs, ordering them to be paid by second and third defendants, who had disturbed plaintiff. This decision, the Court considers, gave plaintiff a right to his claim for damages, to recover which the present action is brought.

Disturbance of Otty Lands in possession.

Damages.

It appears, however, that the case 3,094 was decided in Appeal, so long ago as the 7th July, 1852, since which time plaintiff has taken no steps to recover the Otty amount. The Court will only therefore give Judgment for damages from March 1847, up to 7th February 1852, the date of the decision by the Supreme Court, at the rate of £2. 10s. per annum, with costs.

Judgment in favor of plaintiff against defendants, for damages, at the rate of £2. 10s. per annum, from March, 1847, up to 7th February, 1852, with costs.

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14th March, 1855.

No. 2,236.

Court of Requests, Point Pedro.

Canny, wife of Moorger of Carrewetty... ... *Plaintiff.*

Vs.

Alwan Welen and two others... ... ... *Defendants.*

LEISCHING, Judge.

Mr. De Hoedt assists first defendant, and says that if third defendant's uncle did otty the parcel alluded to in the plaint, to plaintiffs, any verbal agreement made by first and second defendants, who *do not* hold under that uncle, is null and void. Second defendant having admitted the Otty, Judgment should go against him. First plaintiff asked, says, "the heirs of the Ottier are third defendant and his brothers and sisters. I delivered over the Land to first defendant with the sanction of the third defendant. I have no writing."

Delivery to one of the Heirs with the sanction of the others.

The plaintiff must recover the Otty amount from the person who ottied *or his heirs,* third defendant *and others not here.* There is no written agreement on first defendant's part, to pay the debt of third defendant, and therefore any alleged agreement is invalid. Plaintiff must seek his redress from third defendant and his shareholders, after giving up the Land to them.

Third defendant says, I never sanctioned first defendant taking over the Land. First plaintiff gave *it over to me,* and when I went and watched it, first and second defendants opposed me.

The case lies then between first and third defendants, and third defendant is liable to plaintiff.

First and second defendants absolved from this instance, with costs. Third defendant to pay plaintiff the Otty amount £4 10s., save first and second defendants costs, which plaintiff must pay.

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No. 8,300.

19th May, 1856.

Soopremanier Sowapaddy and wife Vadanayegam.... *Pltffs.*

Vs.

Tiagerayer Comaracoropaer and others ... ...*Defendants.*

PRICE, Judge.

The Court is of opinion that the objection alleged to have been made by first defendant to plaintiffs taking possession of the otty land in question, is not satisfactorily proved, the only witness called in support of this fact, is the brother of the third defendant.

Prayer for further relief.

Plaintiffs' Proctor is asked if, under the prayer for further relief, he will take judgment in favor of plaintiffs against first defendant for the amount of the otty, waiting 12 months for his money, as provided for by the first clause of the Thesawalemo, Section V. Plaintiffs' Proctor states he will take judgment for the money, waiting for it for 12 months.

It is therefore decreed, that first defendant do pay plaintiffs in one year from this date, the sum of £18. 15s. being money due to them in right of transfer assignment, dated 29th May, 1855, and original otty dated 25 December, 1848, (filed in the case) *with costs.**

No. 3,000

30th June, 1856.

Court of Requests, Point Pedro.

Teywane widow of Aronaselam administrator of Armoga Corokel Sanmoga Corokel of Carrewetty ... ... *Plaintiffs.*

Vs.

Pariar Cadergamer ... ... *Defendant.*

LIESCHING, Judge.

Defendant admits debt, judgment for plaintiff £19. 15s. and costs.

The defendant appeals against the judgment.

First. The Court below required of the defendant whether he stood in the said amount indebted to the estate. The defendant answered in the affirmative, and contended

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* Why should defendant be made to pay costs?

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Delivery of possession.

that the plaintiff as administrator, had no right to recover the amount before possession of the otty land was delivered to the defendant a year previous to the claim, which has not been done. The Commissioner unmindful however of the defendant's latter plea, decreed the claimed amount in favour of the plaintiff.

Second. The plaintiff having been barred from maintaining this claim by the Country Law, which requires that in case the mortgagee wished for his money back, that possession of the mortgaged Land ought to be delivered to the mortgager *a year before* the claim.

5th Novr., 1856.

Judgment of the Supreme Court.

That the decree of the Court of Requests of Point Pedro, of the 30th day of June, 1856, be set aside, and the case be returned for a new trial. Judgment to be given *de novo*, and with reference to the Country Law laid down in the Thesawaleme, Section fifth, clause first, should such be the prevailing law. The Commissioner is further directed not to write his remarks upon the documents filed in the case, but to make them in the proper place, either in the proceedings, or in the column in the record that is set apart for that purpose.

Second judgment of the Court of Request.

Judgment for plaintiff for £9 15s. and cost of suit.*

4th Decr., 1856.

No. 1,955.

Court of Requests, Point Pedro.

Natchen widow of Paramander and another ... *Plaintiffs.*

Vs.

Casier Attier and two others. ... ... *Defendants.*

Liesching, Judge.

It is with reluctance that the Court has gone into the trial of this case, in its present form, because the first

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* It appears by the proceedings that on the same date on which the otty was granted to the intestate, the Defendant took back the lands on lease upon a Deed for five years, long after the intestate's death, and according to Defandant's own statement there was no party legally authorised to take over the land. Plaintiff is not an heir but a creditor Administrator, and it appears Defendant failed to prove that he gave up possession.

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defendant appears to it, to stand in an anomalous position.

Plaintiffs claim the land by otty from the ancestors of a lunatic now in an asylum, and complains that the defendants rejected him. The first defendant *denies* the otty and disputes the right of the lunatic, and claims the land as his. This Court, impressed with the conviction that the lunatic's interests must be represented, refuse to hear the case and postponed it time after time, for this purpose. The District Court eventually granted Letters of curatorship, to whom *to first Defendant*, the very man whose interest and aim it is, to invalidate the title of the lunatic. This Court again postpones the case that the District Court may be informed of the fact, but the District Court declines doing anything and this Court unwilling to grant any further postponements proceeds to enquire into the otty deed The first defendant stands therefore, in a two-fold position, as representative of the lunatic, he denies his title and denies the otty deed—on his own behalf he claims the land, this Court entertains the question of the *otty deed*, and the Court is of opinion that plaintiff, should recover that amount from the estate of the lunatic.

Curator.

Judgment for plaintiff in the sum of £2. 5s. from the first defendant, as curator of Sandrewer Mapaner, with costs of suit.

Judgment of the Supreme Court.

That the decree of the Court of Requests, of Point Pedro, of the 4th day of December, 1856, be set aside, and it is decreed that plaintiff be put in possession of the land in dispute, first defendant to pay the costs.

The plaintiffs pray for the land and damages, the latter of which they have waived, and it was irregular in the Court giving Judgment for the debt.

Judgment for Debt irregular, when Land alone was claimed.

No. 4,246.

23rd Feby., 1857.

Ramalinga Ayer Panjatchara Ayer, and wife Yanammah of Puttoor ... ... *Plaintiffs.*

Vs.

Casinader Murogasen of Atchowely... ... ... *Defendant.*

PRICE, Judge.

The otty Deed of date, 6th December, 1833, upon which plaintiffs ground their claim, is admitted.

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It is admitted that prior to the execution of the transfer in favour of defendant, dated 2nd November, 1848, plaintiffs were in quiet possession. There is no evidence to prove that plaintiffs were forcibly ejected, as alleged in the Libel.

The answer alleges that defendant is in possession, plaintiffs having voluntarily given up the land to him—this also is not proved.

Plaintiffs in reply call the Deed of 2nd November, 1848, in favor of defendant, an illegal document, inasmuch as the alleged grantors are only entitled to one half share of the land in dispute, the other half being the property of Walen Caderen (one of the joint grantors of the otty Deed in favor of second plaintiff) who left this for Colombo about six years ago, leaving a wife and children.

The Court believes that Walen Caderen is dead, as there is no direct evidence of his having been seen or heard of, for the last seven or eight years.

It is not clear that the woman Canden Wally was lawfully married to Walen Caderen—she states that her marriage was registered by the Maniager of Puttoor "Sittambelam." The registry produced by the present Maniagar is signed by the Maniagar of Atchowely "Mapana Modliar Coomaden." The registry purports to be of marriages where prior cohabitation had taken place. Canden Wally says the marriage was registered before "I became marriageable, and before we cohabited."

She further states that there was only one witness to the entry "Casey Odear Wissowen." The entry has two witnesses, viz., Canneweddy Caderen and Casinader Wissowenaden, (note, Wissowen and Wissowenaden are the same name.) There is no proof of the signature of the late Maniagor Mapana Modliar Coomaden, nor is it shewn by the evidence that he is dead. The entry is the closing entry in the register, and there is a surplus of some 82 blank leaves.

The Court is of opinion, that judgment should go in favor of second plaintiff for the otty amount, with value of produce at 15s. per annum, reserving any right Walen Caderen may

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have on the land, if alive, and if dead reserving the same right to his lawful heirs.

It is decreed that the sum of £6 15s. deposited by defendant's Proctor on the 30th October, 1849, be paid over to the second plaintiff, with damages at 15s. per annum, and costs, reserving any right Walen Caderen if alive, or his heirs if dead, may have in the land. The Loan Board interest to be paid to the defendants.

Judgment of the Supreme Court.

That the decree of the District Court of Jaffna, of the 23rd day of February, 1857, be modified by judgment, being entered in favor of plaintiffs for the sum of £6 15s., costs in the District Court and in appeal divided.

Refusal to receive Otty money.

The plaintiffs ought not to have refused to receive the otty money from the defendants, which they did if the evidence of Cander Swam Ramenaden (examined on the 27th October, 1856,) and that of Candentamby Sinnetamby (examined on the 17th February, 1857,) be true, and the tone of the plaintiffs in their reply, leads the Supreme Court to believe that it is true. They were still more wrong in persisting in their case after the deposit. The Supreme Court is, however, unwilling to cast plaintiffs in costs, in consequence of the doubts it entertains as to the correctness and regularity of defendant's conduct, they should have made a formal tender, and consignation of the amount in Court when the tender was refused. The fact too that the Court does not distinctly find when plaintiff lost possession adds to these doubts, for if in January as plaintiff alleges, he would have been entitled to the value of the crops in 1849, and the deposit would be insufficient. In view of all these circumstances, and considering that the postponements of trial twice after it was partially entered into, was at the instance of the Judge, the Supreme Court thinks that the justice of the case will best be met by dividing costs.

Formal tender.

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18th October, 1858.

No. 8,771.

District Court, Jaffna.

Sidembery Caderen, and wife ... ...*Plaintiffs.*

Vs.

Audey Ayer, and others of Chivialeno... ...*Defendants.*

PRICE, Judge.

Prescription.

In the absence of Plea of prescription touching the claim for rent, the Court cannot interfere in that part of the claim, it appears that defendants have been in possession from the time of the execution of the rent Bond up to the present time.

The Court is of opinion, that the Libel is proved.

Judgment in favor of plaintiffs against defendants, for £6 10s. otty money due on the Bond, dated 31st March, 1847, and further for seven years rent from the 28th April, 1849, at the rate of 18s. per annum (£6 6s) with costs.

SCHEDULE CASES.

1st Novr., 1815.

No. 1,768.

Canagerayah Modliar Sidembrenathen ... ... *Plaintiff.*

Vs.

Walliar Valen and Poodial ... ... *Defendants.*

RICHARDSON, Judge.

Paramer Sandnar duly sworn, deposes that the Thombo is under his charge, and the Land in question belongs to second Defendant, and entered in the thombo on her name. The witness gave a Patola to first Defendant, in July 1814, Second day—No Bill of sale was made out agreeable to that Patola, because the Land was ottied by second Defendant to Mothaliatta, and the amount had not been paid, therefore the sale did not take place.

Want of Publication.

Odear Fined.

The witness admits that he wrote and gave to first Defendant the Patola for the sale, dated 20th July, 1814, produced by the first Defendant, no notice was given about this sale by beat of Tom-tom. It is ordered that the witness do pay a fine to the King of 10 Rds,, for having granted a Patola or report, for the purpose of transferring the Land in ques-

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tion to first Defendant previous to the otty claim being settled, and without any public notice being previously given for the sale of the Land, agreeable to the intent and meaning of the Thesawaleme.

22nd May, 1819.

No. 777.

Ponner Aramanender, and wife Wayrewil ... *Plaintiffs.*

Vs.

Pagoteva Modliar Cander Parpatiagar of Ploly, Maleweraya Coorichy ... ... *Defendant.*

St. Leger, Judge.

Refusal to give Schedule.

Objection a sufficient justification.

On reading over the pleadings and the Reports of the Commissioners, it appears that this action was brought on account of the Defendant, as Odear, having refused to grant a schedule to Plaintiff for certain Lands that he wished to sell, it appears that objection was made to the sale of the Lands which is sufficient to exculpate the Defendant, for it is not the duty of Odear to examine the justice of the objection made, the existence of such objection is sufficient to compel him to refuse a return, and the plaintiff should have prosecuted the persons who objected to the sale, in order to establish his claim to the Lands, when after the decision of the competent tribunal, the Odear would have granted a Schedule according to such degree.

Under these circumstances, it is decreed that the plaintiffs suit be dismissed with costs, and that this Decree do not affect any right the plaintiff may have to the Lands concerning which the defendant refused to grant a Schedule.

Decree affirmed by the Minor Court of Appeal.

26th October, 1819.

No. 7,448.

Cadergamer Wayrawen and another ... ... *Plaintiffs.*

Vs.

Somer Winayeger and another, Parpatiagars of Eledonattoval North and South ... ... *Defendants.*

Scott, Judge.

The plaintiffs declare that they instituted this suit against the Parpatiagars, by order of the Court, otherwise they

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would not have done so, they would have confined their action to the sellers; they admit that the Parpatiagars have not received any portion of the sums advanced on account of the sales, and that they believe the sellers had a fair title to the Lands sold.

The decree passed in the former suit, and dated 28th July, 1818, is referred to, on passing that Decree the Acting Judge merely reserved to the plaintiffs the right of suing the sellers and Parpatiagars, for the sums advanced to the sellers.

Under all the circumstances, the Court is of opinion that the plainitffs must confine their claim to the sellers who actually received the sums advanced on account of the sales, and that it would be unjust towards the Parpatiagars of that district, to make them responsible for the sums so advanced, whereas a title was found deficient; from the nature of the situations they held they are bound to grant these Certificates whenever there appears a fair title found, from the nature of the tenure of Lands in this country, their Certificates may often be contested, and may as often be found defective, but except in cases where they have acted with corruption and evidently with a fraudulent intent, they cannot, as in the present instance, be subject to be fined or punishment of any kind. The present case does not appear one arising under this denomination, for the plaintiffs themselves admit that they were led to believe the Lands were the property of the sellers, and if they were deceived (who held Lands adjoining those sold) surely it is but common justice to admit that the Parpatiagar must also have been led into error from misinformation.

Schedule. Practicable Title.

Fraud.

Consequently it is decreed, that plaintiffs Libel be dismissed with costs.

22nd Jany., 1821.

No. 1,386.

Arolappen Pedro, of Navantorre... ... ...*Plaintiff.*

Vs.

Modelitamby Arier Maniagar of Kaits, and his brother Modelitamby Aronaselam Parpatiagar ... *Defts.*

LAYARD, Judge.

The claim of the plaintiff is just. The defendants evi-

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dently as headmen, whether creditors or no, it has been proved in this suit, after having persuaded the plaintiff to this purchase, gave him a certificate of the rights in the Vendors, themselves received the amount claimed. It is therefore decreed, the late sale being set aside, that plaintiff do recover from them jointly the sum of 530 Rds. and interest thereon from the date of the Deed of sale, until this sum be paid, and Costs of this suit.*

Parpatiagar to pay back purchase money.

Judgment *reversed with costs*, by the High Court of Appeal, 15th September, 1821.

No. 1,545.

22nd March, 1821.

Cadrasy, wife of Armogetan ... . *Plaintiff.*

Vs.

Sinnewer Cadergamor, and Tisseweerasinga Modliar, *Parpatiagar* of Caytaddy Nonawil...*Defendants.*

Layard, Judge.

The Court considering the proof of plaintiff's dower Voucher, and the production of the original Title Deed of the Land, transferred to her as well as the evidence touching the other Vouchers of the family, decrees that plaintiff is entitled by right of Dower to 20 Ls. of the Land Wepencolam Tallemedo, which was sold to Caderen Vinayeger. That the transfers in favor of the first defendant by Sidowy and Canden Welen, minors, be set aside, (dated 20th September, 1819, and 1st September, 1820,) and that the defendants are jointly to pay all costs, first defendant as defending on illegal grounds, the second as having granted Pattolah for the sale, when he must have known the parties were neither of age to make such transfers or entitled to the property they were transferring.†

Illegal Schedule.

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* It does not appear whether the defendants were condemned to pay, because they wrongfully took the money or wrongfully granted the schedule, the latter evidently seems to be the meaning.

† The age of the minors does not clearly appear, but in a representation filed in the case, the age is shewn to be about 15.

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Year 1824.

No. 627.

Point Pedro.

Wayrewen Moorgen of Point Pedro ... ... *Plaintiff.*

Vs.

Waler Cadergamer *Pattengattie* of Walvettitorre ... *Deft.*

MEYBRINK, Judge.

Odear to give Schedule.

Action against objector.

It is ordered that the defendant do deliver a schedule for any share the plaintiff may be entitled to from the Land Anewolondan, according to the Thombo, and if any persons having claim for the said share, they are to bring a case against plaintiff, the defendant to pay costs of suit, in the 2nd class.*

14th March, 1825.

No. 796.

Point Pedro.

Sidemberen Kaylen ... ...*Plaintiff.*

Vs.

Somer Sidemberen ... ... *Defendant.*

TOUSSAINT, Judge.

A second Schedule.

It is a matter of surprise to the Court that the *Odear*, knowing that this Land was in prior mortgage (as they call Otty) could have granted a report for a second mortgage to the plaintiff's first witness. It appears to the Court in this case, that the Testimony of the witnesses produced by the plaintiffs, cannot at all be relied upon. Had the Otty been a true one, the duty of the plaintiff was to call on the seller to him or to his Heirs to clear up the dispute, and when on a regular prosecution, decision might have been given (if proved the claim) both for the Land and profits, but it has not been observed in this case, and on the contrary, both the first and the last witnesses interested persons in the case and their aiders, to support this claim, but as their testimony with regard to this Otty is so grossly contradicted, the Court could not believe the prosecution, and the Court considering

* This is not good Law.

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the Defendant's witnesses, decrees that plaintiff's claim be dismissed with costs.

No. 3,255.

29th April, 1825.

Ramen Welayden of Puttoor ... ...*Plaintiff*.

Vs.

1. Sidembrenader Modelitamby
2. Mader Kaylayer *Parpatiagar* and
3. Cadergamer Aronaselam *Schoolmaster* of

Puttoor ... ...*Defendants*.

FORBES, Judge.

It is decreed on consideration of this case, that the Transfer of the 25th of July, 1823, be set aside, and cancelled, in consequence of publication of the sale of the Land therein specified, prior to its execution, *not* having been made as required by the Thesawaleme. Costs of suit to be paid by defendants.

Publication.

No. 3,619.

1825.

Wissower Cadergamen and Children ... ... *Plaintiffs*.

Vs.

Mayler Velaiden, and son Velaider Covinden,

Parpatiagar of Tangoda, and two others... *Defendants*.

FORBES, Judge.

It is decreed that first and second defendants are indebted to plaintiff, in fanams 2,000, it being my firm belief that they have combined to defraud plaintiff and his children of this amount, dowried to plaintiff's late wife Poodial; and as a punishment to second defendant for having granted a *Schedule*, "when aware of the existence of the said dowry," costs of suit to be paid by first and second defendants, third and fourth defendant, are informed that the otty land may yet be sold to satisfy the plaintiffs claim on it, under the circumstances of the sale of the 20th August, 1824.

Schedule.

Parpatiagar.

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10th June, 1826.

No. 4,151.

Mottocomaren Ramenaden, and Mottocomaren Casinaden of Sunnagam .... *Plaintiffs.*

Vs.

Ayempulle Poodetamby and Maylor Velayden, *Parpatiagar* of Copay North ... . *Defendants.*

WRIGHT, Judge.

In the course of inquiry it appeared that the 1¾ Ls. claimed by first defendant, under his two sale deeds of September, and October, 1825, had been already disposed of to plaintiffs as per their sale deeds of October, 1819, and August, 1820, upon reference to which, it will be seen that the defendants Vouchers contain the very same names of the persons which are entered in the thombo, whose right had been previously transferred by the plaintiffs vouchers without reserving any part thereof, but in order to render this less apparent, the second defendant as Odear has chosen to falsify the total extent of the land on the North side, by calling it 3 lachams instead of 2¼ as is stated in plaintiffs Voucher, and the Schoolmaster who received the Odears report either did not take the trouble to enquire, or connived at the tricks which the Odear was playing, to favor his brother-in-law, first defendant.

Odear.

Fraud.

It further appears in evidence that the plaintiffs two pieces of this land are bounded by the two banks on North and South sides, within which this defendant has made the above purchases, which must consequently be set aside, the sellers having no right to dispose of them.

With respect to the other land, it is only necessary further to state that the boundaries of the 12½ Ls. belonging to first defendant being falsely given in his sale Voucher of the 4th October 1821, the same must be set aside, and the true boundaries given. The impositions have been likewise practised by the second defendant as Odear, who in his official capacity is required to give a Schedule, and the Court regards him as the author of all the trouble, expense, and vexation of this Law suit.

Odear's duty.

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It is decreed that the sale Deeds in favor of first defendant, bearing date 1st September 1825, and 22nd October 1825, be null and void, &c., lastly it is decreed that the second defendant do pay all costs of this suit.

Odear to pay costs.

No. 4,143.

6th July, 1826.

Sidemberen Tilleyen of Tangoda ... ... *Plaintiff.*

Vs.

Paramer Casinaden and others ... ... *Defendants.*

WRIGHT, Judge.

The second defendant having filed no answer, states, that he made the Schedule for the sale of the Lands in question as the property of the fourth defendant in this suit, who was the defendant in suit No. 2,087, from the circumstance of these Lands being entered in the thombo in the name of her mother, and since then as appearing in her Dowry Ola, and that he knew the Lands were held at the time of making his Schedule in right of Otty from the said fourth defendant by one Tillier Ramen the husband of the plaintiff in suit No. 2,383; on reference to this last mentioned case, it appears that the Land Cunjandiapulam 30¾ quarters Lachams in extent, was the sole and entire property of the plaintiff in that case, by right of purchase and inheritance. It is therefore evident that the Schedule granted by the second defendant was an erroneous one, and with respect to the other Land called Malawarayccadoe in extent eight Lachams, a decree has likewise passed in favor of Ramen Tillier in the case No. 3,552, so that the fourth defendant continues responsible to plaintiff for the amount of the decree in his favour against her in case No. 2,087, and as all the trouble and expense which the plaintiff has been put to, has been incurred through the negligence and error, to say the least of it, on the part of the second defendant, who appears to have been in league with the fourth defendant, in having made a return of these lands as the property of the fourth defendant, both these persons should be held liable for all the costs in

Odear to pay costs.

this suit, Nos. 2,383 and 3,552, as far as they affect the present plaintiff.

It is therefore decreed that the plaintiffs do recover from the fourth defendant, the amount of the decree in the case No. 2,087, and that she, and the second defendant, be jointly and severally liable to plaintiff for the amount of his expenses in this suit, and the suit Nos. 2,383 and 3,552.

3rd August, 1826.

No. 3,791.

Caderen Canden of Carneway ... ... *Plaintiff.*

Vs.

Canden Canneweddy, Cadergamer Wayrewen and Tisseweerasinga Modliar, *Parpatiagar* of Caytaddy Nonawil ... ... *Defendants.*

Wright, Judge.

It is decreed that all the right and title in and to the land Ameawalawoe and appurtenances in extent 17 Ls., situated at Caytaddy Nonawil, be in the plaintiffs, upon paying to the first defendant the sum of Rds. 17. 6, being the balance due upon an agreement deed, filed and dated the 10th December 1824, for the purchase in perpetuity of the said land. That the first defendant do pay the plaintiffs costs.

That the second defendant do bear his own costs, and

That the third defendant do, in addition to his own costs, pay unto our Lord the King, a fine equivalent to the full amount of all the costs incurred by both parties in this case, being Rds. 58 11. for his direlection of duty, as Odear of the village, and the chief supporter of the first defendant's improper sale of the land to the second defendant.

Odear. Direlection of duty, Fine.

1st May, 1828.

No. 4,907.

Tanmawarder Sangrepulle of Mattovil ... ... *Plaintiff.*

Vs.

Amblewaner Ayempulle, and three others, *Parpatiagars* of the same place .. .. *Defendants.*

Brownrigg, Judge.

The Court considers that the objections and claims which are proved to have been made to almost all the lands men-

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tioned in the libel, are quite sufficient to justify the defendants in refusing to grant schedules for them.

Objection justification for refusing Schedule.

It is therefore decreed that plaintiff's libel be dismissed with costs, but the plaintiff's right to the lands in question not to be considered as affected by the present decision of the Court.

5th Jany., 1829.

No. 4,983.

Cadergamen Caralen of Condawil ... ... *Plaintiff.*

Vs.

Cander Coonger and others ... ... *Defendants.*

BROWNRIGG, Judge.

The Court considers it unnecessary to hear the defendants witnesses, although the plaintiff has called three witnesses to substantiate the Bill of sale filed by him, the Court entertains very considerable doubt of its being a genuine deed, at all events as it appears by the plaintiffs own witnesses, that the forms laid down in the Thesawaleme Section 7, clause I., viz., that the intended sale of lands should be publicly announced for three successive Sundays in the parish to which they belong, have not been observed in the case. The deed cannot be held good against the claims of the heirs of the *granter*.

Publication.

Heirs of granters.

The Court further observes that the plaintiff has proved by his own witnesses to have at first claimed only a part of this land, as an heir to the deceased Ayempulle Canden, and did not then set up any deed of purchase for the whole, which circumstance is conclusive with the Court that the deed is a forgery. It is decreed that plaintiff's claim be dismissed with costs.

18th March, 1829.

No. —

TOUSSAINT, Judge.

The sellers to third defendant, named Teywie and Sinnie, are two ignorant females, that appear to know nothing about the Lands; and must therefore be supposed by the Court,

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Odear.

that the first defendant, who is the Odear, is the instigator of this transfer and the author of the whole dispute.

The Otty to third defendant's father-in-law nor the Dower to his wife, have been proved in this case, and the Court therefore does not believe them at all, the more so as it plainly appears both by possession and vouchers, that the share now sold to third defendant with the share of other partners, have been purchased by plaintiffs and their ancestors, and possessed by them and the Intervenient since a length of time. Under this, and all the other circumstances of this case, the Court must blame much the first and second defendants, that they have not, listening to the objections made at the time, passed a new Deed in favor of the third defendant, and as the said newly executed Deed is, to the opinion of the Court, an illegal one, it is decreed, that the Deed filed by the third defendant, dated 22nd February, 1828, be cancelled and set aside, and that plaintiffs be left in unmolested possession of their respective shares of the Land, namely, the first and second plaintiffs in $\frac{1}{8}$ share, the third plaintiff in $\frac{1}{4}$ share, and the Intervenient in $\frac{1}{4}$ share of the Land Callyaddy, and that the defendants do pay the plaintiff's and the Intervenient's costs of this suit.

Objection Schedule.

1830.

No. 5,734.

Tanmawarder Sangerepulle, of Mattowil... ... *Plaintiff.*

Vs.

Sewagamy, wife of Sidembrepulle, and others... *Defendants.*

PRICE, Judge.

Held that the Parpatiagar (second defendant) was bound to pay costs, for refusing to give schedule to plaintiff for mortgaging his property, even though there was an objection which was frivolous.

Frivolous objection.

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No. 6,014.

26th April, 1830.

Wallinachy widow of Moorger, of Batticotta ... *Plaintiff.*

Vs.

Her daughter Omeal, and husband Modely Weerepatteren, and others... ... *Defendants.*

PRICE, Judge.

The Land now claimed, appears to have been sold by first and second defendants to sixth defendant, for Rds. 130, who sold it again for the same price to the seventh defendant, the Return in the first instance was made by third defendant as Odear of the village, and in the second instance, the return was made by fourth defendant, fellow Odear with the third defendant, both transfers of the Land were made before fifth defendant, as Native Notary, in 1828; the Dowry purports to convey two pieces of Lands, the one in dispute, which appears to be worth at least 130 Rds., and a Land called Orywayel 8 Ls. of Paddy culture, which second defendant admits to be worth between 50 and 60 Rds. The Dowry Ola also conveys 100 Rds. in ready Cash, and some moveable property. It appears that this propert y has been conveyed upon a stamp of two and three, which not being adequate to the amount conveyed, it is therefore decreed, that the Bills of sale, dated 8th September, 1828, and 4th October, 1828, in favor of sixth and seventh defendants, together with the Dowry Ola dated 20th May, 1812, be set aside, and that plaintiff be put in quiet possession of the Land called Cappomlawatte, at Batticotta East. *Defendants* to pay the costs.

Odear to pay costs.

No. 6,511.

26th April, 1832.

Walliamme, widow of Soopen, and others ... *Plaintiffs.*

Vs.

Cadergamer Pulleynan, Cander Perian, and Tillenayega Modliar, *Parpatiagar* of Tillepalle, and others ... ... *Defendants.*

PRICE, Judge.

There is no evidence to shew that the sales held of the Land

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Want of due Publication.

in question were duly published. It is therefore ordered that the Fiscal's Certificate dated 12th July, 1831, be cancelled.

Third defendant to pay the costs.*

6th Novr., 1832.

No. 6,430.

Anal daughter of Caderen ... ... *Plaintiff.*

Vs.

Cadergamer Welappen and two others ... ... *Defendants.*

PRICE, Judge.

It is decreed that plaintiff is entitled to 169¼ Lachams of the Land Parraparapoe, entered in the thombo on the name of Padachenga-arachiar Coemarer and partners, which she appears entitled to as per Deeds enumerated in a Notarial dated 3rd of March 1827. As the original Deeds have not been proved, this decree is only to affect the parties in this case.

Odear to pay costs.

Defendants to pay costs.†

22nd Jany., 1834.

No. 1,241.

Islands.

Nicholapulle Bastianpulle, and wife Anapulle ... *Plaintiffs.*

Vs.

Sinnepulle daughter of Ambeletal ... ... *Defendant.*

LAVALLIERE, Judge.

It appears that no publication whatever was made, nor Schedule granted according to the prevailing custom previous to the execution of the *Dowry Deed*, which he (the witness) as the Odear of the village was his bounden duty to have seen done.

Dowry Deed.

Schedule.

Under these circumstances, combined with that of its not

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* Plaintiff and Execution debtor were Shareholders, and the Land was sold under a Writ upon a schedule of the Odear,—publication was denied and not proved.

† The first and second defendants were the Adappen and Maniagar of Point Pedro, who granted schedule. The Judgment does not enable us to state further details.

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having been regularly executed before a Notary, the Dowry is illegal and invalid. Assessors agree.

It is decreed that plaintiffs be put in possession of the Land in dispute.

Defendants to pay costs.

No. 419.

28th June, 1834.

Waligammo.

Ramenader Innasitamby and others ... ... *Plaintiffs.*

Vs.

Weeregettiar Morgaser *Odear* of Alevetty, and another... ... ... *Defendants.*

BURLEIGH, Judge.

First defendant I consider granted the schedule hastily. He did so merely on viewing this Division Ola which has not been proved, and which most probably was a forgery.

I am of opinion that a Decree should pass for the plaintiffs, the *first defendant to pay the whole costs*, as I consider that he is answerable for having granted a wrong schedule. Some witnesses have stated that the number of Lachams about to be sold was published in the village—this is *never* done, and the publication merely mentions that the property of suoh an individual is to be sold.

Odear liable in costs for giving wrong Schedule.

The Assessors fully agree in opinion.

Decreed accordingly.

No. 7,905.

10th Novr., 1834.

Poonen Maden, and wife Coongy ... ... *Plaintiffs.*

Vs.

Weder Tamoderam and others ... ... *Defendants.*

PRICE, Judge.

It appears that 20 Lachams of the Land Sadowalle were sold, and the produce, Rds. 240, went in satisfaction of debts due to the first and second defendants, of this sum Rds. 40 and odd were paid to the first defendant, and the balance has been paid over to second defendant in part satisfaction of his claim.

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It appears that no part of the Land was mortgaged to the first defendant, I am therefore of opinion, that the sum of Rds. 40, stated to have been received by him, should be refunded in part satisfaction of plaintiffs claim.

Of the Land in question, it appears that only 12 Lachams were mortgaged to the second defendant, and to satisfy his claim he has taken the value of 3 Lachams more than he was entitled to. I am therefore of opinion, that he should be decreed to refund to plaintiffs the value of the said 3 Lachams, viz. Rds. 36.

Odear punished for false Schedule.

There will still be a sum of Rds. 50 to be made good to satisfy plaintiffs claim, and I consider that as the third defendant* falsely returned the whole land as being 38 instead of 33 lachams, that this sum should be paid by him, and that the costs should be borne by the defendants. Assessors agree.

Ordered accordingly.

20th Feby., 1834.

Supreme Court Judgment.

Affirmed.—The plaintiff has a prior claim on the land, except so much of it as was specially mortgaged to the appellant, (second Defendant). As regards therefore the value of all above 12 lachams, the quantity so mortgaged, the appellant stands in the same relation to the plaintiff as if he held no mortgage at all.

14th Novr., 1834.

No. 76.

Wademorachy.

Philiper Canden, and son Witiwaloe ... ... *Plaintiffs*

Vs.

Sangerepulle Eramber *Odear* of Point Pedro, and two others ... ... *Defendants.*

TOUSSAINT, Judge.

Odear justified in refusing Schedule.

The objection to the granting of a schedule for the sale of the land in question being held good, the first defendant, as Odear, was justified in refusing to give the schedule.

Plaintiffs claim dismissed with costs.

30th Jany., 1835.

Judgment affirmed in Appeal.

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* Third Defendant was the late Parpatiagar of Puttoor.

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No. 160.

17th Decr., 1834.

Chavagacherry.

Cannewedдy Sinnatamby... ... .*Plaintiff.*

Vs.

Ramen Venen, and his mother Sinnapulle, of Coilakandy ... ...*Defendants.*

SPELDEWINDE, Judge.

It appears very evident from the evidence, that there exists some combination between the plaintiff and his first witness, the Odear of Navelkadoe Ramer Kadergamer, in having imposed on the Fiscal by delivering to him a corrupted schedule of the lands in dispute, most of them being the property of the Defendants in right of inheritance and long possession, as proved in this case.

Schedule for a Fiscal's Sale.

It is decreed that the land Navetcooly in extent 14 Ls. P. C., registered in the thombo upon the name of the first defendant's late Paternal Uncle, as well as another land called . . . . are the property of the defendants in right of inheritance and prescription, and that the same be expunged from the Certificate of Sale granted by the Fiscal to the plaintiff, exhibit A., and the same as far as it regards those lands is set aside, and as to the value of those lands which the plaintiff might have paid to the Fiscal for the purchase thereof, the Court reserves him, the plaintiff, a right of recovering the same in a fresh suit from his first witness Ramer Cadergamer Parpatiagar of Navetcooly and Coilakandy, he being the person through whose illicit procedure the Parties have involved themselves in this unavoidable prosecution, and in consequence whereof the Court further adjudges the said Odear to pay the costs of suit to both parties.*

Fiscal's Certificate set aside.

Odear to refund money to purchaser.

Assessors agree.

* Plaintiff was the Creditor under the Writ.

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30th May, 1835.

No. 1,593.

Wallinachen widow of Amblewer of Copay ... *Plaintiff.*

Vs.

Amenaymuttoe widow of Canagasawe and others. *Defendants.*

PRICE, Judge.

Pre-emption.

Plaintiff claims pre-emption as an adjoining landholder, and prays to set aside the sale to the second defendant by he first, on the grounds that no publication was made previous to the granting of the Transfer deed, and as the second defendant is neither an Heir nor adjoining landowner.

Due publication

The defendants having failed to prove the due publication of the sale of the land in question, the Court and Assessors are of opinion, that the Bill of sale in favor of the second defendant, granted by the first, should be cancelled, and that a Bill of sale should be made out in favor of plaintiff for the land, for the same sum it has been sold to the second defendant, viz., £2 12*s.* 6*d.*, which she is entitled to in right of pre-emption, and that the first, second, and third defendants do pay the costs.

Decreed accordingly.

7th August, 1835.

No. 901.

Teywane widow of Soopen ... ... *Plaintiff.*

Vs.

Soopen Casinader Parpatiagar of Tirnelvely and others ... ... *Defendants.*

PRICE, Judge.

The Court and Assessors are of opinion that the transfer of the land in question by plaintiff and her late husband, to their son, the late second defendant, as a donation, is not proved, and it is by this right that the land has been transferred to the third defendant. It appears from the evidence that the land has for very many years been in the possession of plaintiff, and she appears to have held it even since the alleged donation to the late second defendant. The Court and Assessors are therefore of opinion, that a decree should go in favor of plaintiff, agreeable to her libel, setting aside

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the Bill of sale in favour of third defendant, dated 30th April, 1834, the costs to be paid by the first and fourth defendants.

It is decreed that plaintiff be put in possession of the land called Collatoonga Mudliar Wallane Singeraya Wallawa situated at Tirnelvely, in extent 4⅜ Ls., which she is entitled to in right of entry in the thombo and long possession, and that first and fourth defendants to pay the costs.

Odear to pay costs.

The Bill of sale in favor of third defendant, dated 30th April, 1834, to be cancelled.*

No. 1,446.

27th August, 1835.

Waligammo,

Sidembrepulle Sanmogam and his grandfather Casinader Welayder ... ...*Plaintiffs.*

Vs.

Amblewaner Sin netomby Parpatiagar of Sooliporam and nine others ... ...*Defendants.*

BURLEIGH, Judge.

It is quite evident that the mortgaged land was not sold, but another one was. It appears to me that the first defendant wished his sister to purchase the land, which made him grant a wrong schedule. I am of opinion that the sale should be annulled, *first defendant paying all costs.*

Odear to pay costs.

The Assessors are of the same opinion.

It is decreed that the sale of the land Katowa Koodie, held on the 7th May, 1835, be annulled, first defendant paying all costs.

No. 1,092.

8th Sept., 1835.

Waligammo.

Nagatte widow of Moorgen. ... ... *Plaintiff.*

Vs.

Wayrawender Cad raser *Odear* of Batticotta west, and others ... ... *Defendants.*

BURLEIGH, Judge.

Held that the first de fendant, the Odear, should pay costs,

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* First defendant, the Odear, who granted Schedule, made to pay costs. Donation disbelieved.

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Ordear to pay costs. though no fraud.

for giving a schedule for the sale of a land in execution though he did so after due publication, and upon an order from the Fiscal's Office, the Court having found that the land did not belong to the execution debtor.*

27th April, 1836.

No. 439.

Wademorachy.

Cander Aronaselam of Ploly ... ... *Plaintiff.*

Vs.

Wayrewy Maylen and wife ... ... *Defendants.*

Toussaint, Judge.

Schedule for Sale of Land in Execution.

With regard to the claim of the first objector, the Court is of opinion that no schedule can be given to sell any share of land that belongs to the Father, for the debt of the children, while the mother is alive, unless proved that the property was dowried or divided between them by a regular division, which is not proved to the Court.

The Assessors agree in opinion.

It is ordered that the land, &c., should not be sold for the debt due by second defendants. Plaintiff to pay first objector's costs of suit.

25th August, 1836.

No 474

Wademorachy.

Wady widow of Aronen, and child Wally ... *Plaintiffs.*

Vs.

Silemby Wary and another ... ... *Defendants.*

Cadergamer Peratamby ... ... *Objector.*

Toussaint, Judge.

Schedule. Its object. Its advantages.

The Deed in favor of the Objector, is of December, 1834, the case No. 474 was instituted in October of that year. The Notary appears to have executed the deed in favor of the objector, without schedule or publication, so that the creditors had no opportunity to be acquainted with the transaction.

The Court is of opinion, that the Deed was executed

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* There was no fraud.

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in order to avoid paying the Creditor's claim, the Assessors agree in opinion with the Court, that the Lands must be sold, and after paying the amount claimed in the writ, that the rest be given to the objector, who is to pay the Creditor's cost of this suit.*

Decreed accordingly.

No. 2,592.

24th Jany., 1837.

Mallagam.

Winayeger Caderen of Batticotta ... ... *Plaintiff.*

Vs.

Wessower Sanmogam ... ... *Defendant.*

BURLEIGH, Judge.

In this case the Defendant, it would appear, wants to shew that the action should have been brought against the woman he sold the Land to, in this he is wrong, inasmuch as the sale was an irregular one, the transfer not having been published as required by the Thesawaleme This transfer took place on the 20th October last, at which time Plaintiff must have concluded the chief part of the field work; by the usual custom Plaintiff is undoubtedly entitled to the cultivation share, I am therefore of opinion, that a Decree should pass in his favor. The Assessors agree.

Want of due Publication.

Cultivation share.

It is Decreed that the Plaintiff do recover half of the Paddy grown on the Land, and from the present crop, together with the whole of the share. The Odear to see this executed.—Defendant to pay costs.

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* Deed set aside was a Mortgage bond.

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28th April, 1837.

No. 1,976.

Tenmoratchy.

Conaretna Modliar of Navelkadoe ... ... *Plaintiff.*

Vs.

Mayler Netchinger *Odear* of Wareny Eyetale, and others ... ... *Defendants.*

SPELDEWINDE, Judge.

It is Decreed that, agreeable to the contents of the Libel, the first Defendant do immediately grant to the four last Defendants a Schedule from his thombo, now in his possession in his capacity of Parpatiagar of that place, to enable them to transfer over to the said Plaintiff their Land lying at Navelkadoe called Candapermalwalewoe 8 Ls. W. C., notwithstanding the objections stated to him by certain Kirottener Morttayer Cadergamer.

Schedule notwithstanding objection.

It is further Decreed, that the first Defendant do pay solely the costs of suit incurred by the Plaintiff, and the last four Defendants, reserving however a right to first Defendant to recover again the same from the said Cadergamer, by a fresh suit, if he chooses it.

11th July, 1837.

No. 2,213.

Island.

Maylen Ayen of Tangoda ... ... *Plaintiff.*

Vs.

Sanmogam Candappen *Odear* of Tangoda, and others ... ... *Defendants.*

WALKER, Judge.

It appears to the Court, by the evidence adduced by Plaintiff, that the half of this Land so bought by the third Defendant, is the property of the Plaintiff. That consequently the first Defendant as Odear had no right to return it as the property of the late Casie Caderen, that as it is illegally returned by the first Defendant as the property of Casie Caderen, it could not be sold as his property at the Fiscal's Sale.

Schedule for Sale in Execution.

It appears further to this Court, that the first Defendant is the immediate wrong-doer in this case, as had he con-

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fined himself to returning as the property of the late Casie Cadleren, that which really was his property, the half of the Land now claimed by Plaintiff would never have been sold to third Defendant, and that the sale is consequent upon the wrong return furnished by the first Defendant to the Fiscal.

The decision come to then by this Court, is, that as far as the southern half of the Land set forth in the notice of the Fiscal's Sale, that sale must be set aside.

The third Defendant having at that sale bought the whole of the 13 Ls., is now entitled by the decis ion of this Court only to 6½ Ls. of it, being the north half of it and that to compensate him for the money which he paid for the half now decided to be the property of the Plaintiff he has his remedy, by sueing the first Defendant, as the immediate wrong-doer in this case, for the amount which he paid for that half.

Odear to refund purchase money.

It is Decreed that Plaintiff be put in possession of 6½ Ls. being the north half of the Land, and that first Defendant do pay costs of suit.

No. 3,627.

20th Sept., 1837.

Mader Canneweddipulle, of Vannerponne ... *Plaintiff.*

Vs.

Teywane, widow of Candapper ... ... *Defendant.*

PRICE, Judge.

At the re-sale it was certified by the plaintiff, who was acting Odear at the time, that publication had been made on the strength of the former Schedule, which was granted by the defendant's late husband to the Fiscal, for the purpose of the sale.

It appears to the Conrt that the sale of the Land and house in question, took place on a Schedule granted by the defendant's late husband in 1828, and that therefore, the paintiff cannot be held responsible for any wrong in that Schedule.

It appears that the property was sold at Fiscal's sale on this Schedule, and re-sold on the same Schedule in consequence of the non-payment of the purchase amount; at the time of

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the re-sale plaintiff appears to have certified, but only to the extent that due publication of the re-sale had been made.

Estate of Odear condemned to pay costs.

I am therefore of opinion, that the Estate of defendant's deceased husband, Cadergamer Cander, should be held responsible for the costs claimed by this Libel, together with the costs claimed by this suit, and not plaintiff, he (plaintiff) appearing to have done no wrong.

The Assessor agree in the opinion of the Court.

It is therefore decreed, that the estate of defendant's deceased husband, Cadergamer Cander, is indebted to plaintiff in the sum of £9 3s. 7½d., with costs of this suit.

4th Decr., 1838.

No. 2,783.

Islands.

Ramasy, widow of Conayen of Caremben ... ... *Plaintiff.*

Vs.

Aronaselam Swaminaden, Wisentipulle Matthespulle Odear, and Mighel Diegoe ... *Defendants.*

MOOTIAH, Judge.

The Court is of opinion that the plaintiff has sufficiently established her claim to the Land Sembencalledor, in extent 28 lachams, situated at Carembeu, and returned by the second defendant to the Fiscal, to be sold under Writ in favor of the third defendant, No. 8,452, as the property of the first defendant's late father, Modelitamby Aronaselam. The Court however, cannot avoid observing that the conduct of the second defendant appears to be blameable, in a great measure, because he is the person upon whose return this suit arose, and he after filing an answer in the case, denying the plaintiff's claim, and shewing different reasons to justify his making such a return, files an amicable settlement, jointly with the first defendant on one part, and the plaintiff on the other, allowing the plaintiff's claim, and begging that a decree should be passed in her favor for the Land in question, as claimed by the Libel; but the Court is sorry at its being deprived of the power of even making him liable to pay the whole costs of suit, as in the amicable settlement, it appears that they have agreed with the plaintiff, that each party should bear his costs, and on

Odear. Wrong Return.

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the other hand the third defendant, between whom and the plaintiff the case is tried, has been at no expense in this case; and under these reasons the Court is inclined to give a decision in favor of the plaintiff for the 28 Lachams of the Land in dispute. as her dowry property ,and cancel the return of the second defendant as far as the 28 Lachams is concerned, and that part of the expense however which has been incurred by plaintiff since the filing of the amicable settlement should be paid by the second defendant.

Odear.

Costs.

The Assessors agree in opinion. Decreed accordingly.

No. 3,567.

1839.

Waligammo.

Ramesinderer Soopayer and wife, of Sangone ... *Plaintiffs.*

Vs.

Periar Aronan, and daughter ... ... *Defendants.*

BURLEIGH, Judge.

I consider this Renunciation Deed filed by the plaintiffs an illegal document, the original Transfer Deed is dated May 26th, 1828, and the Renunciation Deed October 21st, 1836, more than eight years after. In the purchase Deed Paddy Culture is mentioned, now Warrego and Paddy are claimed, there are twelve Koolies to the Lacham in Paddy Culture and eighteen in Warrego; of course plaintiffs now claim more than they really purchased; it is said that the Odear made a mistake when granting the Schedule for the plaintiff's purchase, if so the Odear ought to have been cited to produce the Thombo, when the fact would at once have been discovered; but in general Odears are nor apt to make such mistakes. This is the fourth case brought against the first defendant by the plaintiffs, one being instituted for Otty money on the 14th June, 1836, about four months before the date of the Renunciation Deed; that Deed I consider an illegal Voucher, because it contradicts the Original bond, because it was executed privately at Mallagam, away from the Parish in which the Land is situated, and above all, because no publication was made as required by the Thesawaleme and long established custom, and no publication can be made without a Schedule,

Renunciation Deed.

Publication.

Schedule.

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if such transfers were permitted without a Schedule and publication, no property would be secure. I perceive that in the Case above alluded to, Elleger Ponner was a witness for plaintiffs, but not examined, and the second witness states that he was on bad terms with the first defendant; the latter ought, according to the custom, to have been a witness to the Renunciation Deed, the present claim shews the necessity for this. I am of opinion that the claim should be dismissed. Surely the adjoining Landholder (first defendant) should have been made acquainted with the Renunciation Deed when it takes from him a certain quantity of Land: it is a trick between plaintiffs and Ponner. Assessors agree. It is decreed that the claim be dismissed with costs.

Judgment affirmed in Appeal, 6th August, 1840.

30th May, 1839.

No. 3,156.

Chavagacherry.

Naden Wayrawen of Mesale ... ... *Plaintiff.*

Vs.

Wally Maroden and wife Sinny ... ... *Defendants.*

SPELDEWINDE, Judge.

False Schedule.

It is very evident of the combination of the plaintiff with his first witness Morgaser Odear, to deprive the second defendant of her just valuable share from the whole Land in dispute, by the latter having granted a Schedule for the sale of the profitable west side thereof to the plaintiff by the seller; as there does not exist any division olah to establish that privilege to him more than what the second defendant should enjoy in common with each other, yet the Court does not see the necessity to set aside all at once, the Transfer deed exhibit Lr. A., but deems it only proper to expunge from it the words *west side* set forth therein, and allow both parties to possess the whole Land in common amongst them till they should divide it by holding out a difference on either side to possess the better part thereof undisputedly.

Deed partially set aside.

It is decreed accordingly, the plaintiff and his first witness the Odear, Wariar Morgaser, do jointly and severally pay defendant's costs.

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No. 3,878.

30th Aug., 1839.

Waligammo.

Nanni pulle widow of Valer, of Sangam ... ... *Plaintiff.*

Vs.

Covinder Murger and others ... ... *Defendants.*

Sidembrenader Nitsinnre, late Odear ... *Co.-Defendant.*

Burleigh, Judge

The Co-defendant was allowed time to make any defence he pleased, but he has not made any. He was *Odear* when the writ was issued, and therefore must have granted the Schedule which he is answerable for. The Fiscal sold the Land on that Schedule, and there is no doubt that the sale was illegal and must be cancelled. It appears to me that the Co-defendant is entirely to blame,* and should pay the costs of this suit. Assessors agree in opinion.

Schedule for Fiscal's sale.

It is ordered that the sale be cancelled and set aside, the Co-Defendant paying the costs of this suit : the Writ may be re-issued to have the proper Land sold.

No. 3,487.

24th March, 1840

District Court, Islands.

Mootatamby Teager, and others ... ...*Plaintiffs.*

Vs.

Pooder Comaroe, Odear of Copay South, and nine others... ... ...*Defendants.*

Burleigh, Judge.

It is the opinion of the Court, that the first (on behalf of his children the second and third) and sixth Plaintiffs have proved long possession of their shares of the Land in dispute : in the answer of the first, second, ninth, and tenth Defendants, it is admitted that an application was made to the first Defendant, to grant a schedule for the transfer of 48 Ls. of the Land to the second Defendant. The first Defendant admits that he granted the schedule, and the second also admits that he made the puuchase ; the first Defendant is charged with having granted a false schedule, and the

* For selling a wrong Land instead of the Otty Land.

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Clear to shew just and legal grounds for granting schedule.

Court conceives as he admits having granted the schedule, he was bound to prove that he did so on just and legal grounds, for the action has arisen on this act, as without it no Deed could legally have been executed in favor of the second Defendant, and the Court conceives also that it was incumbent on the second Defendant to prove most satisfactorily that his purchase was an honest and legal one; no inclination whatever has been evinced on their part to prove anything. The purchase Deed was not even produced in evidence. The natural inference therefore to be drawn, is, that the charge made by the plaintiffs is true, that the execution of this Deed was a fraudulent act, and that they consequently feared to bring it forward, the first defendant has admitted to-day in the replies to questions put to him by the Court, that the Land sold by the first plaintiff and his children to the second defendant, in 1838, is the one now in dispute, it being so, how could he grant a schedule for the sale of it previous to the institution of this case, as the property of the fourth, fifth, sixth, seventh, eighth, ninth, and tenth defendants, when it belonged to the first plaintiff, this clearly accounts for the total absence of proof on the part of the defendants, that the Land was the property of the fourth, fifth, sixth, seventh, eighth, ninth, and tenth defendants, and that they had the power of transferring it to the second defendant. The Court does not understand this alleged Transfer to the second defendant by the first, second, and third plaintiffs, in 1838, (two years after the institution of the case) of the Land (as admitted by first defendant) in question; if this transaction had occurred, why was it not brought to the notice of the Court at the time, and the purchase Deed produced, it would in a manner have settled the dispute, so far as the three first plaintiffs are concerned, such allegations must be doubted, if delay occurs in bringing the matter before the Court.

The Court is of opinion that a Decree should pass for the first (on behalf of his children) and sixth plaintiffs. First and second defendants paying the costs of this suit, as they

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appear to be the principal defendants, and the action arose chiefly from them. Assessors agree in opinion.

Decreed accordingly.

No. 6,677.

13th June, 1840.

Mader Veeregetty, and brother of Alevetty ... *Plaintiffs.*

Vs.

Soopen Tamoe, and others ... ... *Defendants.*

Price, Judge.

The Court is of opinion, that the fifth defendant (Swanda Adepenar Odear of Carreoor) has acted wrong in granting the Schedule, while he was aware of the first defendant's claim on the Land.

Odear.

Schedule. Prior claim.

The third, fourth, and fifth defendants to pay *all costs.**

No. 4,946.

20th Aug., 1840.

Aromogam Ramalingam of Tirnelvely ... ... *Plaintiff.*

Vs.

Wally, daughter of Winasy, and others ... ... *Defendants.*

Price, Judge.

Plaintiff as a relation of the seller (second defendant) claims the right of pre-emption, and wishes the sale to the first defendant to be cancelled. Plaintiff is the nephew of the second defendant, but his (plaintiff's) father signed as a witness to the Bill of sale.

The Assessors state, they are of opinion that due publication of the sale of the Lands in question was made, and that plaintiff's claim to the Land in right of pre-emption should be dismissed.

Publication.

Pre-emption.

The Court agrees in the opinion of the Assessors.

Plaintiff's claim dismissed with costs.

Judgment affirmed in Appeal, 23rd February, 1841.

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* First Defendant held the Land on Lease Deed, executed in favor of Plaintiffs upon fifth Defendant's Schedule.

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26th Aug., 1840.

No. 4,225.

Waligammo.

Welayder Sangrepulle of Alevetty ... ...*Plaintiff.*

Vs.

Swampulle Soosepulle, and another ... ...*Defendants.*

BURLEIGH, Judge.

Agreement.

Schedule.

Had the Deed alluded to in the evidence been filed in this case, the Court would at once have dismissed the claim; it was filed in another case and admitted, and no notice taken of it: now an Intervenient appears and states there is a collusion, the plaintiff claims on the Agreement Deed which is an illegal one, inasmuch as no schedule was obtained from the Odear, and no publication was consequently made. It would be most unsafe to allow such Deeds to pass current in Courts of Justice, the first defendant is a most notorious man for litigation, and the Court believes he has imposed on the plaintiff. On reference to other cases it would appear that this Land belongs to a person now at Colombo; in this case it would be useless to hear evidence, the agreement not being denied by the first defendant.

The Assessors are of the same opinion.

Husband's control over his late wife's estate transferred.

It is decreed that the claim made by plaintiff on the Lands, be dismissed, the Bond of Agreement being contrary to the Thesawaleme, and in fact a clandestine act; the first defendant and the Estate of his late wife to pay plaintiff £6. and costs of suit, both to plaintiff and the Intervenients. The plaintiff being a very litigious man knew full well that a schedule was absolutely necessary. The Court now tells him that if he is again found litigating, the estate of his late wife will be put under other control.*

* The Agreement was *not Notarial*: it ought to have been set aside on the ground that it was not Notarial.

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SCHEDULE CASES

No. 4,237.

Waliagammo.

28th Augt., 1840.

Andries Pauloe and his wife Swanal of Chillale ...*Plaintiffs.*

Vs.

Mogaser Amarasingam, Notary of Sangane ... *Defendant.*

Burleigh, Judge.

It is Decreed that the claim of plaintiff be dismissed with costs, the plaintiff could make no use of this agreement (allowing that one was executed) it being an illegal instrument without a schedule.*

Agreement. Schedule.

Judgment affirmed in Appeal, 26th February, 1841.

No. 4,462.

Waligammo.

15th Decr., 1840.

Canneweddy Ayer Soopremania Ayer residing at Nellore ... ... *Plaintiffs.*

Vs.

Sanmogam Amodelingam and others ... ... *Defendants.*

Burleigh, Judge.

This is a vexatious claim, and one which the plaintiff has no right whatever to make : he states in his Libel that the Lands in question were the property of his grandmother, that the third defendant could only take the produce of them during his lifetime, and has no right whatever to dispose of them ; he states in the replies given by him today to the Court, that the Lands belong to his mother and her sisters, if so, and they have been sold by one who has no right to dispose of them, his mother and her sisters should come forward and claim them.

Life interest. Right to alienate

In the Replication there is an evident attempt to mislead, in the remarks regarding the Thesawaleme or Customs of the Malabars of Jaffna, I lately told the Proctor that he was in error on this point and misunderstood the Thesawaleme, yet he persists in misquoting it, the Thasawaleme

* An Agreement for the future sale of Lands ; the grantors were no parties to the suit.

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requires on the sale of the Land that the intended sale shall be published for three successive weeks within the parish the Land is situated in, this is well known to all and to the Proctor also. I have no doubt it has never been the practice to publish the sale of the Lands out of the parish in which they are situated, and could not in fact be done without great inconvenience.

Publication within the parish.

Publication out of the parish.

It is decreed that the claim of plaintiff be dismissed with costs.

It may be further observed, that the publication of the sale of these Lands in the parish where they are situated, is not denied in the pleadings, therefore the sale as regards due publication is quite legal; and that, in fact, is the only point in question so far as the plaintiff (who is not the owner of the Lands, but merely claims in right of pre-emption) is concerned.—He lives in another district.

Affirmed in Appeal, 2nd August, 1841.

No. 4,572.

23rd Decr., 1840.

Waligamma.

Tomisopulle, Swampulle and wife, of Alvetty ... *Plaintiff.*

Vs.

Sanmogam Tambinadepulle, *Odear* of Sangane... *Defendant.*

Burleigh, Judge.

It is decreed that defendant do grant a schedule to the plaintiff, on receiving reasonable recompense, *the paying the costs of suit.**

Schedule.

Proper remuneration.

No. 4,659.

1st May, 1841.

Waligammo.

Sinnawer Santiappulle, and Waytianader Soliam Sodenader, of Tillepalle... ... ...*Plaintiffs.*

Vs.

Wannier Wayrewen, and two others... ... *Defendants.*

Burleigh, Judge.

The plaintiffs have been proving a point not in dispute, they have been proving what is alleged to have occurred

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* Defendant demanded a higher fee than he was entitled to.

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when the Odear granted a schedule for the price of Land which was exchanged, and when the Deed was executed for the exchange, it now appears from the evidence that this is not the part sold, and therefore not the part claimed in the Libel; it appears now that there is some attempt to deceive the Court, on the part of the plaintiffs; in fact, when the Libel was filed, they intended making the case up in a certain way which has since been abandoned for another, second plaintiff has admitted in the replies to the Court, that the sale of the *Land in dispute was published.*

Exchange. Deed.

Publication.

It is decreed that the claim of plaintiffs be dismissed with costs.

No. 4,628.

13th July, 1841.

Waligammo.

Sooper Murgaser, and others ... ... *Plaintiffs.*

Vs.

Nicholan Anthony, and others. ... ... *Defendants.*

BURLEIGH, Judge.

It is quite unnecessary to proceed on with this case, it is evident that the late Odear granted a false Schedule, the first and second defendants have no Land registered in the name of Maria, wife of Philipen, only two Lachams of this Land are registered in her name which belongs to others. I am of opinion that the deed filed by fourth defendant, should be cancelled and set-aside, and that the Odear should pay all the costs of this suit.

Want of publication.

Odear.

Costs.

The Assessors fully agree in opinion with the Court.

It is decreed that the Bond filed by the fourth defendant be cancelled and set aside, and that the *third defendant* do pay all costs.*

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* Third defendant was the late Odear of Madegel.

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18th Aug., 1841.

No. 8,093.

District Court, Jaffna.

Cartigaser Aromogam, and Son Poodetamby of Atcholo ... ... *Plaintiffs.*

Vs.

Toler Covinder, and another ... ... *Defendants.*

PRICE, Judge.

Schedule from the proper Odear.

The Assessors state, the Lands in question appear to have been sold without a Schedule from the Odear of the village in which the Lands are situated, and it not being made clear to the Court that publication of the sale of these Lands was made prior to the sale, they suspect that a fraudulent transfer has been made; the custom of the country is that publication be made.

The Court and Assessors are of opinion that plaintiffs claim on the Lands in question should be dismissed with costs, and it is dismissed accordingly.

8th Feby., 1842.

Judgment of the Supreme Court.

Deed cancelled for want of publication.

That the decree of the District Court *be modified* by the plaintiff being decreed to be nonsuited with costs in this case, as he has failed to prove that the transfer deed of the 5th December, 1836, was properly executed upon a Schedule, and due publication, as required by custom and the Thesawaleme; and the deed being accordingly set aside as invalid, is ordered to be cancelled.

19th Aug., 1841.

No. 4,745.

Waligammo.

Pawelpulle widow of Soosepulle of Tillepulle ... *Plaintiff.*

Vs.

Mapane Modliar Jacco, and others ... ... *Defendants.*

BURLEIGH, Judge.

Agreement.

Schedule.

The agreement* was executed without a Schedule, and without previous publication. It was admitted that £5 had been received.

This shews the Court and Assessors that a fraud was intended, as according to long established custom, publication should have been made, under these considerations the

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* The agreement was for the future sale of property Ottied.

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Court and Assessors consider that a decree should at once pass for plaintiff.

It is decreed that the plaintiff do recover from the otty Land, in accordance with the Thasawaleme, the sum of £9 and costs of suit, together with the interest claimed.

No. 4,359.

District Court, Jaffna.

Mootetamby Nagen and wife Walliamme, of Tirneloely ... ... *Plaintiff.*

Vs.

Pooder Comaroe Odear of Copaac South, and another ... . *Defendants.*

Extract from the award filed by the Arbitrators umpire.

That as the first defendant is the person who made returns for the sale of second plaintiffs said Land Odewayel, for a sale by first plaintiff and his mother to Mootutamby Teager in 1832, as also for the sale of the same by him (M. Teager) to Sooper Wayrewen in 1835, and for the sale by him (S. Wayrewen) in the same year to second plaintiff, and as notwithstanding all this, he the first defendant made another return for 3 Ls. of the said Land, annexing it with 8½ Ls. of second defendant's Land for passing a dowry deed in favor of third defendant in spite of plaintiffs objection, this action is quite evident arises from the fraudulent conduct of the said first defendant.

Objection.
Schedule.

Under those circumstances we do award that the said 3 Ls. of the Land Odewayel now in question should belong to second plaintiff, and that she should be quieted in the possession of the same, and that the Transfer deed passed for the said 3 Ls. in favor of the second defendant, and the dowry deed in favor of the third, should be set-aside, and that the costs of suit be paid to the plaintiffs, and the second and third defendants, by the first defendant.

Costs by Odear.

17th April, 1841.

Signed Plaintiffs Arbitrator, Mootetamby Ramalingam

„ Defendants Arbitrator Viscaretera Modr. Sittamblam.

„ Court's Arbitrator Walasoopremania Ayer.

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7th October, 1841.

PRICE, Judge.

The Court and Assessors are of opinion that the said awarded should be made a Rule of Court, and enforced by the further process thereof.

Judgment affirmed in Appeal, with costs.

No. 3,586.

9th March, 1842.

Pooder Sooper of Oodwill ... ... *Plaintiff.*

Vs.

Wedawanam Wedaramen and another ... ... *Defendants.*

PRICE, Judge.

Bill of sale set aside for want of publication.

Schedule.

The Assessors state, they are of opinion that the Bill of Sale filed in this case should be set aside, as it appears by the statement of the plaintiff that no publication of the sale of the Land was made as required by the Country Law, and that no Schedule was granted as required by the Customs of the Country.

The Court agrees in the opinion of the Assessors, the Bill of Sale dated 7th March, 1836, is therefore cancelled and plaintiffs claim dismissed with costs; this decision wil not prevent plaintiff again coming into Court with his claim when he can do so, supported by a Document executed agreeable to the existing Laws of the country.

Judgment of the Supreme Court.

Schedule.

Cancelled deed.

That the Judgment of the District Court be set aside, and that plaintiff be allowed a reasonable time to obtain publication and Schedule, agreeably to the local custom. Such time to be limited by the District Court, and Costs to abide the ultimate result.*

No. 3,912.

3rd June, 1842.

Chavagacherry.

Minachy widow of Murgen, and two sons ... ... *Plaintiffs.*

Vs.

Tamer Cander, *Odear* of Wadicocorichy, and others ...*Dfts.*

WOOD, Judge.

It is clear that there has been a fraud on the part of the third defendant, and the first defendant has made himself

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* If it were intended to revive a cancelled Deed by subsequently obtaining a Schedule, I think the Judgment of the Supreme Court was wrong.

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a party to it, either designedly or through a gross neglect of duty. I am therefore of opinion that the otty deed bearing date the 21st March, 1840, should be cancelled, and that first and third defendants should pay plaintiff's costs. The Assessors concur in opinion.

Odear.

Fraud or gross neglect of duty.

Decreed accordingly.

No. 5,083.

Waligammo.

1842.

Winayeger Tandawer and wife ... ... *Plaintiffs.*

Vs.

Sidemberam widow of Weeregetty and others ... *Defendants.*

Burleigh, Judge.

The Odear, the fourth defendant, condemned in costs, even though the objection by third parties to his granting the schedule was proved and admitted.

Odear.
Costs.
Objection proved

No. 5,206.

Waligamo.

14th Decr., 1842.

Catpe, daughter of Sinny, of Sangane ... ...*Plaintiffs.*

Vs.

Valley, widow of Canneweddy her daughter, Nagamuttoe and Sannogaen Tambinaden *Odear* of Sangane ... ... *Defendants.*

Burleigh, Judge.

It is decreed that the plaintiff do recover from the first and second, and fourth defendants, the sum of £8 15s., and costs, the third defendants being liable to pay that amount, or any part of it which cannot be recovered from the other defendants.

Odear's liability.

The Court and Assessors are of opinion that the third defendant is liable, should the other be unable to pay what is decreed against them, and for this reason, in the Criminal case he stated that the complainants (Sinnepulle's) Deed was executed in the month of November, and that he granted no schedule in the month of August, this is untrue, as it was clearly proved in the Supreme Court that the Deed was executed in August.

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19th January, 1843.

No. 3,612.

Islands.

Anthoniapulle widow of Andampulle of Carembem ...*Plaintiff.*

Vs.

Santiagopulle Jacco and wife Anthonipulle ... *Defendants.*

Burleigh, Judge.

Mortgage Bond. Schedule.

Case No. 2,703 was instituted on the 13th September, 1837, and this Mortgage Bond granted on the 11th of December, following without a schedule, and therefore without publication as proved by the first witness for plaintiff, this must be considered a fraudulent transaction, the case not having been decided, and the Land mortgaged being involved in the suit.*

31st. March, 1843.

No. 3,775.

Islands.

Welayder Sidembrepulle, and wife... ... ...*Plaintiffs.*

Vs.

Mullopulle, widow of Amblewaner, and others, residing at Caremben... ... ...*Defendants.*

Burleigh, Judge.

It is clearly proved that the first defendant had attempted to take hold of the second plaintiff's Dowry property, in lieu of what her late husband purchased from the sixth witness for the plaintiffs, on account of the wrong schedule granted by the third defendant, who was in no way justified in allowing this Deed to pass without the concurrence of the first plaintiff; and it is very clear from the evidence that the passing of the Deed was a clandestine act, because two of the witnesses admit that no publication was made, and the third defendant has returned more of the Land than the sixth witness was entitled to sell.

Publication.

The Assessors fully agree in opinion with the Court.

It is decreed that the Land Pereahill is the Dowry property of the second plaintiff. The first Defendant to pay Plaintiff a damage of 15s. value of produce, and the first and third Defendants to *pay all* the costs of this suit.

Odear.

Costs.

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* This case shews that even for the purpose of mortgage a schedule was considered necessary, though not essential.

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No. 5,383.

1843.

Waligammo.

Sidemberam, widow of Weeregetty... ... ... *Plaintiff.*

Vs.

Winayeger Tandear, and others, residing at Mallagam... ... ...*Defendants.*

BURLEIGH, Judge.

Refusal to give schedule. Objection admitted.

The fourth Defendant (*Odear*) refuses to give schedule as the first, second, and third Defendants objected. The Court found for the Plaintiff, and made the Odear to pay costs jointly with the other Defendants.

Costs.

Judgment affirmed in Appeal.

No. 12,173.

1st June, 1843.

Irregonader Samander, and Siwecoronada Mudr., Pregonader of Vannarponne... ... ...*Plaintiffs.*

Vs.

Sidembre nader Waytianader, and others... ...*Defendants.*

BURLEIGH, Judge.

Deed illegal for want of Schedule.

The Deed filed in case No. 10,654, is an illegal instrument, because it was granted without a schedule, and therefore no publication was made. It is decreed that the Plaintiffs be quieted in the possession of the Land Samadakagel, in extent 11 Ls. lying at Prowalle, according to certificate marked L. A. The Defendants to pay costs of suit.

No. 11,492.

21st. Oct., 1843.

District Court, Islands.

Cannatte, widow of Sooper of Enovil... ... ...*Plaintiff.*

Vs.

Canden Sinnewen, and others... ... ... *Defendants.*

BURLEIGH, Judge.

First, second, and third Defendants are Plaintiff's brothers, they mortgaged to fourth Defendant without schedule. Plaintiff claims it as her Dowry property, and proves possession.

It is satisfactorily proved that the 4 Ls. in question have

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been possessed for many years by the Plaintiff, and the fourth Defendant has not proved that these 4 Ls. from 55 are those mortgaged to him. The Court believes this to be a fraudulent transaction, because the Defendants are evidently not entitled to more than ½ a Lacham, and the Court must always suspect Deeds passed as the one granted to the fourth Defendant was: why did they not obtain a schedule, and why did the first, second, and third Defendants put themselves to extra expense and trouble by passing the Deed before the Town Notary, instead of going before the Notary of their own village.

Schedule.
Mortgage.

It is decreed that the 4 Ls. are the property of the Plaintiff, in right of Dower, and not liable to be sold for the debt of her brothers; the second, third, and fourth Defendants to pay costs of suit.

Judgment of the Supreme Court, 6th February, 1844.

Set aside, and the case remanded for further evidence on both sides, particularly evidence of the Dowry Deed founded on by the Plaintiff.

2nd Trial.

PRICE, Judge.

The Court disbelieves evidence on both sides, and is of opinion that the case should be struck off the roll, each party paying his own costs. Suspicion must also attach to the Dowry, inasmuch as it bears alteration.

Second Judgment of Supreme Court, 2nd September, 1845.

Affirmed in Appeal.

13th Novr., 1843.

No. 4,600.

Chavagacherry.

Pattany, daughter of Cadiry, of Meesale ... ... *Plaintiff.*

Vs.

Sidemberam, widow of Comaren, and others ... *Defendants.*

WOOD, Judge.

It is useless to go on any further in this case, as the Land alleged to have been encroached, or rather objected to, is wrongfully laid in the Libel as well as incorrectly defined in the Transfer Deed. The Land as laid in the Libel is registered

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on the names of Wary Supen, Walen Cadiren and partners, called Pannayadilwayel 3 lachams in extent. whereas the Odear who granted the schedule for the sale of the land states that there is no land of that extent of the name and registry stated, but that the land sold forms part of the extent of two pieces of land of that name and registry, 16 and 4¼ lachams respectively ; now it is the universal custom under such circumstances for the Odear in his schedule to say "from such and such land consisting of so many parels so much in extent respectively from the whole, such and such portion is sold." The cause of this action appears to have arisen from the ignorance and carelessness of the Odear, and if he had been a party to the suit he should have paid the whole costs of the suit, as it is, plaintiff must be nonsuited, paying defendant's costs, and the deed of Transfer filed by him be cancelled as far as that land is concerned. The Assessors agree in this opinion.

Odear's duty.

Odear's liability.

It is therefore decreed that plaintiff be nonsuited accordingly, paying defendant's costs, and the deed of transfer in favor of the plaintiff be cancelled as far as the land Pannayaddylwagel registered in the name of Waary Walen Soopen Cadiren and partners, 3 lachams in extent, is concerned.

No. 5,590.

8th May, 1844.

Waligammo.

Caylayer Casinader Administrator of the late Caylayer Sooper... ... ...*Plaintiff.*

Vs.

Pooder Cadraser *Odear* of Tillepulle... ... ...*Defendant.*

Burleigh, Judge.

In this Case it appears to the Court and Assessors that the defendant was fully justified in not granting a schedule to the plaintiff before it was clearly shewn to him that plaintiff administered to the Estate of his Brother, the Defendant acted with proper caution.

Odear's justification for refusal of schedule.

It is Ordered that the defendant do grant the required

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schedule to the plaintiff, but plaintiff must pay the defendant's costs; of course, if there be any objection, the usual course must be followed.

23rd October, 1844.

No. 7,916.

District Court, Islands.

Maylwagenam Casinaden, wife Mootenachy, and her brothers Sermaepulle and Philipo, residing in the Town ... ... *Plaintiffs.*

Vs.

Mariemotto widow of Yanepregasam, Gasper Jacob, Gaspar Solomon, Anthony Swanden *Odear* of Caneoor, John Speldewinde, *Auctioneer*, Reymond Innasimootto his wife, Jacco Weerasinga mudliar *Notary* of Pandetemepoe, and Ramanader Waytienader ... ... *Defendants.*

PRICE, Judge.

Facts.

The Father of the three last plaintiffs was the husband of the first defendant, and brother to second and third defendants, who died leaving issue the three last plaintiffs, on whom the property left behind by him devolved. Plaintiffs complain, that the defendants have disposed of by private sale, a House and Premises situate in the town and three other lands situate at Magiaputty in which they the plaintiffs are entitled by inheritance to ½ share, without the consent and knowledge of plaintiffs, and appropriated the proceeds thereof to themselves.

First defendant admits ½ share to belong to plaintiffs as claimed, but denies all knowledge of the sale or that she authorized it.

Fifth defendant states he sold the lands as licensed Auctioneer, upon the request of the plaintiffs and first and third defendants, and that of the proceeds of sale he paid a debt due to Mr. Toussaint by the second and third defendants and their late mother, upon the mortgage of the House, and that he has got the balance with him.

Sixth and seventh defendants are the purchasers of the house and premises, fourth defendant is the Odear, but he

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denies that he had anything to do with the sale, or that he granted schedule.

Eighth defendant is the Notary of P onditerropoe, but the action was withdrawn against him. Ninth defendant is the purchaser of the other Lands, against whom plaintiffs claim was dismissed, as the cause of action against him was quite distinct and separate, and should not be blended in this case.

House in town.

The case was therefore confined only to the house and premises situate in the town.

Judgment.

The Court is of opinion that the Auctioneer's Certificate dated 9th May, 1836, together with the acknowledgment made before the Notary under date 10th May, 1836, and signed by the first and third defendants should be set aside, upon the following grounds.

Schedule.

No publication is proved to have been made, and no schedule is proved to have been granted by the fourth defendant the Odear, for the sale of the House and Land in question; on the contrary the fourth defendant denies that a schedule was granted and states that no publication was made.

It appears by the evidence that the House and Land in question were pledged by the second and third defendants and their late mother Walliammey *alias* Kitto, widow of Sidembrenader Murgen, to Francis Adrian Toussaint, as per mortgage bond dated 17th May, 1834, (a Title Deed also appears to have been given with the said mortgage bond, but it is not filed by any party in this case); to satisfy the mortgage debt, the House and Land in question were sold by the fifth defendant to the seventh, by the Auctioneer's certificate it appears that the House and Land were sold as the property of Sidembrenader Murgen, Husband of Walliamme *alias* Kitto, father-in-law of first defendant, father of the second and third defendants, and grand-father of the second, third, and fourth plaintiffs. The property is stated to be his (Murgen's) purchased property. The Sale (the certificate states) was held on the application of the first and third defendants.

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The mortgage of the whole House and Land to Toussaint must have been illegal, inasmuch as Walliamme *alias* Kitto and her two sons (second and third defendants) had no right to mortgage more than two-third shares ; the other one-third share being the inheritance of second, third, and fourth plaintiffs late father, their father and the second and third defendants being the sons of the late Sidembrenader Murgen the proprietor of the House and Land.

The Bond purporting to have been granted by the fifth defendant, to the second plaintiff and first defendant for £30, being part of the proceeds of sale of the House and Land in question, and dated 9th May, 1836, has not been proved, but evidence has been adduced to prove an endorsement on the back of the said bond, dated 27th August, 1837, and purporting to be an acknowledgment of the receipt of the said £30 by the second plaintiff and first defendant, this acknowledgment the Court considers a forged one, and comes to that conclusion upon the following grounds. The fifth defendant in his examination on the 21st instant states, that he himself wrote the acknowledgment on the back of the Bond, and that the whole of the acknowledgment was written on the 27th August, 1837, the day it bears date ; now, one of the subscribing witnesses to the acknowledgment, Peter Britto, states, I first arrived at Jaffna with Dr. Murray, I cannot recollect what year it was in. ... ... The witness called by the Court, Tambyapulle, Clerk in the Medical Department, states that Dr. Murray arrived in Jaffna on the 10th September, 1838, and to support this statement, he produces an entry made in the Records of the Medical Office in the handwriting of Dr. Murray himself, by which it appears that that Gentleman arrived in Jaffna on the 10th September, 1838, and that he took charge of the Medical Department on the 11th of the same month, so that Peter Britto could not have been in Jaffna to witness the acknowledgment of the 27th August, 1837.

The Court is further of opinion, that all the costs should be borne by the first, third, and fifth defendants.

The Assessors agree with the opinion of the Court.

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It is therefore decreed that the certificate dated 9th May, 1836, and the acknowledgment of the first and third defendants before the Notary on the 10th May, 1836, be cancelled and set aside, and that first, third, and fifth defendants do pay all costs.

Petition of Appeal—Sheweth.

1st.—Because the want of a Schedule from the local headman cannot vitiate the sale of the premises purchased by the seventh defendant and appellant, inasmuch as according to the existing customs and usages of the country no Schedule is requisite for the sale of Lands situated within the Town of Jaffna, such Lands not being registered in the thombo of the country.

2nd.—Because the said premises having been the *acquired* property of the late Sidembrenader Murgen of Jaffna, deceased, the plaintiffs were only entitled to one-sixth share of the same, according to the Laws touching and concerning the inheritance of property in force at Jaffna.

3rd.—Because the father of the plaintiffs, and the plaintiffs themselves on the demise of their father, became liable to pay the debt of Kitto the wife of the said Sidembrenader Murgen, according to the Laws and Customs in force at Jaffna.

4.—Because under the circumstances proved in the cause, to wit, the existence of a Debt Bond and the liability under which the Land was placed in consequence of that debt, the first defendant as the mother and guardian of the plaintiffs had an undoubted right to dispose of the share to which they were entitled, and such sale was necessary for the interest of the plaintiffs themselves, inasmuch as by the detention of one-sixth share of a House, the value of that share as well as of the other five-sixth shares would have been greatly depreciated.

5.—Because the Court below ought, according to the prayer of the plaintiffs themselves have adjudged the fifth defend-

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ant to pay the amount of proceeds realized by the sale of the plaintiff's share of the Land to the plaintiff.

6.—Because the plaintiffs according to the laws and customs in force at Jaffna, could and ought not to have been allowed to set up any claim to property belonging to the estate of their father the first defendant, the mother of the plaintiff being still alive and unmarried.

1st March, 1845.

Judgment of the Supreme Court.

The proceedings in this case having been read and explained to the assessors. It is ordered that they be reserved for the collective decision of the Judges on the following points.

1.—Whether the decree should be modified by the sale being decreed illegal only in so far as it respects the plaintiffs share of the House and Land in question, and by the purchasers being thereon ordered to re-transfer the plaintiffs share to them, and the first and fifth defendants paying the costs of the plaintiffs, and the sixth and seventh defendants paying their own costs.

2.—Whether the sale should be wholly cancelled and set aside on account of the want of a Schedule being granted and publication being passed. It appears by the testimony of the Odear in the Supreme Court, that the House is not registered in the Thombo, and if the House had continued to be held by a Dutch proprietor, no Schedule or publication would have been necessary, but is doubtful whether the premises having been transferred over to a native does not render the publication necessary under the Thesawalemme, it must be observed however, that publication is only made on Schedule which is a certificate of the registry in the Thombo, and in this case the house not being registered in the Thombo, the only Schedule would be a certified copy of the Vendor's Deed.

Thombo. Dutch Proprietor. Schedule. Native. Definition of Schedule.

Such certificates have occasionally been granted, and the fees payable thereon may probably tend to the Odear's encouraging such a course, but any practice of the kind, if recent, cannot be held to be part of the customs so as to avoid all similar sales hitherto made.

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3.—Whether the defendants can be decreed to pay costs, or any other decree can be made against them, the pleadings being apparently incomplete as regards them.

4.—Generally for any further direction the Judges may think proper to give in the matter.

30th June, 1845.

Collective Judgment of the Supreme Court.

Mr. Advocate Selby appears for the plaintiffs and the third defendant, and Mr. Advocate Stewart for the sixth and seventh defendants, and upon their motion, It is considered and adjudged that the decree of the District Court of Jaffna of the 23rd day of October, 1844, be set aside, and the sale to the seventh defendant be declared invalid, in so far as the same doth regard the plaintiffs one-third share of the property sold, reserving to the second defendant, Gaspar Jacob, any right whatever whether of Pre-emption or otherwise which he may have to the said property or any part thereof. The first and third defendants to pay all costs.

25th Oct., 1844.

No. 4,977, Chavagacherry.

Wally Teywie of Varany Etaley ... ... *Plaintiff.*

Vs.

Omeal Cadery, do. ... ... *Defendant.*

Wood, Judge.

Notary. Schedule.

The conduct of the Notary, Mr. Vandergencht, in this case is extremely reprehensible, he has executed an Otty Deed for a piece of Land without obtaining, or the production of, the usual certificate of the Odear of the publication having been duly made according to the Country Law, and that there exists no objection to the sale, either on the part of the other shareholders, heir, or adjoining landowners, (none of whom appear to be witnesses to the deed, as customary) but merely on the alleged verbal message from the plaintiff, who, it appears, was not present. He Mr. V. says that *he was aware* that a decree had been given in favour of the defendants, but his extremely equivocating manner in reference to the production of this copy of the decree (viz. an alleged second copy) without

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making any enquiry for the first copy of the decree which Mr. V. states he knew to have been taken out, and which must be presumed to have been in the possession of the defendant (if it had not been previously satisfied) and could easily have been produced by her (defendant) if she really was present when the deed was executed, and this after a period of nearly two years, when he, Mr. V., as Secretary of the District Court, must have known that a decree could not be acted upon without a Rule Nisi upon the parties ignorant when the decree was given, after the expiration of twelve months, together with the extremely suspicious manner in which the alleged second copy of the decree was taken and apparently on the very day the deed was executed, and as I am fully convinced (by Mr. Vandergencht's extreme equivocations) *after* the deed was executed, is quite sufficient, independent of defendant's denial, and the contradictions of the plaintiff's witnesses, to warrant me in setting aside the Otty deed as irregularly if not fraudulently executed. I am persuaded that there has been collusion between the plaintiff or rather his Son, the defendant and the Notary Mr. V., fraudulently to secure lands mentioned in the libel from being sold for the debt due by the defendant to the Intervenient. Assessors concur.

It is decreed that plaintiff's claim be dismissed, and that the Otty deed filed by the plaintiff, dated the 8th May, 1841, be cancelled and set aside. Plaintiff to pay Intervenient's costs, and defendant to pay her own.

Judgment affirmed in Appeal, 1st March, 1845.

27th June, 1845.

No. 66.—4,183.

Wademorachy, transmitted to Jaffna.

Mayler Cadergamer of Carneway ... ... *Plaintiff.*

Vs.

S. Ambalawanan, Esq. and others ... ... *Defendants.*

PRICE, Judge.

On reading over the libel in this case, it appears that the action is brought by plaintiff against ten defendants, but the prayer is only to order the second and fourth defendants to

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grant the schedule; no damage is, however, claimed against the second and fourth defendants, as having been sustained by plaintiff by their refusal to grant the schedule. The Court and Assessors are of opinion that the defendants should be absolved from the instance, with costs.

Refusal to grant Schedule. Criminal offence.

The plaintiff is informed that if a Headman refuses to grant a schedule, he may be criminally prosecuted, as provided for by the ordinance No. 1. of 1842

Defendants absolved from the instance, with costs.

No. 11,511.

5th Novr., 1845.

Aromogam Pooden and wife, Seedowen of Tirnelvely ... ... *Plaintiffs.*

Vs.

Comarawaler Sadmogam and Walen Ramalingam. *Defendants.*

PRICE, Judge.

By defendants' Proctor to first plaintiff. My Father and Mother-in-Law gave me the land in question in dower. I don't know by what right they were entitled to it. I have filed no deed in their favor, when my wife's dowry deed was executed no schedule was obtained from the Odear; no publication was made.

Dowry Deed. Schedule.

Defendants' Proctor on hearing the above statement, declines calling evidence, as he considers plaintiffs' title defective.

The Court and Assessors are of opinion that the land in question should be released from Sequestration, and that it should be declared to be the property of the Plaintiffs, Defendants paying all costs.

It is therefore decreed that the land Adiepattowayel situated at Marawenplow, in extent 38 Ls., registered in the thombo in the name of Canny wife of Wissowen, is the property of plaintiffs, (Defendants admit they are in possession and have failed to prove any right of their own to the land.) It is further decreed that the said land be released from sequestration, and that defendants do pay the costs.

Judgment of the Supreme Court.

28th July, 1846.

That the Decree of the District Court of Jaffna, of the

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5th day of November, 1845, be *reversed*, and the plainti ffs claim is dismissed with costs—although the plaintiffs are in possession, they ought not to be considered the *prima facie* proprietors until the contrary be shewn, under the 15th Clause of the Ordinance 1 of 1839, as there is a provision therein as follows.—"Unless such reasonable suspicion be "thrown on the right and title of such possessor, as having "originated in force or fraud, as shall in the judgment of "the Court require the possessor to prove his title."

Dowry Deed.

Schedule.

And the Supreme Court is of opinion that the Decree in the former suit 3,287 against the claim set up by the second plaintiff's mother, and the first plaintiff's admissions, that when the Dowry Deed under which the plaintiff's claim in this suit, was executed, "no schedule was obtained from the Odear and no publication was made," do create such a reasonable suspicion of the plaintiffs title having originated in fraud, as to require the plaintiffs to prove their title, which they have failed to do.

27th Jany., 1846.

No. 1,180.

District Court, Islands.

Motto Modliar Aronasalem of Vannarponne ... *Plaintiff.*

Vs.

Caylayakoorokel, Suppacoorokel and another ... *Defendants.*

PRICE, Judge.

No Schedule required for mortgage.

The Court is of opinion that according to the Thesawalemme or Country Law, no publication or schedule was necessary on the occasion of the mortgage in favor of the first defendant, but that such preliminaries were only necessary when any Landed property were ottied or sold in transfer.

With regard to the second defendant, the Court is of opinion that he was rightly sued as general Attorney, and that the second defendant as such general Attorney is bound to answer the claim of the plaintiff, inasmuch as he was a party actually signing to the security bond of the 23rd July, 1845, and that the plaintiff's debt bond is preferable to that of the second defendant, the debt bond having been renovated by the settlement alluded to above, by which interest

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was allowed, and that the Libel against the first defendant should be dismissed with costs.

The Assessors agree in the opinion of the Court.

It is decreed that the claim against the first defendant be dismissed with costs, and that the claim of the plaintiff be considered preferable to that of the second defendant, the second defendant do forthwith reimburse the amount drawn by him from the Cutcherry, viz. £13 10s.

No. 733.

26th May, 1846.

Aronasalem Caralepulle of Niervely ... ... *Plaintiff.*

Vs.

Ayempulle Sidemberen and others ... ... *Defendants.*

PRICE, Judge.

Publication. Bill of Sale.

The Court is of opinion that the sale of the Lands in question has never been published, and that the Bill of sale in favor of plaintiff, should be set aside. Plaintiff paying all costs. The Assessors agree in opinion.

It is therefore decreed that plaintiff's claim be dismissed, and that the Bill of sale in his favor be dismissed (dated 22nd August, 1844.) Plaintiff paying all costs.

Judgment of the Supreme Court.

Affirmed with costs. The Supreme Court disbelieving the Odear, and the fifth and six witnesses, in their evidence respecting publication of the sale of the Lands in question.

No. 1,047.

12th June, 1847.

The Hon'ble Arthur Buller, Esq., Queen's Advocate...*Pltff.*

Vs.

1st. Thomas Clark, and

2nd. Edwin Stanhope Whitehouse ... ... *Defendants.*

JUMEAUX, Judge.

This is a case brought by the plaintiff on behalf of the Crown, to recover possession of certain Lands now in possession of Mr. Clark, and partly planted by him, which he purchased from Mr. Whitehouse who bought them from the natives, by whom they had been held and possessed under thombo title.

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Odear, Thombo holder.

This is a fact which has been very positively sworn to, by Swampulle Odear, the thombo holder of the villages, wherein the Lands are situated, and who appears to be the best authority on the point, and whose evidence has been corroborated by the testimony of the other witnesses called by the defendant, every one of whom the Assessors have stated they believed with regard to possession. The defendants have not made out a strong case, but the Court is of opinion that slight evidence as to possession in support of the Thombo, would suffice to establish the title of the sellers to the Land in question, which it would appear had been possessed by them, although not cultivated to any extent for want of means, which reason made them to consent to the sale.

The Court is further of opinion, that these Lands, registered as they are in the Thombo, and possession as they appear by the evidence, do not come under the description of the Lands within the meaning of the sixth clause of the Ordinance No. 12, of 1840, wherein such Lands seem to have been expressly exempted, had it been otherwise it is to be presumed that the framers of the said Ordinance would never have made mention of the " Thombo register heretofore established" in the manner they have done. This is a point, which the Court, under the peculiar circumstances of this case, could not well overlook.

Great stress has been laid by the Deputy Queen's Advocate, in the course of his reply, on a portion of the evidence given by the Odear Swampulle relative to the report made by him to the late Maniagar, and the Deputy Queen's Advocate has endeavored to shew to the Court, that the Report in question has reference to the very Land now in possession of Mr. Clark, which the witness very positively denied; it therefore became necessary to recall the Odear Swampulle, in order to clear up that portion of his evidence, which he has distinctly explained, by shewing to the Court that the Land referred to in his report could not have been the same Land which is now possessed and planted by Mr. Clark, inasmuch as they are very differently bounded; this witness Swampulle

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is an old Government servant, has been an Odear for the last twenty-five years,and continues as such up to the present day, holding the Registers of Lands of no less than six different villages, and his evidence, which was given in a very straightforward manner, is believed by the Court, unanimously ; such positive testimony from a man in his sphere of life, while still in the service of Government, and specially in a case of this nature bears double weight and works forcibly on the minds of the Judge and Assessors. If the integrity of such a witness be questioned, what security is there in the Registry of Lands entrusted to him by Government ; his holding such an office of trust inspires confidence, which confidence there can be no doubt induced Mr. Whitehouse, the Original purchaser of the Land, who appears to have acted in good faith throughout the whole of the transaction, to become the owner of the Land in question, on the assurance made by the Odear that he knew the Lands referred to in the Thombo extract, granted by him to belong to the sellers who executed the Deed of transfer ; this witness has further very positively stated to the Court, that he knew these Lands to have been possessed by the sellers, and that they lay within the boundaries pointed out by him to the Surveyor as the Land purchased by Mr. Whitehouse.

Under these circumstances, the Judge and Assessors are unanimously of opinion, that the Land in question *cannot* be declared to be the property of the Crown, as prayed for in the information filed on behalf of the plaintiff, but that it is private property, and as such that the defendant be quieted in the possession of the same, within the boundaries defined by the Odear and by the Surveyor, stated to be in extent one hundred and seventy-five acres or thereabouts, and that plaintiff's case be dismissed with costs.

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Judgment of the Supreme Court, 17th August, 1857.

On the motion of Mr. Advocate Langslow for the Appellant, and having heard Mr. Gambs for the defendants thereon. It is ordered that the case be remanded for further hearing and further evidence on both sides, and judgment *de-novo*, costs to stand over. *

No. 1,185.

16th June, 1849.

Caderen Welen and others of Navelcadoe ... ...*Plaintiffs.*

Vs.

Mayler Coenaievalen and others ... ... *Defendants.*

PRICE, Judge.

Publication.

Third plaintiff in this suit grounds his claim upon a Bill of Sale, dated 19th October, 1841, no publication is proved to have been made of the sale of land in question to the third plaintiff, neither is any possession proved on the said Bill of Sale, but an otty deed dated 21st September, 1814, is brought in proof of the right of the first and second plaintiffs' late Father, and proof of possession by the otty holder has been adduced, but the otty deed itself has not been proved, neither is it shewn that the witnesses to it are dead so as to admit evidence of their signatures, under these circumstances, and the fourth defendant having proved to the satisfaction of the Court an undisturbed possession of it for ten years and upwards, the Court is of opinion that the plaintiffs' claim on the land should be dismissed with costs: as their appears to have been no necessity for the Intervenients appearing in this Case, the Court is of opinion that they should pay their own costs.

The Assessors agree in opinion.

Decreed accordingly.

Judgment of Supreme Court. 1st. February, 1850.

Affirmed except as to costs, and it is decreed that the Intervenients do pay all costs consequent upon their useless Intervention, and that the first and second plaintiffs do pay the defendants costs.

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* The Case was subsequently settled.

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No. 4,218.

8th Decr., 1849.

Sewapatte daughter of Sidemberen of Samarapagotuvencoorichy ... ... *Plaintiff.*

Vs.

Alwar Welaiden and others ... ... *Defendants.*

PRICE, Judge.

Publication. Donation Deed.

The Assessors are of opinion that in the absence of due publication the Donation deed in question cannot be considered lawfully executed. The Court agrees in the opinion expressed by the Assessors, and considers that there *is* strong grounds for presuming that the Donation deed was merely got up to evade the claim of the first, second, and third defendants, against fourth defendant (Plaintiff's Father) for costs in the suit 1,536; it is true that the deed filed by plaintiff is dated prior to the Judgment in the Case 1,536, but nothing would be easier than to anti-date the deed.

The Court and Assessors are of opinion that plaintiff's Libel and claim should be dismissed with costs, and the Writ be re-issued in favor of first, second, and third defendants, who were defendants in the case 1,536.

Decreed accordingly.

Judgment affirmed with costs, in Appeal.

15th July, 1850.

No. 4,845,

11th March, 1851.

Vallian Pulleynan of Niervely ... ... *Plaintiff.*

Vs.

Arrapulle widow of Wayramottoe and others ... *Defendants.*

PRICE, Judge.

The question before the Court is whether the deed in question was granted or not, the Notary in his evidence tells you that a schedule was granted by the Odear. The defendants are the Heirs of the grantor of the deed who is dead. The Court therefore does not consider the evidence of publication necessary between the present parties.

Objection. Want of Schedule. Heirs of grantors.

The Court and Assessors are of opinion that the libel is proved, with the exception of the value of produce, which portion of the claim has been withdrawn, and that Judgment should go in favor of plaintiff, as claimed, with costs.

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Defendant's Proctor wishes the Court to take down the Assessors opinion with regard to the non-publication of the sale of the land. The Court objects to do so, having already expressed its opinion on that point, and on which notice of Appeal has been given.

It is decreed that the one-half share of the Lands in question are the property of the plaintiff in right of purchase, according to a Transfer Deed in his favor dated 7th March, 1850, and that defendants do pay all costs.

26th Jany., 1852.

Judgment of Supreme Court.

That the decree of the District Court of Jaffna be set aside with costs, and the case be remanded back to the District Court, for the plaintiff to prove the due publication of sale, and to adduce the other attesting witnesses to the Purchase Deed which he claims under, any evidence also that the defendants may offer thereon should be heard, and the District Court will give judgment *de-novo*.

Proof of publication necessary between the parties to the Deed.

The due publication of the sale is a material fact in issue on the pleadings between the parties, and it is clearly incumbent on the plaintiff to prove it. The present evidence moreover to establish the execution of the Deed is, under all the circumstances, far from being satisfactory, and all the attesting witnesses to it therefore should be examined. *

Copied from case No. 8,705.

Fiscal's Office, Jaffna, 22nd November, 1851.

Sir,—By your first letter, without date, but received on the 12th Instant, it did not appear that the property to which you referred was situated in the Town, and my reply was therefore written without any reference to that point to which my attention was not directed.

Neither do you in your letter of the 13th, in express terms refer to the distinction in the matter of Schedules between property in the Town and elsewhere. I was therefore under the impression that the observations made by you, as to the practice in respect to Schedules and "the rule only

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* The District Court subsequently found the fact of publication, and gave judgment for plaintiff.

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lately made" by me, were meant to have reference to property in general, and was near upon overlooking that the real point of your reference, as I now conceive it to be, was that the requiring a Schedule for property situated in the Town, and in respect to which, there is no Thombo registry, is a new practice, the effect of a rule made by me.

It is a new practice, and has the appearance of being the effect of a rule made by me; in fact however, I never did make any such rule, and the practice which has not ever before been brought under my personal observation, is unauthorised.

Schedule.
Custom.
Thombo Registry.
Property in Town.

The charge made in 1848, as to Schedules, had reference exclusively to the manner in which they should be furnished in such cases, as they had always been furnished, but for such property in the Town as is not in any Thombo they never had been furnished.

An order will be sent to the Constable who granted what has been called a Schedule, but which really is not so, inasmuch as it has no reference to Thombo registry, and is not authorised by any Custom, as referred to in the Ordinance, to explain to him that he was not authorised to receive the fee in question, and to point out that it should be refunded, and I will be responsible to you if necessary that it be refunded. The receipt is returned.

I have &c.,

(Signed) P. A. Dyke.

Mr. P. F. Toussaint,
Proctor, Jaffna.

No. 2,599.

From the District Court of Jaffna.

Peter Frederic Toussaint, and others....*Applts. and Pltffs.*

Vs.

Siresango Chettiar Veerepattererswamey, and
Siresango Chettior Soopermanier......*Defts. and Respts.*

The Proceedings in this case, haing been read and explained by the Supreme Court to the Assessors, It is

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ordered that this case be reserved for the opinion and Judgment of the Supreme Court, at General Sessions. A writ of Execution was issued, and forwarded with a list of the debtors property, but shortly afterwards the same was returned by the Fiscal unexecuted, as the Defendant had failed to pay the amount or to surrender property, and the Plaintiff (in whose favor the Writ issued) had failed to bring a schedule from the Headman, on whom he had obtained an order, 27th July, 1847.

14th July, 1847.
29th July.

The Writ was afterwards re-issued, the Plaintiff's Proctor stating that he had delivered the order with the list of property to the Headmen, but on a representation from the Fiscal to the effect that he had neither issued any order on the Headman for a schedule, and a motion by the Plaintiff's Proctor, that the Fiscal should be required to seize and sell the property pointed out by the Plaintiff, and other procedure, the District Court refused to re-issue the Writ, seeing no reason to interfere with the practice adopted by the Fiscal, of requiring the party suing out the Writ of Execution to furnish a schedule from the Headman with the list of property to be seized.

25th Augt.
19th Aug.
10th Oct.
12th Oct.

The Rules for Fiscals do not expressly require more than a list of the property to be furnished, and the main question here is whether the Custom said to exist in the Northern Province, in the matter in question, does in fact exist, and is such as to compel the Plaintiff in this case to comply therewith.

On the 13th February, 1849.

From the District Court of Jaffna. No. 2,599.	Col. Same Parties.

Before deciding this case, it is necessary that the Supreme Court be fully informed in respect of the custom relative to schedule of Odears on transfer of landed property, the information required is, whether by the custom, a purchaser is bound to take conveyance of lands sold to him, to which there is no other objection except that it is not accompanied by the Odear's schedule. Second—Is it the custom of Nota-

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ries to pass transfer of Land without the production of such schedule. Third.—Has it been the invariable custom for the Fiscal from time immemorial, not to sell Lands taken in execution, without the production of a schedule. Fourth.—Has it been the invariable custom of the Fiscal from time immemorial not to seize lands in execution, without the production of a schedule, and if not from time immemorial in the two last mentioned cases, when did such custom commence. Fifth.—To what local limits is the custom of requiring schedules confined.

As the Regulations for the guiding of the Fiscal make no saving of the custom in question, and are therefore in the creditors favor on the point under consideration, the Court can only apply to the Fiscal for the proof of the custom, and the Registrar is directed to make such application.

Fiscal's Office,

Jaffna, 10th October, 1851.

No. 2,599.

Sir,—I have the honor to return herewith the case referred to in your letter of the 29th July last.

In a separate paper, enclosed, I have set forth the several questions put to me in the order filed in this case, and have stated my answers thereto, which I trust may prove satisfactory.

I have to express my regret that this matter should have been accidentally overlooked by me.

I have, &c.,

(Signed) P. A. Dyke,

Fiscal.

The Registrar of

The Supreme Court,

Colombo.

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Question put to the Fiscal, in the order of the Supreme Court in Case No. 2,599, and the Fiscal's replies thereto.

Question	Reply
1.—Whether a purchaser is bound to take conveyance of lands sold to him, to which there is no other objection except that it is not accompanied by the Odears schedule.	I append hereto the statements of one Notary, and of five other persons selected from different parts of the country, as elderly people of intelligence not being public officers, whose statements seem to furnish a very positive answer in the negative to this question.
2.—Is it the custom of Notaries to pass transfers of lands without the production of such schedule?	The same statements above referred to seem sufficient to shew that such a practice is followed only to a very limited extent, and only with the consent of parties and at their risk. On the practice generallly as to schedules, I further annex copies of certain statements made to the Government Agent in 1836, and subsequently submitted to Government in explanation of the Ordinance, of 1842 when under consideration.
3.—Has it been the invariable practice of the Fiscal, from time immemorial, not to sell lands taken in execution without the production of schedule, and if not from time immemorial, when did such custom commence? 4.—Has it been the invariable custom of the Fiscal, from time immemorial, not to seize lands in execution without the production of a schedule, and if not from time immemorial when did such custom commence?	The statements of two old officers of the department, submitted herewith shews what has been the practice since 1820. It would be difficult to obtain definite information as to the practice prior to that. From these statements it may be seen, that from 1820 to the present time, lands have neither been seized or sold in execution without a schedule.
5.—To what local limits is the custom of requiring schedules confined?	To the Peninsula and Islands of Jaffna, and the Districts on the main, of Karetchy and Ponorya.

10th October, 1851.

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Jaffna August 23rd, 1852.

Mr. J. De Niese—In my practice as Notary I generally require Schedules. In a few cases only in which both parties have expressed themselves as desirous to dispense with them to save the expence. I have executed deeds without a Schedule, but only where there were deeds produced in favor of the very party executing the deed before me. I have been Notary since 1829—I cannot say the number of times in which I have so executed deeds without a Schedule, but they have been very few.

I do not know what is the practice now in the District Court as to Schedules, when deeds may be disputed.

When a Schedule has been given, the Odear generally attends and signs as witness to the deed. This is sometimes dispensed with in respect to certain Odears near to the town. with whose signatures I am familiar.

It is only when both parties agree to do without the Schedule that I execute deeds without it: should the grantee require a Schedule I do not, as Notary, consider myself authorised to execute a deed without it.

It is in very few cases that parties agree to dispense with Schedules; generally they insist on them, the exceptions are, I think; mostly where the parties are related to each other.

2.—*Sivavaganaga Vula Suppermanier Ayer.*

I am 64.—I was a Proctor but do not practice at present; the cases in which schedules are now required are Transfer, Otty, Mortgage, Dowry, division of hereditary property, donation and all relating to land.

The practice of granting schedules commenced at the time that stamps for deeds were first introduced in 1806. I am not aware of any express order for its introduction, but the Notary was required to make publication, and as he resorted to the Odear for that purpose, the custom as I believe, arose, of the Odears giving schedule.

I do not remember whether the Thesawelame requires any publication.

Again he says, I am not aware that the Notaries *were required* to make publication. (I cannot reconcile his statements in this particular)

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Contracts for the future sale of lands, are sometimes now executed without schedule with the consent of both parties, where Odear makes difficulty about granting the schedule.

Transfers, Otty and Mortgage deeds are not to my knowledge, at present executed without schedule.

N. B. To the question frequently repeated and explained over and over again, whether a person who has contracted to purchase a land is bound to take transfer of it without a schedule, I cannot get any other answer but: "No transfers are executed without a schedule."

Jaffna, August, 1851

3. *Vasiercorn Modliar Sittemblem* of Nalloor. I am 65 years old. It is the practice now for schedules to be granted for all Deeds relating to Land: such has been the custom for as long as I can remember.

I am not aware that any Deeds affecting Land are now executed without schedules. I do not speak of my own parish only, but as far as my knowledge extends, of all others also.

Agreements are executed for the future sale of Land, the person agreeing to buy, would not consent to take a transfer consequent upon such agreement, without a schedule; he would not be bound to do so, the peron agreeing to sell could not maintain any action against him as for bresch of agreement, for his refusing to take the transfer without schedule.

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4. *Sittambelam Sethemberanather* of Kattavely. I am 50 years old. Some deeds affecting Land are now executed by the parties themselves, without schedules, and afterwards acknowledged before the Notary. Deeds are not so executed by the Notaries in Kattavely parish. Many deeds are executed by the parties themselves without schedules. I have known this to be the practice only for one or two years. I had the same opportunity before as now, of knowing what was the practice; again he says, I had not the same opportunity of knowing before as I have now, as before I was much engaged with my duties as a schoolmaster.

I would not accept a deed without a schedule. I should not consider the deed valid.

A person who had agreed to sell a Land, could not be allowed to execute the transfer without a schedule.

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5. *Visovanatha Modliar Sangrepulle* of Pattacotta. I am about 55 years old. No transfer deeds are now executed without schedules. Some Dowry Deeds are executed without them, also some mortgage deeds, and some Otty deeds.

Before deeds were required to be executed on stamps, transfers were sometimes executed without schedules.

I would not take a transfer deed without a schedule after due publication.

Velyther Tillanathen of Poonah Cattovum. I am 45 or 46 years old. Some deeds affecting Land are now executed without schedules viz. Dowry Deeds and transfers in cases where the seller holds a title deed in his own name, and where the purchaser consents to have the transfer without the schedule. The practice varies in different places, that is, I mean as to the extent to which schedules are dispensed with.

I have not purchased any Land without a schedule. I would do so if the Notary made no objection to the execution of the deed. I would do so on my reliance that no dispute would arise, but if disputed, a deed without a schedule is not valid, because of the want of publication. I do not know by what rule it is that publication is required, but I know the fact that publication is required, and that a transaction without publication will not be recognised by the Court as valid.

A person who had agreed to sell a Land, cannot be allowed on that agreement, to execute a transfer without schedule, nor could a person who had agreed to purchase it, be obliged to accept such a deed. It would not be a breach of his agreement to refuse to receive such a deed.

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* Answers to the queries of the Government Agent by Philip Rodrigo Muttukisna, Cutherry Modliar, and Tisseweresinga, Stamp Conecoply.

Answers.

1. We have been in our present office since the last 30 years.
2. The latter has the custody of the Land Thombo, during a period of about 20 years.

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* N.B.—Given in writing.

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3. The obtaining of the Schedule of landed property for mak- transfers from the Odears is indispensable, and that no Notary has been authorised to execute such deeds without the Schedule

4. The obtaining of such Schedule, or the above practice has never become obsolete, but since the last 2 or 3 years, some of the Notaries have been in the habit of executing deeds without it, when the parties applying should express that they are satisfied with the execution of the deed without such Schedule—this opinion was entertained by some construing the meaning of th Clause in the Government Regulations, which says the parties may make out deeds on their mutual consent, and have it afterwards attested by a Notary.

Observation. That in the 60th article of the Country Law which is in force by the authority of the Government Regulation No. 18 of 1806, it is enjoined "that the sale of landed property should be published in the respective Churches during three successive Sundays", and this publication must be certified by the Odear who causes the publication to be made, and gives a certificate with an extract of the description of the land from the Thombo or the Land Registry which he holds, and he is in a great degree responsible for any false or unfair description of the land. In like manner all landed property which has been received by Government as mortgage, were with the schedule according to the above purport, whether or not Title deeds for such landed proper ty has been in existence. In short it was always considered that transfers passed without the schedule alluded to, are nullities n themselves.

Jaffna, August 27th, 1851.

Sir,—I beg leave to inform you that it is the general custom in this District, that transfers of land should be passed upon the schedule of the Odears, which usage continues up to this time. I am not aware of any Regulation that allows the Notaries to execute such deeds without such return. I am therefore of opinion, that it is indispensable that the schedule should be obtained. I hope you will excuse my awkward writing, in consideration of my

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being unable to make use of my left hand owing to a dangerous boil on it.

(Signed) J. R. Mootiah.*

17th February, 1837.

Jaffna, October 8th, 1857.

Diogopulle Davidpulle. I was appointed to the Fiscal's Office in 1820, as Native writer—from the time I was appointed until the change made after the passing of the schedule Ordinance of 1842, order was always sent in the case of each Writ, requiring the Odear to sequestrate and send schedule of the Debtor's property.

By the form now in use, the order to the Odear, only requires him to sequestrate such property as he may upon the application of the party grant schedule for. Since I have been in the Fiscal's Office, no lands have been sold without a schedule from the Odear, either sent direct to the Fiscal's Office according to the former practice, or produced by the parties according to the present practice.

Mr. J. Kranse states. I was appointed to the Fiscal's Office in 1529, from that time to this, no lands have ever been sold without a schedule from the Odear, nor have any lands ever been seized without such a schedule Since 1848, there has been an alteration in the manner it which the schedules are obtained.

True copies,
(Signed) W. Twynam,
"True Extract."
John Selby.

From the District Court of Jaffna.
No. 2,599.

Same Parties.

The Proceedings in this case having been read, It is considered and adjudged that the order of the District Court of Jaffna of the 12 day of October 1848, be affirmed with costs.

In this case, the Fiscal returned a writ of Execution signed by the plaintiff against the defendant's property unexecuted, on the ground that the plaintiffs had failed to bring a schedule from the

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* Many years Interpreter of the Provincial and District Court and Permanent Assessor of the latter, and lastly District Judge of Kayts.

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Odear. The plaintiffs thereon made a Motion to compel the Fiscal to execute the Writ, no such schedule being required by the General Rules respecting the duties of Fiscals, but the District Court refused the motion as the Court did not see any reason for interfering with the practice adopted by the Fiscal, and from this order the plaintiffs have appealed.

The Collective Court has called for information from the Fiscal, as to existence of the Custom of requiring schedules, and the continuance of the practice in the Fiscal's Office respecting it. And from the report of the Fiscal, with the statements annexed thereto, it appears that schedules have been granted since 1806, and that from 1820 to the present time, lands have neither been seized nor sold in execution without a schedule, and any definitive information as to the practice in the Fiscal's department prior to 1826, would, he adds, be difficult to obtain. The practice in the Fiscal's Office of requiring schedules therefore, has existed for thirty years, and no origin being assigned thereto, it may be inferred to have been in existance at the earliest period of the custom; a duration of period very different from the "two or three years" only which the appellants in their first opposition to the demand for a schedule, appear to have supposed it to exist. Admitting that the schedule is required, the next question is as to the mode and time of obtaining it. The Fiscal in his first report of the 5th January, 1849, has stated an alteration in the practice of the Office in this respect, since the Ordinance No. 1, of 1842, in order to make it accord with the provisions of that Ordinance, and he has urged strong reasons in support of such alterations, and that the party himself should produce the schedule, as he and not the Fiscal should proceed against the Odear for refusal or neglect, according to the provisions of the Ordinance.

The General Rules not having expressly required the party to procure the schedule, have been relied upon in favor of the appellants, but their total silence on the subject, does not exempt the party from acting in compliance with any existing custom, and it is not contended that a schedule and publication are not required in a sale or deed of transfer of the land, although the General Rules are equally silent thereon. The party moreover is bound to point out the land to the Fiscal, and the necessity of a schedule

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in so doing is partly admitted by the Plaintiffs having voluntarily produced the schedule which they got on their mortgage, for the Fiscal's use.

Under these circumstances as the practice and usage in the Fiscal's Office, appear to be in conformity with the custom as far as it can be ascertained, and also of the provisions of the Ordinance, No. 1. of 1842, this Court will not interfere therewith.

Witness the Hon'ble Sir Anthony Oliphant, Knight, Chief Justice at Colombo, the 3rd day of January, in the year of our Lord 1852, and of our reign the 15th.

Signed Joseph Cuffe.

The Chief Justice dissented from the above Judgment, and his observations in the case are appended thereto.

"I am sorry that I cannot concur in the Judgment in this case. I am strongly inclined to think that the second witness Sivavagana. Vale Suppiemanier Ayer is correct, when he states that the practice of granting schedules commenced at the time that stamps for Deeds were first introduced in 1806. *

"I can find no trace of schedule being granted by the Odear in the Thesawaleme, nor in the Regulation, No. 18 of 1806. I find in that Regulation, that the Thombo Registers were to be given back to the Schoolmasters, (who had them in the meantime I know not).

In the Thesawalame Sect. 7, we read that since Blom's time, no sale of land whatever, has taken place until the intention of such as wish to sell the same, has been published on three successive Sundays at the church to which they belong, that all interested might have notice.

But there is no mention made either in the Thesawalame or in the Regulation, of any schedule to be granted by any person.

One should suppose that if a schedule were to be granted regarding the ownership of the land, that such would be done by the schoolmaster as holder of the Thombo, but he is not required to do so.

It is observable the Thesawaleme evidently does not contemplate sales by Process of law, but such as were merely voluntary.

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* This is an error, the custom of granting the schedule can be proved to have existed from an earlier period.

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I know not whether the publication in practice at Jaffna, is according to the orders of Blom, by publication on three successive sundays at Church, or according to the Rules of Court for the Fiscal, or whether both modes are in use.

If the former mode be only used, I know not whether the Odear or any other person certifies that publication has been duly made. Why should the Odear have any thing to do with the matter if he *be not* the Thombo * holder, and even if he be, of what use is his schedule even in the case of voluntary sale; it is surely not supposed that his dictum as to who was propreetor of the land can confer the *slightest* title upon any one. Is the schedule of any use to any human being except theOdear.†

But supposing that some good reason should exist why land should not be transferred in any case, whether by the notary or by the Fiscal without a schedule, what reason exists why the schedule should be produced to the Fiscal at the time of the seizure. The Fiscal can get into no trouble ‡ by seizing land without schedule or not and one cannot see until better informed why a schedule if really necessary for the safe transfer of property, should not be produced to he Fiscal before he gives conveyance, or, at the earliest, on the day of sale.

I am strongly of opinion that unless some new light can be thrown on this subject, there is no ancient custom of the people of the country, other than that mentioned in the Thesawaleme before Blom's order, and that the obtaining of schedules from the Odear, if it did not arise in 1806 as before mentioned, comes in place most likely of a Dutch Regulation requiring the schoolmaster to give schedule, and was substituted by the English, and that the observation of it in the Fiscal's office, is simply a practice arising in that office, perhaps about the year 1820, and cannot be called a custom.

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* But he *is* the Thombo-holder.

† It prevents fraud in many instances as will be seen by the Decision now published.

‡ The seizure is the first step towards sale, and protection is sought at the earliest opportunity.

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The Ordinance No. 1 of 1842 affects the question in no way, as it only regulates what is to be done when parties apply for a schedule.

Is it the custom when a European sells his Cocoanut Estate, which he has by Grant from Government, that if the purchaser insist upon it, the Odear must get his £5,* for the schedule, or does the Custom in favor of the Odear only run against Tamils, or how otherwise, (See Papers.)

In my opinion no custom is sufficiently proved, and if it were, there is no evidence to shew the use of such custom, and it appears to me to be bad, and I think therefore the Judgment of the District Court should be reversed.

Signed JOSEPH CUFFE.

SCHEDULE CASES.

26th Novr., 1852.

No. 3,294.

Cannatey, widow of Cadergamer, of Sangane ... *Plaintiff.*

Vs.

Mader Aromogam, and others... ... ... *Defendants.*

PRICE, Judge.

Schedule.

The Court is of opinion that Plaintiff should be put in possession of the Land as claimed, and the Bill of sale of first defendant be cancelled, no Schedule for the sale of it having been granted, and no publication made.

The Assessors agree in the opinion of the Court.

It is therefore decreed, that plaintiff be put in possession of the Land situated at Sangane, called Pideanparrogo registered in the Thombo on the name of Selly, in extent 10 Ls. with House, Well, and profitable trees standing thereon, in which she is entitled to a life interest in right of her late husband, who was the son of the late Sinnepulle, wife of Canden, who was entitled to it in right of purchase as per

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* *Lex-rei sita* must govern, if the lands are *registered* in the Thombo a schedule would be required.

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Fiscal's Bill of Sale, dated 16th January, 1847, (marked C.) Defendants to pay costs.

The right is reserved to defendants to sue for the purchase money, if they consider they have any claim.

18th May, 1854.

No. 5,968.

Sinny, daughter of Sarrawanne, of Mattowil... ...*Plaintiff.*

Vs.

Sinnewer Casey, and others... ... ...*Defendants.*

PRICE, Judge.

The Court is of opinion that plaintiff is entitled in right of Prescription to ¼ share of the Land claimed by the Libel, her witnesses having proved eighteen years possession.

Publication.

The sale of the Land to first defendant by Cattean, does not appear to have been made after due publication, but as it conveys the whole Land, and the portion claimed by plaintiff being only ¼, the Court does not set aside the Deed.

Judgment in favor of plaintiff for ¼ share of the Land, which she is entitled to in right of prescription. First and second defendants to pay all costs, with value of produce at 10*s*. per annum.

Judgment affirmed in Appeal.

27th July, 1853.

No. 15.

Court of Requests, Mallagam.

Cander Sedemberem of Atchovaly ... ... *Plaintiff.*

Vs.

Cadiraser Carsipulle, Cadiritamby Sinnatamby and Tavany, widow of Cadirgamen of Atchovaly... ... ... *Defendants.*

BIRCH, Judge.

Mr. Anderson for plaintiff, Mr. Advocate Muttukisna for first defendant.

Judgment.

The plaintiff here claims a certain piece of land called Cattorian in extent 12½ Ls., by right of purchase from the third Defendant and her deceased son Conamally. From

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this land he alleges he has be been ejected by the first Defendant, and claims 19 shillings as damages, value of the crop of 1852, which was reaped by first Defendant in 1853, and costs of suit.

The first Defendant claims the land by right of purchase from the same parties, and alleges that Plaintiff has never possessed it, and consequently that there has been no ejectment, and contends that he took possession of it in 1851, when the Crop of 1850 had been reaped by the otty holder Wayrawy Santhan, that he has possessed it ever since, and he likewise asserts his right of pre-emption over the Plaintiff, he being an adjacent landholder.

The second Defendant is the Odear of the Village, who granted the two schedules on which the Notaries executed their two deeds of sale. He granted one Lr. D. in August, 1849, on which a deed Lr. A. was executed in favor of Plaintiff in December, 1849, and he granted a second Lr. C, (said to be in October 1850, but how can we tell, as he put in the date when he signed the deed) on which a deed Lr. B. was executed in September 1850, in favor of first Defendant. He alleges that he wrote a chit to the Notary not to execute a deed on schedule D., the same day that he gave it, as first Defendant claimed right of pre-emption, but he admits that he received no answer from the Notary, and that he took no further steps to get the schedule back, and avers his ignorance of the deed in favor of Plaintiff.

The third Defendant is the seller in both instances, in conjunction with her deceased son Connamaley, she admits the sale to plaintiff, but denies any to first defendant.

The Court believes both deeds to have been bona-fide executed, and therefore must suppose that the sums alleged to have been received by third defendant and her son actually were so received, viz., £3 7*s.* 6*d.* from plaintiff and £5 5*s.* from first defendant, he having purchased the land for £1 17*s.* 6*d.* more than plaintiff gave for it; a stipulation was included in each deed of sale, to the effect that the purchaser should redeem the land from Wayrawy Santhan, to whom it was in otty for £1 2*s.* 6*d.*, and this stipulation

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has been complied with by the plaintiff, for in December, 1840, he paid £4 2*s*. 6*d*. to Wayrawy Santhan, and received from him the otty deed Lr. E., and a receipt for the otty money Lr. F., but first defendant has up to this date, paid no money on that account to any one, the plaintiff therefore purchased the land for £7 10*s*. of which he has paid the whole, and first defendant purchased it for £9 7*s*. 6*d*., of which he has paid £5 5*s*. only. It is clear from the evidence that plaintiff received over the land from Wayrawy Santhan, in February 1851, after he had paid him the otty amount for the otty holder paid over to plaintiff some share on that Crop, under, I presume, the third paragraph of fifth section of Thesawaleme, and it has also been proved that plaintiff cultivated the land in 1851, and reaped its crop in 1852, but in August last there was some dispute, which continued from the cultivation, and first defendant reaped the crop in February last. This evidence first defendant has in no wise contradicted by adding any witnesses to prove the negative, and the Court must consider that first defendant wilfully made a false statement, in asserting that he had taken charge of the land in February 1851, and continued in possession ever since.

If he had done so, he must have known he was doing so after plaintiff had redeemed the otty, for it is not likely that the otty holder would have given up possession to first defendant before he had redeemed his otty.

Looking at the whole, the Court would have been much inclined to think the second deed of sale, B, a forgery, had it not been for plaintiff's statement that the third defendant's son Conamaly admitted the second deed before the Justice of the Peace of Mallagam, in November, 1850, and an informal record of this exists in the Justice of the Peace office ; where on a Petition presented by the plaintiff, the Justice of the Peace summoned all the parties, and third defendant's son Conamaly there stated that he admitted the sale to first defendant, but denied the one to plaintiff. This record is not on oath, and was therefore inadmissible as evidence. It is certainly possible that Conamaly may have been in collusion with the

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second defendant, first defendant, and the Puttore Notary, and that the second deed may have been a forgery; but looking at all the facts, the Court believes that it is a genuine deed of sale, and that third defendant now denies it because she knows she must refund the money she has received on one or other of the sales.

The question now resolves itself into this—which of those deeds is valid in law.

It has been attempted to be shewn that the former is invalid, because the schedule was an imperfect one, because the Odear did not sign as a subscribing witness, and because in the deed it states we have now received £3 7*s.* 6*d.* whereas only £1 10*s.* was paid on the date of execution; and the validity of first defendant's deed over plaintiff, is urged, on the grounds that first defendant had adjacent lands as regards the schedule. It has been contended by the Counsel for first defendant, that the Supreme Court by its decision in a recent case, has decided that a schedule from the Odear is indispensably necessary in this district before any transfer of immovable property can take place, that the Ordinance No. 1 of 1842 also renders this necessary, and that the Thesawaleme also requires it.

Schedule essential to transfers.

The Court has most carefully considered each of these questions, and has referred to the Supreme Court decision in Case No. 2,559, from the District Court of Jaffna, dated 3rd January, 1852, a decision of the Collective Court, where the Chief Justice differs in opinion, and this Court looks on that decision as not affecting the question now before it in any way, but simply as affecting a Rule alleged to exist in the Fiscal's Office, requiring schedule from the Odear before the Fiscal seizes lands under writs of execution.

As regards the Ordinance No. 1 of 1842, the Court finds nothing in it rendering schedule absolutely necessary on the transfer of lands—it simply asserts that a custom does exist for Headmen to grant Certificate or extracts from the thombo, commonly called schedule, and enacts certain penalties for extortion or neglect on the part of those headmen.

Custom.

Granting Certificates.

And now as regards the Thesawaleme and the regulation

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No. 18 of 1806, which makes that Thesawaleme law, the Court can find nothing in either to induce it to come to the conclusion that schedules granted by the Odears are legally necessary to render a transfer of land valid. In section 7 of the Thesawaleme, Paragraph I, it appears that since Blom's time no sale of land whatever has taken place until the intention of such as wish to sell their lands have been published on three successive Sundays at the Church to which they belong, now what in this requires a schedule?* It is a nortorious fact that this publication never takes place, a publication which the Court understood to mean, a publication at a public place where people resort on three successive Sundays or fixed days; such a publication never takes place: the Odears, on application made to them, if the fee offered to them is approved, grant schedules, or if another person offers a larger fee they will refuse schedules; and the Court cannot conceive what benefit accrues† from such a system, nor can it look upon the system as one at all required by the Thesawaleme; the object of which, in requiring publication, was the allowing of the neighbours and the people knowing what lands were to be sold, and this publication may doubtless be allowed with some good if made at a public place like the Court of the District or the market place.

Schedule not necessary.

Publication on 3 successive Sundays.

The Court has also referred to the list of Dutch proclamations &c., lately, and can find nothing requiring a schedule.‡

Dutch Proclamation.

Nor can the Court for one moment hold that a deed executed before a Notary is not valid, unless the Odear, a petty headman of the village, signs it as a subscribing witness. Does the Ordinance 7 of 1840, against frauds and perjuries; 16 of 1852, for the guidance of Notaries; or 17 of 1852, say one word about it.

Fraud Ordinance.

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* This is saying too much. It might be neglected in some exceptional cases, but to say that it *never* takes place is certainly incorrect.

† It will be observed throughout this judgment that the Magistrate was endeavouring to *make*, instead of *administering*, this Law.

‡ Why did not the Magistrate refer to the 72 orders? He might as well have looked into Chetty on Pleading, and argued against the system from Chetty's silence on the subject.

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Does the Odear's Schedule confer a title to the land, and if it does not, what use is there in his granting it, or what use in his signing the Deed.

This Court cannot therefore hold that a Schedule is necessary to render a Deed of transfer complete.

This Court has no doubt that the whole amount of £3 7*s*. 6*d*. alluded to in the Deed was paid.

Pre-emption.

As regards the first defendant's right of pre-emption, the Odear has stated that he made due publication of the third defendant's intention to sell his land to plaintiff, and has granted what he calls a Schedule Lr. D., though he now says it is an incomplete one, the Court must consider that the publication required by the Thesawaleme was made, and the first defendant therefore was too late in coming forward.

The Court has referred to a case No. 210, Tenmorachie, alluded to by Sir Charles Marshall, but in that case the adjacent landholder made her claim on the first publication. The first defendant lives in the village, has land adjoining this very piece, and must have known of the intention to sell.

Adjacent landholder without a mortgage.

The Court moreover doubts whether an adjacent landholder who has not got a mortgage on the land has a right to claim pre-emption.

In this case therefore the Court considers the Deed Lr. A., in favour of plaintiff, a valid one, particularly as plaintiff has complied with all the stipulation of that Deed, and duly redeemed the Otty.

The Court also considers that an ejectment by first defendant has been proved, he has called no evidence to controvert it, and he has not disputed the valuation of nineteen shillings, first defendant must therefore be mulcted in the damages. But as regards the costs of suit, it is clear that the plaintiff behaved in no fraudulent way, though believing the execution of the second deed; third defendant has behaved fraudulently, and will of course be liable to the first defendant for the money advanced by him to her, and her

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son. It is contended that the Odear has also done so, and perhaps he has, but holding as this Court does that his Schedule was not necessary, the Court cannot make him liable for the cost.

That he has not acted properly is clear, or consistently with what ought to be, and what is generally conceived his duty. He ought to have got back the other Schedule personally, or have taken active step to prevent a Deed being executed if he knew there were objections, but the only one he avers to have known of, was of Casipulle's, first defendant's, wish to buy the land as an adjacent landholder.

Odear's duty.

It is therefore decreed that the Deed of sale Lr. B. in favor of first defendant be forthwith cancelled, and set aside as invalid, and that plaintiff be quieted in possession of the land Katto-oorian in extent 12½ Ls., registered in the thombo on the names of Poolaipiayaga Mudliar, Rasoocoolosoorar and others, bounded on the East by Vayravenather and others, on the North by waste land, on the West by Casipulle, and on the South by a street, and it is further decreed that the plaintiff do recover from first defendant the sum of nineteen shillings, and that third defendant do pay the costs of suit.

3rd Nov., 1853.

Judgment of the Supreme Court.

That the decree of the Court of Requests of Mallagam, of 29th day of July, 1853, be affirmed, but not for the reason stated by the Commissioner, viz., that any Schedule was unnecessary, but because the first Deed was executed on a valid Schedule which was not cancelled, and that the claim for pre-emption was too late.

Prior Schedule.

Pre-emption.

No. 6,696.

29th May, 1854.

District Court, Jaffna.

Modelitamby Cander, of Tillepalle... ... ...*Plaintiff.*

Vs.

T. Modr. Sinnetamby, and wife... ... ...*Defendants.*

Casinander Moorger ... ...*Intervenient.*

PRICE, Judge.

The Libel claims a specific performance of an Agreement,

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dated 8th December, 1852, to transfer certain Land, the consideration being £49 19*s*. of which £37 10*s*. is alleged to have been paid, leaving a balance of £12 9*s*. which has been paid into Court.

The answer denies the agreement and payment of £37 10*s*., and adds that the Land has been sold by Defendants, to Intervenient, on the 6th January, 1853.

The Reply denies the allegations contained in the answer, and Plaintiff contends that the Deed to the Intervenient is illegal and fraudulent.

Intervenient claims the Land in right of Transfer, dated 6th January, 1853, from the Defendants, for £50.

The Court is of opinion that the Transfer Agreement granted by Defendants in favor of Plaintiff, is proved, also the payment of part of the consideration £37. 10.

Transfer Deed.

The Court is of opinion that the Transfer Deed by Defendants, in favor of Intervenient, dated 6th January, 1853, is invalid, inasmuch as it was not executed after due publication, as required by the custom of the country. The charge of collusion between Plaintiff and Defendants is not proved, on the contrary Defendants support Intervenient's claim, and collusion is apparent on the face of the pleadings between Intervenient and Defendants.

Publication.

It is therefore decreed, that Defendants do specifically perform the conditions of the contract granted by Defendants in favor of Plaintiff, dated the 8th December, 1852, by causing to be executed and granted in Plaintiff's favor, within one month from the date of this Decree, a Transfer Deed for the Land in question. Defendants and Intervenient to pay all costs.

It is further decreed that the Transfer Deed in favor of Intervenient, granted by Defendants, and dated 6th January, 1853, be set aside as invalid, it not having been executed after due publication, as required by the custom of the country.

Judgment affirmed in Appeal, 20th June, 1855.

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16th June, 1854.

No. 7,035.

District Court, Jaffna.

Suppremanier Mootatamby, general Attorney of Venayeger Sinnatamby... ... ...*Plaintiff.*

Vs.

Casinader Welayden, and others .. ..*Defendants.*

Price, Judge.

It being admitted by the pleadings, that the Plaintiff (Venayeger Sinnatamby) was formerly the owner of the Land in question, from whom the late father of the first defendant is alleged to have purchased it, as per Deed of 17th June 1837, (which Deed the plaintiff Venayeger Sinnatamby denies), and that the receipts and the agreement for the tythes was in the name of plaintiff (Venayeger Sinnatamby) up to 1853; defendants were called upon to prove the Deed and possession upon it, also the payment of the tythes, first defendant having stated in his *viva voce* Examination on the 9th February last, that he paid the tythes for eight or nine years, and that the tythe receipts were in his possession for all the payments he had made. This statement of first defendant was admitted on the same day, by third and fourth defendants. Defendants' first witness proves the death of the Notary Herft, and proves his handwriting and signature to the Deed of 17th June, 1837.

Defendants' second, third, and fourth witnesses are the subscribing witnesses to said Deed; two of said witnesses are by common fame barrators of the Court, but the Court cannot suppose the Deed forged so long ago as 1837, to meet the case.

The Court believes that it will not be denied that said Notary died some eight or ten years since: of his handwriting and signature, there can be no doubt. The Secretary of the Court has sworn to them, and the Court knows the signature of Mr. Herft, he having been a Proctor of the late Provincial Court of Jaffna, for very many years. The deed of 1837, is admitted not to have been executed on the schedule of the Odear, agreeably to the custom of the country, after due publication, but still from its length of date, the

Old Deed.

Want of publication.

Court admitted it in evidence, to see if possession could be proved upon it.

The Court is of opinion that the first, fourth, and fifth defendants have not made out a title to the Land in question, and that Judgment should go in favor of Plaintiff as claimed. Costs to be paid by all the defendants, the Court includes the seventh defendant, in the order for costs, being of opinion that seventh defendant's first and third witnesses gave false evidence, and that such evidence was got up by the seventh defendant in order to meet the expected denial of publication by seventh defendant's second witness, the Tom-tom beater, who, it would appear, has been dismissed from his situation on complaint made by seventh defendant to the Agent. The Tom-tom beater's name appears in both Lists of witnesses.

It is therefore decreed, that the Dowry Deed in favor of sixth defendant, granted by the first, second, third, fourth, and fifth defendants, and dated 11th April, 1853, be canceled and set aside. Costs to be paid by all the defendants.

No. 98.

Court of Requests, Chavagacherry.

Ayenger Welayden of Sarasalle ... ... *Plaintiff.*

Vs.

Sidembrenader Sarrawanemottoe, and another... *Defendants.*

20th Novr., 1854.

Plaintiff complains that he applied to the Odear for a schedule to sell his Land, but that the defendants objected to the schedule being granted.

Defendants claim the Land.

The evidence proves plaintiff's long possession.

PURCELL, Judge.

Odear to grant Schedule—objection declared groundless.

Plaintiff has another witnss to prove the same facts, but the Court deems it unnecessary to examine him. The opposition of defendant appears vexatious. Judgment for plaintiff. Odear ordered to give him schedule.

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19th March, 1855.

No. 14,482

Police Court, Jaffna.

Soopremanier Sidembrepulle ... ... *Plaintiff.*

Vs.

Sidembrenader Tilleambelam *Odear* of Madegel. *Defendant*

Hume, Judge.

Charge.

For neglecting, delaying, and refusing to grant schedule, or to furnish complainant with an objection schedule, in breach of the Ordinance 1 of 1842, clause second and third.

Evidence supports the charge.

Schedules of the kind referred to are held to be necessary, as by decision of the Supreme Court the Odear has therefore been guilty of a breach of the Ordinance in question. He is fined £5.

Odear fined.

Affirmed in Appeal, 14th May, 1855.

2nd April, 1855.

No. 14,487.

Police Court, Jaffna.

Vaytianader Velayder ... ... *Plaintiff.*

Vs.

Morgeser Amblewaner *Odear* of Alewetty ... *Defendant.*

Hume, Judge.

Charge.

Unnecessary delay.

For neglecting, delaying, and refusing to grant schedule, or to furnish an objection schedule in breach of Ordinance 1 of 1841, clause second and third.

The Accused is found guilty of unnecessary delay in granting the schedule in question, which appears to have been applied for at the time* stated by complainant, and yet was not completed till the 27th November following; the evidence of the witnesses called by the Odear in disproof of the complainant's statements adds to, instead of detracting from, their probability, as that witnesses statements were

* About 10th October, 1854.

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given in a most shuffling way, and are very contradictory and evasive.

The Accused is fined £1.

The witness Amblewaner Sinnatamby 5 shs. for shuffling and prevaricating in reply to questions put him.

Judgment affirmed in Appeal, 14th May, 1855.

No. 7,686.

8th June, 1855.

District Court, Jaffna.

Siwecoronada Mudliar Jeregouader, Administrator of the late Weerappepatter Cadrawaloepatter... *Plaintiff.*

Vs.

Cander Sinnatamby and Canneweddipulle Veerawagoe *Odear* of Vanerarponne East, and another ... ... *Defendants.*

PRICE, Judge.

Publication.

It is decreed that the Transfer deed dated 2nd March 1854, (copy of which is filed in the case), in favor of first defendants, granted by the third defendant, is cancelled and set aside as illegal, having been executed without due publication. Defendants to pay the Costs.

No. 2,841

Cander Murger and wife Walliamme, of Batticotta *Plaintiffs.*

Vs.

Amblewaner Sarrewannepermal and wife Amerapaddy ... ... *Defendants.*

Mr. Brown for plaintiffs.

Mr. Anderson for Defendants.

Dowry Deed.

Schedule.

Defendants Proctor moves that the Dowry Deed filed in support of plaintiffs claim, and upon which plaintiffs ground their action, may be declared an invalid instrument, inasmuch as it appears on the face of it to have been executed illegally, without any schedule or publication. Defendants Proctor contends that Dowry Deed is equal to any transfer of property, as it gives the Donee an exclusive right to the property conveyed in dower.

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Plaintiff's Proctor maintains that the Dowry Deed in favor of plaintiffs is a legal one, and that there was no occasion for schedule or publication, because the Country Law provides separately how transfers of Land are to be made and how dowry ought to be given. The Country Law requires that there should be publication and schedule when a person sells his property to a stranger, in order to ascertain whether there are any parties who have a right of pre-emption or right of preference to purchase said property, and the publication and schedule is not necessary with reference to dowries, because the parents give their property to their children.

PRICE, Judge.

The Country Law clearly refers to sale of Land, but the Court believes that the custom of the Country is to grant Schedules for dowry Lands as well as transfers by sale.

The Court has no objection to take evidence on the point and to sit with special Assessors, should the parties wish it, as it is the first time the objection has been taken before this Court.

The parties express a wish that the Court will sit with special Assessors.

PRICE, Judge.

1st August, 1855.

Special Assessors. Tisseweerasinga Mudliar, sworn, Viseyaretna Mudliar Tillenader, affirmed; Copalenayeken Sooperayaloo Nayaken, affirmed.

The Assessors are asked the custom upon the following point, viz.

In the transfer of Land in dower, is a schedule and publication necessary as in cases of sale of Land?

The first Assessors states, schedule and publication in giving Lands in dower are not necessary where parents give their purchase or dowry Lands in dower. If an individual wishes to sell a Land, registered in the thombo on his own name he must get schedule and have publication made.

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The other two Assessors state, the custom is not to obtain schedule or have publication made when Lands are conveyed by parents to their daughters in dower.

By the Court to the Assessors.

Where a mother gives property in dower belonging to herself and her deceased husband, publication and schedule is not necessary.

The parties wishing to call evidence as to the custom, the Court allows them to do so.

Mr. Advocate H. Mutukisna for plaintiffs.

PRICE, Judge.

19th October, 1855.

To prove custom ten Notaries have been called and examined, who prove that some dowry deeds are executed upon schedules and some without schedules, but the greater number of dowry deeds were executed upon schedules.

Dowry Deed.

Schedule.

Plaintiff's Advocate maintains that schedule is not necessary.

1.—It is peculiar to this Province, and unknown to English, Dutch or Roman Law, which generally guide us, even in this Province its operation is limited.

Schedule unknown to English, Dutch, or Roman Law.

2.—It is a special exception founded on the Thesawaleme, and we must look to the Thesawaleme before we extend that peculiar exception to other Cases; it devotes two Sections, one to purchases and sales, and the other to donations. The former speaks expressly of publication, the latter not a word, the inference is that such a custom was not known at the time.

Purchases and sales. Donation.

3.—The reason assigned for publication is to enable parties, with preferent rights, to assert those rights, but that reason cannot apply to dowry, for joint shareholders and neighbouring Landowners cannot prevent dowry being given to daughters.

Publication.

4.—The practical working of the Schedule system as it exists, is not only a failure as regards its primary object, but notoriously oppressive, and the Court ought to pause before it extends its operation.

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5.—Custom, according to the English Law of evidence, by which this Court is bound, has not been proved; for admitting Dowry Deeds have been executed upon Schedule, to constitute a legal custom it is not only necessary that its existence should be established by evidence, but it should be reasonable, certain, compulsory, consistent and uninterrupted. Refers to Starkie, Vol. 32, Page 358, here it is none of these, for it has been shewn that many Dowry Deeds for many years have been executed without Schedule, and therefore the custom has been interrupted and cannot be considered as compulsory.

The greater number of Dowry Deeds being upon Schedule, can be easily accounted for, from the fact of parties wishing to be on the safe side, but what is optional cannot go to establish a binding or legal custom. In this instance in particular the Court ought not to interfere as the Dowry Deed is so old as 1839, and other Lands mentioned in the Deed have been conveyed to third parties by Plaintiff, any interference at present would affect the right of many innocent purchasers.

The Court will give decision on the point on Monday next.

22nd October, 1855.

PRICE, Judge.

Resumed from the 19th October last.

The Court is called upon to decide whether publication is necessary before Landed property can be transferred in Dower or not.

The Thesawaleme (where publication is required) particularly refers to *Purchases* and *Sales*, Vide Sect. 7, with reference to *Donations* it is silent on the subject of publication, Vide sect. 4. The necessity of publication in purchases and sales is obvious, as relations, joint tenants, and immediately adjoining Landholders, may claim a right to purchase in preference to others by pre-emption. In Donations and Dowry the same right does not exist, and publication is not required by the Country Law.

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The Court has caused reference to be made to the Duplicates of several Notaries for many years past, where Land has been given in dower, by which it appears that by very far the greater number have been executed on Schedule, but the Court does not consider this sufficient to establish a Custom.

The Legality of the Dowry Deed in question, which was executed so long back as 17th Septr. 1839, was not mooted till 1st August 1854.

Schedule and Publication not necessary for Dowry Deed.

The Court decides that publication was not necessary. Parties are therefore called upon to proceed with the case.

No. 101.

Court of Requests, Chavagacherry.

Sinnatamby Welaiden of Edeycorichy ... ... *Plaintiff.*

Vs.

Ayenger Cadergamer and wife, Weyalatchy of Vanney North... ... ... *Defendants.*

Plaintiff claims the Land in question in right of purchase from the late Canden Soopen, upon a Deed dated 30th December 1852, and complains that the Defendants have ejected him from possessing the same.

Defendants claim the Land by right of dower from the brother and sister of the second Defendant, who bestowed it to her on her marriage, upon a Deed of 19th September 1850.

Plaintiff's Deed was not executed upon a Schedule, but the Deed of the seller to Plaintiff was.

PURCELL, Judge.

31st August, 1855.

The Plaintiff has made out his case to the satisfaction of the Court, and the case attempted to be proved on behalf of Defendants has failed in the most material point, for it is clear from the Survey that *l m k f* does not con-

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tain 18 Lachams as alleged on behalf of Defendants, but 16½ Lachams. It is evident that the *Temple* on the North side, and not the Plaintiff on the East, has encroached on Defendants.

It is therefore decreed that Plaintiff be quieted in the possession of the 2¼ Lachams as claimed, with costs.

9th Feby., 1856.

Judgment of the Supreme Court.

Judgment of the 31st August, 1855, be set aside, and the case be remanded back for a new trial. The plaintiff claims under a deed of transfer, dated 30th December, 1850, which was executed without Schedule or publication made, apparently, for the Notary states, that a Schedule having been obtained when the Transfer Deed to the plaintiff's vendor, was executed before him on 2nd February, 1843, he did not require a Schedule to enable him to draw the plaintiff's Deed of transfer, but the Supreme Court requires evidence on the point, to shew that by the customary law, fresh Schedule and publication can be dispensed with under such circumstances, and the Deed be valid.

1st. Schedule

2nd. Schedule

11th Nov., 1856.

WODEHOUSE, Judge.

Parties present, the order of the Supreme Court is explained to them, and it appearing by the Country Law Schedule is on all occasions necessary in selling land, plaintiff is nonsuited, and defendant *quieted* in possession.

1st.—Plaintiff appeals that the Supreme Court referred the case back to hear evidence of custom, whether fresh Schedule is required, but which the Court below has not done.

Fresh Schedule.

2nd.—That the seller's Title Deed was executed upon a Schedule according to the local custom, and in consequence of the formality already observed, a second Schedule or publication was not absolutely wanted, and that in no part of the Country Law is such a doctrine mentioned.

1st Deed upon Schedule. Whether a schedule necessary for 2nd. Deed.

3rd.—That when hereditary lands are sold in absence of any documents then and then alone a Schedule or publica-

Hereditary Lands.

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tion is required, but not when there is already a Title Deed executed upon Schedule.

"That throughout the Northern Province it is a stand-"ing custom, that Deeds of the description as presently "forms the subject and point under consideration, have been "numerously executed, and many such have been the subject "of investigation in Courts of Law, and Judgment passed "on those without reference to a second Schedule or "publication, and such have all been held good; and why "now a practice to no great utility should be followed up, "merely for the benefit and profit of the headmen called "*Odears*, who hold the Thombo registry, by repeatedly "paying over and over certain fees for the Schedules, "who, in many instances, also never make any kind of "publication, to the loss and disadvantage of the public "community, is a matter submitted for the more mature "consideration of this honorable Court, and should not be "tolerated in the least."

Remarks of the Commissioner, on an extract of the Record Book—in forwarding the case in Appeal.

I have only to remark that, in addition to consulting the Thesawaleme, I specially asked the opinion of the Government Agent, Mr. Dyke, as to the custom of granting schedule, and he informed me that on all and every occasion it was necessary that the Odear should do so. I have also consulted one of the oldest inhabitants of the Province, a very intelligent native, who repeats what Mr. Dyke says.

Judgment of the Supreme Court.

12th November, 1856.

Decree of the 11th November, 1856, be set aside, and case remanded for a new trial.

The Supreme Court sent back the case for a new trial that the plaintiff may be allowed to adduce evidence by the customary law of Jaffna, that the publication and schedule upon the sale to him may be dispensed with under the circumstances.

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5th January, 1857.

WODEHOUSE, Judge.

Canawadiar Sarrawanamutto, Notary of Mogamalle, affirmed, and states,—I have been Notary since 1829. It is necessary in drawing up Transfer deeds to have a schedule, this is the country law, and it is imperative.

Aromogam Canawadiar, Notary of Eledomattowal, affirmed, states,—I have been Notary since 1837. It is proper to obtain schedule in Transfer, but if the original deed is in hand, deeds do pass without one. The country law speaks of it as being required to have schedule granted after due publication has been made, but it is the proper course to *obtain schedule* in every case.

Schedule necessary on every new Deed.

Murger Suppramanier, Notary of Varane Erecoorichy, affirmed, states,—I have been Notary since 1839, one must obtain schedule before the passing of a deed—it is positively necessary, if *both parties* agree not to have a schedule they go without one.

30th June, 1857.

J. R. Vandergeucht, sworn, states,—I am a Notary Public for some 30 years, a schedule is required in every Transfer, but at *desire of parties* deeds are drawn up on former schedule. The custom operates both ways. I do not know if a deed which was drawn by me without schedule was set aside by the District Court. There could be no question as to the validity of a transfer deed with a special schedule, but a transfer deed drawn up without schedule would naturally be questioned as a suspicious document.

Deed without Schedule suspicious.

Moorger Sooper, affirmed, states,—I am a Notary Public for the last 17 years. I have executed many Transfer Deeds. I have executed Deeds without schedule, about two or perhaps four. I have passed a Transfer deed on a former schedule on another deed, this is the practice. I executed the Transfer Deed in the present case. The custom is both ways. It is however difficult to pass deeds without schedule, as we must go to the Odear who holds the thombo to ascertain the registry. If I was to buy

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land, I would not be contented to have a Transfer deed in my favor on a former schedule.

Sooper Moorger, affirmed, states,—I am a Notary for eighteen years. I have executed many deeds without schedule; when there was an Original deed, they are both schedule and without schedule. I would pass a deed without schedule if I know the former deed to be good which has a schedule. I would not pass a Transfer deed in my own favor without a schedule, unless the former deed was every way trustworthy—certainly a schedule is a good thing—there are more deeds passed on schedule than without. The Country Laws contain an order for schedule.

Cander Sidembrenader, affirmed, states,—I am a Notary of nineteen years I standing, have executed deeds with and without schedules, the deeds I passed without schedule were by virtue of original transfer deeds with schedule. Mr. Leisching, the late Commissioner of Point Pedro, was in the habit of drawing up deeds without schedule. The usual custom is to obtain schedule—people who have transferred deeds without schedule do not suffer. I would pass a transfer deed without schedule on a former deed, provided it was clearly trustworthy. I should not be willing myself to purchase land and have a Transfer deed passed without schedule, even although on a former bond.

Judgment.

Plaintiff nonsuited with costs.

Judgment affirmed in Appeal, the Supreme Court seeing no reason to the contrary.

24th July, 1857.

Translation of a Document filed by defendants in the above Case. Lr. E.

To the Maniagar of Waddemorachy.

On the 29th December, 1852.

P. A. Dyke Esq., Government Agent for Jaffna and its dependencies, gives information to the Maniagar.

It is come to cognisance that some Notaries executed, transfer deeds without Schedule, and that it is ex-

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pedient to know it, because a certain case took place before the District Court of Jaffna. He informs that the Proctor of the plaintiff informed the Court, that the Fiscal would not accede to sell away under a writ the defendant's Land without the Schedule of the Odear, and upon which the Proctor of the District Court appealed to the Supreme Court of the disinclination of the Fiscal to sell the Land, and the Supreme Court enquired, first, from the Fiscal, of the Schedule in general, and second, the custom which takes place in the Fiscal's Office respecting the schedule, of which the Fiscal gave a full description, and the three Judges of the Supreme Court sat together and passed the following decision, viz.—It was proper on the side of the Fiscal to have dealt in conformity to the custom of the Province and rejected the appeal.

The above matter not being required to be published throughout the country by tom-tom beating, it is therefore requested to publish the same to the country according to your convenience from time to time.

Translated by
(Signed) S. Walopulle.

4th Sept., 1855.

No. 6,817.

District Court, Jaffna.

Nicholapulle Francisco and wife Escolatte... ...*Plaintiffs.*

Vs.

Sanmogam Amblewanen and others... ... ...*Defendants.*

Price, Judge.

The Court is of opinion that it is unnecessary to take evidence in the case, it is admitted that the lands were sold and transferred by first, second, and thirdDefendants to Plaintiffs without schedule or publication, agreeable to the custom of the country. The Court is further of opinion that the transfer deed filed by plaintiffs should be set aside, and that decree should go in favor of plaintiffs against first, second, and third defendants, for the purchase amount.

Schedule.

It is therefore decreed that the bill of sale filed in the case by plaintiffs, dated 20th October, 1852, be set aside, and

Bill of Sale set aside for want of Publication.

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cancelled as illegal, having been executed without schedule or publication. It is further decreed that first, second, and third defendants do pay to plaintiffs the sum of £19. Plaintiffs, and first, second, and third defendants to pay their own costs. Costs of the other defendants to be paid by plaintiffs, and first, second, and third defendants, jointly.

31st October, 1855.

No 48.

Court of Requests, Jaffna.

Assenatchia, daughter of Mohamadoe Ossen of Vannarponne... ... ...*Plaintiff.*

Vs.

Cadersaib Mahammadoe Meyedien... ... ...*Defendant.*

PRICE, Judge.

The Court is of opinion that the bill of sale in favor of plaintiff, dated 31st December, 1851, should be cancelled and set aside, inasmuch as no publication was made or schedule granted at the time of its execution,

Publication.

Ordered accordingly, with costs.

31st October, 1855.

No. 95.

Court of Requests, Jaffna.

Canther Aromogam and wife Ramasy of Puttoor...*Plaintiffs.*

Vs.

Poodetamby Tavesynaden and others... ... ...*Defendants.*

PRICE, Judge.

"The land alluded to by the witnesses, was sold under writ against me, for my debt. At the sale my creditor purchased he land, and I again purchased it from the creditor. I have a purchase deed, but I have not filed it in the case. I repurchased the land some time since, and paid the money, but I only got my title deed for it three or four days ago.

The deed was executed before the Notary of Niervely, Canneweddiar, it was executed *without publication or schedule.*

Publication.

On hearing this statement of first plaintiff, the Court is of opinion, that plaintiffs should be nonsuited with costs.

Plaintiffs are nonsuited with costs.

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7th November, 1855.

No. 5,525.

District Court, Jaffna.

Madawaddian Selese of Kayts .. .. *Plaintiff.*

Vs.

Marsaltamby Adrian and others... ... ...*Defendants.*

Price, Judge.

Mr. Advocate Mutukisna for the second defendant moves that the case be disposed of on the pleadings, as far as half share of the land in dispute is concerned (said half is an undivided half), namely, the share which plaintiff claims under fourth defendant, and the fourth defendant under the fifth, on the ground that plaintiff has no right whatever to the land; he (plaintiff) has clearly no prescriptive right, and his sale deed can give him no title, because on the very face of the deed of 1849, it appears clearly that the seller (fourth defendant) had no right to convey this land—said deed of 1849, being admitted to have been executed without schedule or publication, the purchaser cannot acquire greater right than the seller possesses himself, for every purchaser steps into the shoes of the seller, and if the seller's title is bad the purchaser's title must be bad also. The fifth defendant here states he has no claim on the land, and that he has transferred away that land without publication, therefore fourth defendant's title falls to the ground at once, fifth defendant being admitted to be the original owner of the land, and he admitting second defendant's right by possession, I move that plaintiff's claim may be dismissed as far as that half share is concerned, and to enter up judgment in favor of second defendant for that half.

Vendor's Deed without publication.

By second defendant's Advocate to the fifth defendant. First and second defendants claim the land in dispute in right of possession, they possessed it to my knowledge for 30 or 35 years, they and their Parents.

By plaintiff's Proctor to fifth defendant.—I sold one-half of the land to fourth defendant, I considered the land to be mine when I sold it, when I sold the land throughout, second defendant had no right to it, and I sold it thinking it to be my property. I signed the deed in favor of

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fourth defendant, although the land was in possession of second defendant; we called it my mothesium possessing Land as it was the property of my mother. I am a witness to a Deed granted by third Defendant to Plaintiff conveying one half of this Land in right of purchase, I wrote the Deed; when I wrote the Deed, third Defendant sold the Land as the property of his mother I was not then aware it was the property of second Defendant. I became aware that the Land was the property of second defendant after the Deed of 1849; I saw a Deed in favor of my mother for the Land I sold, I have got that Deed, my mother and third Defendant's mother were sisters, my mother and second defendant's mother were also sisters.

Plaintiff's Proctor opposes the motion upon the ground that Plaintiff's title is valid, inasmuch as his deeds were executed after due publication and schedule, as required by the Country Law.

Secondly.—On the admission of the fifth defendant, one half of the Land in question cannot be decreed in favor of second defendant to the prejudice of Plaintiff and fourth defendant, as it is clear by the fifth defendant's statements that he is in collusion with second defendant.

Fifth defendant's Advocate in reply.—The fifth defendant's admission or denial can only effect my motion as far as it relates to entering up judgment in favor of second defendant, but it does not affect the question of plaintiff's title, which is null and void; it is a matter of no consequence whether second defendant has a right or no, for the plaintiff must first shew a valid title, which it is clear he has not done, in this instance, the seller to him, that is, the fourth defendant, having no valid title.

Defendant's Proctor hands in decided cases in Appeal, Nos. 3,294 and 739, the latter only was decided in Appeal, where the objection was taken by one of the sellers.

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The objection is not taken by the seller, but by a third party.

Case postponed till to-morrow, when the parties and witnesses are ordered to attend.

8th Nov., 1855.

Case resumed from yesterday.

As the Court understands the case, plaintiff derives his title to two portions of the Land in dispute, each in extent 1⅜ Ls., under separate Bills of sale marked A. and B., the former dated 28th November, 1849, the latter 20th February, 1851. Fourth defendant derived his title from the fifth, by Deed C., dated 23rd October, 1849, but fifth defendant says this sale took place without schedule and due publication as required by the Country Law, if his statement is correct, and it is no where denied, fourth defendant had no legal title to convey to plaintiff, for fourth defendant's title being only from 1849 he had no prescriptive right.

Vendor's Deed set aside for want of Schedule.

Vendor's Deed virtually cancelled.

The Court cannot see how it can give judgment as applied for by second defendant's Advocate in favor of second defendant, for Land which it is denied by plaintiffs that she never possessed, the only party who admits her is fifth defendant, who tells a very improbable story about her title. All the Court can do is to set aside the sale from fifth defendant to fourth defendant, for want of schedule and publication, which virtually cancels the sale in favor of plaintiffs; but the Court cannot on the pleadings, as they stand at present, give judgment in favor of second defendant for any portion of the Land. If the second defendant is satisfied with the cancelling of the sales to the fourth defendant and plaintiff for a portion of the Land, second defendant would not be entitled to her costs, unless she proved a prescriptive right; neither could the Court decide the costs with regard to the other parties without evidence, for fifth defendant in his answer says, that first and second defendants claimed the Land in right of possession, he proposed to return the money to fourth defendant and cancel the sale B, but plaintiff and fourth defendant colludiug together refused, proof of this is

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necessary, before the Court can decide with regard to the costs. If it can be clearly shewn that plaintiff, with his eyes open, purchased the Land from fourth defendant, who he knew had no legal title to it, he would be liable for a portion of the costs, notwithstanding the sale to him as far as granting the schedule and publication of sale was regular.

Second defendant's Advocate states he is quite ready to take a nonsuit in favor of second defendant, as far as half of the Land is concerned.

The plaintiff will then have to confine his evidence to the purchase from sixth defendant, Bill of sale A.

Plaintiff is nonsuited in his claim against the second defendant, as far as half of the Land in question is concerned.

Final Judgment after hearing evidence.

PRIOR, Judge.

12th Nov., 1855.

With reference to the nonsuit entered on the 8th instant, the Bills of Sale of the 28th February, 1851, marked C. and dated 23rd October, 1849, are set aside and cancelled as far as one half share of the Land in question is concerned, for want of due of publication. The want of schedule and publication could give no legal right to fourth defendant to convey to plaintiff.

Want of Publication.
Vendor's title defective.

The only remaining points at issue now, are the sale of the half remaining portion by third Defendant to Plaintiff after Schedule and due publication, and third Defendant's possession, and the prescriptive possession of second Defendant.

The Court is of opinion that there was no Schedule granted or publication made, as required by the Country Law, and that the Bill of sale A. should be cancelled and set aside as illegal; third, fourth, and fifth Defendants paying the costs. Decreed accordingly.*

Judgment affirmed in Appeal, 2nd December, 1856.

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* The Deed in favor of Plaintiff, letter B., was executed upon Schedule as recited in the Deed itself, but the Deed in favor of the Seller (the fourth Defendant) Lr. C, had no Schedule; and Plaintiff failed to prove that the other Deed Lr' A, was executed upon Schedule after due publication, although it was so recited in the said Deed Lr. A.

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PRICE, Judge.

No. 8,021.

District Court, Jaffna.

28th February, 1856.

Murger Aronaselam of Vannarponne ... ... *Plaintiff.*

Vs.

Vissower Valoe and three others ... ... *Defendants.*

Publication.

The Court is of opinion that due publication of the sale of the Lands in question has not been proved, and that therefore the Transfer Deed in favor of Plaintiff, purporting to be granted by first Defendant and his late wife, should be set aside and cancelled.

Two persons are called to prove publication (one a relation of the parties), the man stated to have made the publication denies that he did so.

It appears that Plaintiff is the nephew of first Defendant, and two of the witnesses to the transfer in favor of Plaintiff are related to first Defendant, who admits the sale.

The Transfer Deed in favor of Plaintiff, dated the 16th December 1854, is cancelled and set a side for want of due publication, but first Defendant having admited the sale to the Plaintiff, it is decreed that first Defendant do pay to Plaintiff the sum of £15, and £1 17*s.* 6*d.*, being the value of the Annual produce, with all costs.

Judgment of the Supreme Court, 3rd December, 1856.

Recital of publication of Deed.

Heirs estopped for disputing.

That the Decree of the District Court of Jaffna, of the 28th day of February 1856, be *reversed,* not only is the fact of the publication recited in the Deed, but also the second Defendant is estopped from relying on a want of publication, inasmuch as she claims as heir of one the Vendors.

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No. 94.

4th March, 1856.

Court of Requests, Jaffna.

Vuregettipulle Selleppah and wife Vealatchi-pulle ... ... *Plaintiffs.*

Vs.

Rayeretna Modliar Sittambelam Nagappen Cadergamen and wife Parpaddy of Chavatenne ... ... *Defendants.*

The Court is of opinion that the Bill of sale in favor of third Defendant should be cancelled and set aside, for want of due publication, according to the custom of the Country, and it is cancelled and set aside accordingly.

Bill of Sale cancelled for want of publication.

It is Decreed that second Plaintiff has a right by pre-emption, she being an admitted sister of the first Defendant.

First and third Defendants to pay the costs.

PRICE, Judge.

No. 136.

17th July, 1856.

Court of Requests, Jaffna.

Colendey widow of Vather of Carraoor ... ... *Plaintiff.*

Vs.

Parpaddipulle widow of Sanmogam and Velayder Sinnatamby ... ... *Defendants.*

Plaintiff's Proctor moves that the Case may be disposed of as it stands, setting aside the Deed in favor of second Defendant, granted by the first Defendant, for want of due publication as admitted by Defendants.

The Bill of sale in favor of second Defendant, dated 2nd May, 1856, is cancelled and set aside with costs.

Bill of Sale set aside for want of publication.

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PRICE, Judge.

24th July, 1856.

No. 3,081.

Distict Court, Jaffna.

Muttopulle widow of Sinnatamby of Vannarponne... ... ... *Plaintiff.*

Vs.

Walliamme wife of Nellatamby and her husband... ... ... *Defendants.*

Deed without publication.

Upon possession.

The Court is of opinion that, agreeable to the Law of the Country, publication and Schedule are necessary upon every transfer of Land of the nature of the one in question, the Bill of sale in favor of Plaintiff of 1844; had a two years' possession on it been proved it would have stood good, but this action was brought so far back as 1847, and only put on the trial roll on the 18th April, 1856.

Plaintiff's claim is therefore set aside with costs, for want of due publication and Schedule, and the Deed of the 6th July, 1844, is cancelled and set aside.

20th October, 1856.

No. 8, 705.

District Court, Jaffna.

Anthony Nicholan, wife Vawarasy Pauloe Swam, and wife Maria, Administrator and Administratrix of the late Estrally, widow of Bessemy ... ... *Plaintiffs.*

Vs.

Anthonipulle Bastianpulle, of Jaffna ... ... *Defendant.*

PRICE, Judge.

This is an action to recover possession of half of a House and Land alleged to have been donated to the late Estrally, widow of Bessemy by the late Kittoriapulle as per Deed, of (26th September 1840.) The execution of this Deed is admitted and said Deed reserves a life interest in the property so donated to Kittoriapulle. The Deed conveys the property from henceforth (the date of the Deed) as the property of said Estrally, her Heirs, Executors, Administrators and As-

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signs (plaintiffs now sue as her Administrators), Estrally died in 1845.

There is no proof of the delivery of the Deed to Estrally or that it was ever in her possession.

Second witness proves that Estrally lived in the House, a portion of which is in question, having a right to half of it in Dower, there is also evidence of Estrally having died in said house.

Defendant maintains that there was no delivery of the Deed to the Donee, on the contrary that the Donor delivered it to defendant with the transfer Deed in his favor. That the Donee having died ten years before the Donor without acceptance of the donation Deed, it remains the absolute property of the Donor.

Donation Deed.

Publication.

That the Donor acquired a prescriptive right for want of such acceptance on the part of the Donee. That no publication of the sale to the defendant was necessary. That plaintiffs have not shewn that the grantor of the Transfer Deed (Kittoriapulle) was of unsound mind at the time of its execution.

There is no proof of the delivery of the Donation Deed to Estrally, nor is there any proof of its having been found amongst her effects at the time Estrally's property was appraised, on the contrary it appears to have been in the possession of Kittoriapulle, and to have been delivered by her to the defendant (who now puts it in evidence) at the time of the transfer in his favor.

Schedule for Town Lands.

Schedules for Lands in the Town are not necessary, no such custom having existed, no evidence has been called to shew that Kittoriapulle was of unsound mind at the time of the transfer to defendant.

Plaintiffs having failed to prove a delivery of the Donation Deed to Estrally, the Court is of opinion that the Libel should be dismissed with costs, and it is dismissed accordingly.

Judgment of the Supreme Court, 23rd January, 1857.

That the decree of the District Court of Jaffna, of the 20th day of October, 1856, be reversed, and judgment enter-

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ed in favor of the plaintiffs for the half share of the House and premises in dispute, defendant paying costs.

From Kittoria's statement in the Deed of the 11th March, 1856, the Court must presume that the Donation was complete, and the right to the land therefore survived to Estrally's Heirs, notwithstanding the clause that Kittoria was to possess the Land during her life.—Voet. 39, 54, and 21.

30th October, 1857.

No. 253.

Court of Requests, Jaffna.

Elratamby Seeny, Administrator of Ramasy ... *Plaintiff.*

Vs.

Philipoe Fernando, of Pascor ... ... *Defendant.*

PRICE, Judge.

Objection to Schedule justified.

The Court is of opinion that defendant was justified in objecting to Schedule being granted to plaintiff for the sale of the Land, inasmuch as he at the time held a Writ against Ramasy, whose Executor the plaintiff is. Plaintiff can have no claim for produce, by his own shewing.

Plaintiff to pay the costs.

26th Nov., 1857.

No. 21,437.

Police Court, Jaffna.

Aromogam Cartigaser ... . *Plaintiff.*

Vs.

Naraner Cadraser Odear of Sangawe ... *Defendant.*

CAMPBELL, Judge.

Charge,—for refusing to attend to Prosecutor's application for a schedule, for the sale of his debtor's property under Writ No. 9,370, and for refusing to give his reasons in writing for such refusal, against Ordinance No. 1 of 1842, clauses 2nd and 3rd.

Objection Schedule. Reasons in writing.

The Court records a verdict of guilty against Defendant, he had no right to withhold the schedule on any pretence whatever without giving his reasons in writing for so doing, but in this case it appears from his own statement he had no

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solid reasons for withholding the schedule, and consequently provoked the Prosecutor in prosecuting him, the fee for granting the schedule is not due until after its delivery to the person applying for the same, and the Defendant in this case is fined five pounds, because he abused his power by refusing to grant the document unless he was paid beforehand.

Judgment affirmed in appeal *on the first point.* 4th January, 1858.

No. 8,598.

District Court, Jaffna.

22nd Feby. 1858.

Malaweraya Modliar Sittambelam of Puttoor... ... *Plaintiff.*

Vs.

Soopremania Chettiar Ramalingam and others... *Defendants.*

PRICE, Judge.

The Court is opinion that the Lands sold are not sufficiently identified as being those given in special mortgage to the Plaintiff.

Prior to the execution of the Bond in favor of Plaintiff, it appears that certain Lands were given in mortgage to the late Mrs. Toussaint, from whom they were redeemed, and title deeds and schedule were handed over to Plaintiff: on comparing the registry of the Lands as given in the schedule with those mentioned in the Bond, they do not agree, and there is no evidence to identify the Lands mortgaged to plaintiff as being those mentioned in the schedule.

Fresh Mortgage. Fresh Publication.

According to the custom of the Country, on a fresh mortgage of the Lands fresh publication should be made and fresh schedule granted.*

The Court is therefore of opinion, that plaintiff's claim should be dismissed for want of publication and schedule, and there not being evidence before the Court to identify the lands sold under Writ 6,035 with those mortgaged to the plaintiff.

Plaintiff's claim dismissed with costs.

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* The Editor appeared, and submitted that the Judgment should be affirmed on the facts, as he was not prepared to support the point of Law raised in the Judgment.

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Judgment of the Supreme Court. 29th July, 1858.

Affirmed on the ground that there is no evidence to shew the identity of the Lands sold with those alleged to be specially mortgaged.

3rd May, 1858.

No. 9,260.

District Court, Jaffna.

Sinnetamby Welaiden of Chiviatorre ... ... *Plaintiff*.

Vs.

Soopremanier Vessowenaden and wife Ponnatchy ... *Defts*

Price, Judge.

The Court does not believe the evidence to prove publication, the more particularly so when it appears by the evidence of the seller (ninth witness) that at the time of the sale to plaintiff, there had been a disputed possession of the Land between himself and first defendant and his father of three years standing, it is not likely that had the usual publication been made, they would have remained quiet and not have opposed the sale.

The Court is of opinion that the sale has been a sham one, and merely got up to place plaintiff (the seller's son-in-law) in a position to bring the action.

Deed set aside for want of Publication.

Libel dismissed, and the deed of the 30th September, 1853, cancelled and set aside for want of due publication, with cost.*

Judgment of the Supreme Court.

Affirmed, but the dismissal to operate as a nonsuit.

17th May, 1858.

No. 16,716.

Police Court, Chavagacherry.

Tenvy Sinnawen of Codamien ... ... *Plaintiff*.

Vs.

Cander Cadergamen *Odear* of Codamien ... ... *Defendant.*

Wodehouse, Judge.

For refusing to grant the Prosecutor a schedule, against the second Clause of the Ordinance No. 1 of 1842.

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* Defendants claimed the Land by inheritance.

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Accused pleads Not Guilty, but says, I have no schedule or written answer or *refusal.*

Complainant affirmed, states, in March I applied to the Odear (accused) for schedule, he refused to give me one, I therefore bring this case.

Refusal of Schedule.

Examined, I applied for schedule to the *Land of Morger Canther.* He is dead, but his wife and Children are anxious to sign the deed if a proper schedule is furnished.

Accused adjudged guilty, fined £1.

No. 179.

Jaffna Cutcherry,
12th June, 1858.

SIR,—It has long been an established practice, that I should be regularly informed of all cases in which the conduct of a Headman or Police Vedahn is called in question by any Court. The principal Headman, as well as the particular Headman in question, furnishing me reports.

For many years too, by the courtesy of the Judges and Magistrates, I have been furnished, on application, with the proceedings of such cases and others of public interest, for reference.

In accordance with the practice noticed, it was lately reported to me, that an Odear had been fined by the Police Magistrate of Chavagacherry, under the Ordinance No. 1 of 1842, for refusing to grant a schedule, and not giving to the applicant a written statement of the grounds of such refusal.

Certain statements of the Odear induced me to obtain the proceedings under the usage I have noticed, and the perusal of them induced me to require the Odear's attendance, to afford some further information, and I annex hereto his statement, as taken by the Assistant Agent.

The point in the case is, that the application to the Odear for a schedule was made by an intending purchaser of a land.

The Ordinance in question, No. 1 of 1842, was passed at my instance, it was indeed drafted by me, and the precise terms of it were the subject of some correspondence.

The interpretation of the whole of the requirements of the Ordinance, is governed by the opening words of the Preamble, "Whereas a custom exists." Thus the words "such schedules"

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and "any party applying for the same" as occurring in the 1st Cl. of the Ordinance, apply to such schedules as had been granted under the custom referred to in the Preamble, and to such parties as, under that custom, had been in the habit of applying for them.

And, to apply these observations to the particular case, I have the honor to observe, that it was intending sellers, and they only who, according to custom, applied for schedules, and that to them only were schedules ever given. I submit therefore, that as avowedly an intending purchaser, the Prosecutor in the case in question, had not even a pretence of right to apply for a schedule, and that, consequently, the Odear was not only not required to give him one, but was not under any obligation to give his refusal in writing.

Still further to shew the intent of the Ordinance, I have to mention that a Magistrate did, while the Ordinance was under consideration, suggest some additional matters, the introduction of which was refused, on the express ground that it was desired to leave all questions as to what was the custom, to be decided by evidence of it, and that the sole object of the Ordinance was to provide for omissions in respect to the observance of it on the part of Headmen being noticed in the court, instead of in the Cutcherry, as they had heretofore been.

I have to add in addition to the explanations in the commencement of this letter, that it is also my practice when I think it would be proper, to advise Headmen as to Appealing against the decision of the Court. On the grounds herein stated I certainly should have advised it in this case, but owing to some negligence in my office, the time for Appeal had expired before the matter was fully before me. Knowing this practice, the Odear may have waited for my advice in the matter, and moreover, he was but lately appointed to office. I trust therefore, that his omission to appeal against the decision, may not be deemed a bar to compliance with the request that I have to make on his behalf, that a pardon may be granted him, and that the fine which has been imposed upon him may be remitted.

I have not had any communication with him on the subject, but I am confident that the District Judge would give the same account of the custom that I have given, namely, that it is only

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the owners of lands who have ever customarily applied for schedules.

The only exceptions are Administrators of estates and creditors on Writs, and these exceptions go to prove the rule, as such parties are always provided with formal certificates by the Court and Fiscal of their being entitled, by their peculiar position, to make such applications.

I do not consider myself at liberty to make any extract from the proceedings of the Court, but I must state, that the point, as explained by me herein, is not made to appear therein.

I have, &c.,

(Signed) P. A. Dyke.

The Colonial Secretary,

Colombo.

No. 16,716. Court of Requests, Chavagacherry.
Odear of Codamicn and Navetkaddoo.

" I was defendant in the above Case. The Court asked me many questions, I well remember much of what I said.

" Court asked. Did Thevy Sinnaven apply for schedule. I replied yes, and suggested to Court to ask complainant who owned the land of which schedule was desired.

" Court asked accordingly. Complainant replied, the land belonged to deceased Mooroger Kanther, and is registered in Thombo in name of Supramanier Kanther and Visovanather. Then I asked whether Complainant applied for schedule as an intending purchaser or seller of the land. Complainant replied " as an intending purchaser." I next pointed out to the Court that it was for this reason I had not granted schedule.

" I informed the Court also, that it is not usual for intending purchasers to apply for schedules, but only sellers apply for them, that is, only owners of the property I told this distinctly to the Court.

The Court asked me whether I gave my refusal in writing, whoever would be the person asking for a schedule, and I replied, if any one would apply to me for schedule saying he wanted to sell away his land, then I would be under obligation to give my refusal in writing.

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"Then the Court said I was fined £1., because I had not given my refusal in writing in the present case."

True copy.
(Signed) P. A. Dyke.

No. 234.

Colonial Secretary's Office,
Colombo, August 12th, 1858.

Sir,—In reply to your letter of the 12th June last, I have to transmit for your information, copy of one from the Queen's Advocate, and of one to the Commissioner of Requests and Police Magistrate at Chavagacherry, and to request that you will refund the fine of one pound therein alluded to, to enable him to pay it over to the defendant in the Case No. 19,716.

2.—I am further to acquaint you, that the Queen's Advocate has been instructed to confer with the Hon'ble the Judges of the Supreme Court as to the expediency of altering the Ordinance No. 1 of 1842.

I have, &c.,
(Signed) C. J. MacCarthy.

The Government Agent, Jaffna.

Queen's Advocate's Office,
Colombo, 14th July, 1858.

Sir,—With reference to your letter, No. 137 of the 10th Inst., referring to me for report the accompanying letter from the Government Agent for the Northern Province, I have the honor to state that I concur with that officer in opinion that under the peculiar wording of the ordinance, both the right to demand and the liability to give schedules must depend upon, and be determined by, the evidence of the existing custom. The question however as to the right of the Headman not to give a statement in writing of the ground of his refusing a schedule, is open to much doubt; according to the plain import of the second clause, a Headman refusing to grant a (not such) schedule to any party applying (*not entitled to apply*) for the same, is bound forthwith to give such party a statement in writing of the ground of his refusal; and I should not hesitate to say that such is the correct construc-

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tion, and that the Headman is bound to give a statement to all who apply, without setting himself up as the judge to determine who is and who is not entitled thereto, were it not for the wording of the third clause, which makes the refusal penal, and which must be strictly construed. It is not any Headmen who shall *refuse* a statement, but who shall "*unnecessary delay*" giving the same, that is guilty of an offence, words which would seem to have been used with the intention of grafting upon this and the second clause the qualification of the Preamble, unnecessary delaying to give to a party entitled to demand the same. I confess, however, that I incline to the opinion that the plain import of the words will prevail, but it is desirable that an opportunity should be taken to settle this question, by an Appeal.

Considering however that the wording of the Ordinance is not free from doubt, that the custom of the North applies only to settlers and not to purchasers, and that it was not the intention of the framers of the Ordinance to interfere with this custom, as shewn by the Government Agent, it is clear that the Headman referred to did not mean to commit an offence when he conformed to the ordinary practice and refused to give the statement required of him. The case is certainly one, therefore, in which a pardon ought to issue.

I have, &c.,

(Signed) R. F. MORGAN.

The Hon'ble

The Colonial Secretary.

No. 13.

Colonial Secretary's Office,

Colombo, 11th August, 1858.

SIR,—In forwarding to you a copy of a letter from the Queen's Advocate, I am directed to acquaint you that the Governor has been pleased to remit the fine of one pound awarded on the Odear of Kodameer and Navat Kadoo, the defendant in the case No. 16,716.

2.—I am further to acquaint you, that His Excellency has arrived at this decision not because you have misconstrued the Law, but because the Law is at variance with the custom of the

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Northern Province, which custom it was intended to confirm.

3.—The Government Agent for the Northern Province will be instructed to refund to you the fine in question.

I have, &c.,

(Signed) J. BAILEY.

True copies,

(Signed) JAMES SWAN.

The Commissioner of Requests
and Police Magistrate,
Chavagacherry.

3rd Nov. 1858.

No. 23,827.

Police Court, Jaffna.

Natchen widow of Sidemberen... ... ...*Plaintiff.*

Vs.

Velaiden Casinader Odear of Vasawolan ... ...*Defendant.*

CAMPBELL, Judge.

Charge. For refusing to grant schedule and for failing to give his reasons in writing for such refusal, in breach of 2nd and 3rd Clause, Ordinance No. 1 of 1842.

Objection Schedule.

The Court considers the defendant guilty of not forthwith granting a statement of refusal, or as it is called, an objection schedule, and that his delay or excuse for not granting the same was vexatious and injurious to the interest of the party applying for the schedule. Fined twenty Shillings.

The Court holds that, by the Ordinance, no Odear or other Headman shall, on any pretence whatever, refuse to grant forthwith either a schedule or statement of refusal, as the case may be.

Judgment affirmed in Appeal. 3rd December, 1858.

6th Dec., 1858.

No. 9,667.

District Court, Jaffna.

Murger Ramoe of Ploly... ... ... *Plaintiff.*

Vs.

Sangarer Sidemberepulle and two others ... ... *Defendants.*

PRICE, Judge.

The Court is of opinion that there are two separate and distinct causes of action by the libel, one against first and third

defendants, the former for having opposed the application for schedule, and the latter as the party renouncing his claim on the land in favor of plaintiff.

The other against second defendant for damages, plaintiff having made second defendant (who is no party to the renunciation deed) a party to the suit, he is quite in a position to demur to the plaintiff's title as far as regards himself.

With regard to plaintiff's title some suspicion of fraud must attach to it, third defendant in his answer states, plaintiff *himself* having purchased the land from second defendant, &c. &c., got the purchase deed executed in favor of third defendant upon trust: this is quite opposed to the deed by which third defendant appears to have been the bona fide purchaser, and the Renunciation deed is passed, without schedule or publication.

Renunciation Deed. Schedule.

It is true that the country law only requires that *sales* of land should be held on schedule and publication, but the Court is of opinion that if the same forms required to be gone through with regard to lands purchased are not followed up, upon their being renounced as in this case in favor of a third party, it would lead to great frauds, as there would be nothing to prevent parties transferring their rights without publication, thereby evading the custom of the Country.

As a renunciation deed cannot be looked upon in the light of a donation, the Court is of opinion that all the forms attending a sale of the Land should have been gone through, when third defendant renounced his claim in favor of plaintiff, viz., schedule and publication.

Renunciation Deed. Schedule.

The Court is further of opinion, that second defendant cannot be held liable in damages to plaintiff, he can only be held liable to third defendant.

The Court has no similar case to this in its recollection; it is a thing of common occurrence to make the *Vendor* a Co-defendant, for the purpose of recovering the purchase amount or damages, or both, but the Court knows of no one instance

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in which damages have been sued for as in this case, against the *Seller to the Vendor.*

The Court is of opinion that the Demurrer is good, plaintiff's claim against the second defendant is dismissed with costs.

4th August, 1859.

Judgment affirmed in Appeal, the Supreme Court seeing no reason to the contrary.

4th Jany., 1859.

No. 7,878.

Court of Request, Chavagacherry.

Soopremanier Aronaselam of Mauthovil ... ... *Plaintiff.*

Vs.

Nallamapana Mude Sammogam .. .. *Defendant.*

WODEHOUSE, Judge.

The plaintiff complains that the defendant ottied to him a certain Land as per Otty deed dated 5th March, 1855, but in April, 1858, objected to plaintiff's otty possession ; damages 15s. per annum

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24th Feby., 1859.

Welayther Aromogam *Odear* of Mauthovil affirmed, questioned by the Court, states, I admit I signed as a witness to the otty deed granted in 1855 by N. M. Sammogam to plaintiff. I also admit that Sammogam asked me on that occasion for a schedule, which I refused to give, as the intervenient was a child. I also admit I signed as a witness for the re-otty granted by Vamothorer Sangarepulle to plaintiff in 1852, no schedule was granted or asked for, and no publication whatever was made.

Otty Deed.

Schedule.

BRAYBROOKE. Judge.

20th July, 1859.

Plaintiff absent, case dismissed.

31st Jany., 1859.

No. 9,699.

District Court, Jaffna.

Sandrisegra Modr. Sawrimoottoo Modr. of Jaffna...*Plaintiff.*

Vs.

Tilleambelam Sangrepulle, and two others...... *Defendants.*

PRICE, Judge.

This action is brought to cancel and set aside a Transfer Agreement, dated 4th December, 1856, granted by second

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and third Defendants in favor of the first Defendant, for the sale of a certain Land, which Plaintiff alleges has been fraudulently got up without due publication, to deprive him (Plaintiff) of his right to purchase said Land in right of pre-emption, he being an adjoining Landholder and a relation of one of the grantors (third Defendant).

Pre-emption.

An attempt has been made to shew that the real amount agreed for the purchase (as alleged) to have been £48. 15*s.* and not £60. as stated in said Agreement, but the proof as to this fact is by no means clear, on the contrary, the evidence is stronger in favor that the sum agreed for was £60, this is the sum stated by first Defendant in his *viva voce* examination on the 14th January, 1859, in which he is supported by the evidence of Plaintiff's first witness, and Defendant's first and second witnesses. It is only the evidence of second defendant, and Plaintiff's second witness, that fixes the sum agreed for to have been £52. 10*s.*

The Court is of opinion that the Transfer Deed in question should be cancelled and set aside, for want of due publication.

The Plaintiff has proved that he is an adjoining Landholder, which first Defendant is not, but if the Court adjudged the Land to Plaintiff, the publication required by the Country Law would be evaded as has been attempted by the parties to the Transfer Agreement.

The Transfer Agreement in favor of first defendant granted by second and third defendants, dated 4th December, 1856, for the Land Verawil in extent 20 Ls. P. C. registered in the thombo in the name of Retnasinga Modliar, situated at Pandaterropoe, is cancelled and set aside for want of due publication. Defendants paying the costs, reserving a right to plaintiff to recover the Otty amount Rds. 150, from first defendant, to whom it is alleged plaintiff paid it, and which is not denied by first defendant, the evidence proves that the first defendant admitted the receipt of the Otty money.*

Transfer Agreement.

Publication.

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* Date of action, January, 1858.

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27th April, 1859.

No. 9,891.

District Court, Jaffna.

Cadersaibo Sagoe Osentamby Markayr of Vannarpounne ... ... *Plaintiff.*

Vs.

Cadergamer Nagenader and two others... ... *Defendants.*

PRICE, Judge.

The title of the first and second defendant's late parents Aromogam Cadergamer and wife Teynapulle, is not clearly made out, but the evidence is sufficient to support the present Libel against the third defendant.

It appears by the evidence that third defendant, as Odear, was called upon by plaintiff to grant a schedule for the Lands in question as the property of the first and second defendant's late parents, but instead of doing so he only grants schedule for half of the lands under plaintiff's writ 8,083, issued on a judgment copy filed, dated 16th of July, 1855, against first and second defendants and the Estate of their late parents.

Third defendant in *viva voce* examination admits that for very many years past he, as Odear, assessed the lands in question as the dowry property of first and second defendant's mother Teywanepulle.

The evidence adduced by the third defendant is to prove that the said Teywanepulle was not entitled to the whole, but only to half of the lands, and that third defendant's first witness (Marotheynar) the brother of the said late Teywanepulle, was entitled to the other half in right of inheritance from his, and Teywanepulle's mother, who died in 1858 or 1856. This witness is so much interested in the case that the Court cannot rely upon his unsupported statement.

The Court is of opinion that the lands in dispute should be put up for sale, in satisfaction of plaintiff's writ, as the dowry property of the late Teywanepulle; when, if third defendant's first witness (Marotheynar) has any claim upon them, he can prefer his claim before the Fiscal, and stay the

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sale in the usual way, by giving security,—third defendant paying the costs.

It is therefore decreed, that the lands (in question) be put up for sale under plaintiff's writ 8,083, as the dowry property of the late Teywanepulle (the mother of the first and second defendants), reserving a right to third defendant's first witness (Marotheynar) to prefer his claim before the Fiscal, should he be so advised, third defendant paying all costs.

Odear.

Costs.

Judgment of the Supreme Court, 8th December, 1859.

That the decree be affirmed, all parties paying their own costs.

No. 7,995.

13th June, 1859.

District Court, Jaffna.

Canneweddiar Caddergamer, and wife Nachipulle of Ploly ... ... *Plaintiff*.

Vs.

Vissowenader Comarawalen and seven others... *Defendants*.

Paremer Velaiden and others... ... ... *Intervenients*.

PRICE, Judge.

The Court is of opinion that the Intervenient's claim should be set aside with costs. The Court has already decided in District Court Case 4,218, in which the claim was on a donation deed, that schedule and publication were necessary. Assessors sat in that Case with the Judge, and agreed in the opinion of the Court. An Appeal was lodged' but the Supreme Court upheld the judgment.

Donation.

Schedule.

The other case 2,841 referred to (which the Secretary says is with the Government Agent) is admitted to have been on a Dowry Deed. The Court gave judgment that schedules were not necessary with reference to Dowry Deeds. It is admitted that no Appeal was lodged against the judgment.

Dowry.

Intervenient's claim is set aside with costs, consequent upon the Intervention.

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5th August, 1859.

No. 474.

Court of Requests, Jaffna.

Neeler Cadirgamer of Vasaowalen ... ... *Plaintiff.*

Vs.

Vally Anthony and others ... ... *Defendants.*

MUTUKISNA, Judge.

Mr. Sinnecooty proceeds no further, and asks the Court to give judgment for the money, against the first, second, third and fourth defendants, the sellers, as the Deed is not valid for want of due publication.

Deed. Publication.

It is therefore decreed that the transfer Deed, dated 2nd March, 1858, and marked X, in favor of plaintiff, be cancelled for want of due publication, and that first, second, third, and fourth defendants do pay plaintiff the sum of three pounds and nine shillings, with interest at nine per cent. from 4th April, 1859, the date of the action.

It is further decreed that plaintiff do pay the costs of fifth, sixth, seventh, and eighth defendants, and that first, second, third, and fourth defendants do bear their own costs.

15th Feby., 1860.

No. 27,022.

Police Court, Jaffna.

Virawanather Cadergamer of Illepullle ... ... *Plaintiff.*

Vs.

Poother Cadrasser Odear of Tillepulle ... ... *Defendants.*

CAMPBELL, Judge.

For refusing to grant a schedule for the sale of the Lands belonging to complainant's debtor, under Writ 17,626, and for refusing to give his objections in writing, aginst the 3 Sect. of 1 of 1842.

Accused pleads Not Guilty, and adds, I refused to grant the schedule because Plaintiff's debtor left no property. I gave prosecutor an objection schedule to that effect.

Prosecutor affirmed : I admit having received an objection schedule from accused, but upon that, I and my younger brother instituted a suit under No. 117 of this Court, and

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the objection was set aside. I then made a second application to Defendant, who again refused to grant the schedule or even to give me any writing whatever, he told me he had already granted a schedule to Ramasy, widow of Velayder, and three others who transferred the Land to Mr. Proctor Sinnacooty. Ramasy is the niece of my debtor; this "granting" was after I had applied to him for the schedule and the settlement of the case 117 ; the Defendant reported these Lands to be in dispute between my debtor and others, and *subsequent* to this "reporting" the schedule to Mr. Proctor Sinnacootty was granted.

The Court considers this a very grevious instance of misconduct on the part of the Defendant, and fines him in the full penalty allowed by the Law, of a breach of which, the Court upon the merits finds him guilty. Fined £5.

It matters not in, my opinion, whether Defendant gave an objection schedule to the Prosecutor's brother or not. He was still bound to respect Prosecutor's application, instead of which, it appears proved that he treated both him and it with contempt.

His conduct in the matter has been, I think, at once insolent, arbitrary, and unjust ; insolent in his mode of refusal both of the schedule and the "objection writing ;" arbitrary in the present instance of exercise of his power as an Odear, and unjust towards the Prosecutor, inasmuch as notwithstanding the pending objection of the latter, which objection was well known to him, he grants a schedule to Ramasy and three others, to enable them to sell the Land to Mr. Proctor Sinnacootty, thereby depriving the Prosecutor and his brother of the only means of recovering their debt, on the judgment in District Court, 17,626.

It would appear from the evidence, as if the Odear, seller, and purchaser, all colluded to defraud the Prosecutor and his brother, at all events Mr. Sinnacootty ought not to have purchased the Land until quite satisfied of the genuiness of the seller's title, his profession as a Proctor prohibits his pleading ignorance, and no doubt at the time of the purchase he was perfectly aware of Prosecutor's claim to the Land.

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The Odear, if again applied to by the prosecutor, can only grant him an objection schedule, wherein he must admit that the objections are of his own creating, so as to enable the prosecutor to combat them and set them aside in regular course of law, as his brother did in the case 117.

Objection Schedule.

The Accused, as I have said, has been found guilty entirely on the merits, it appearing clear from the evidence of the witness, that the application of the prosecutor was really and truly unheeded, when it ought by law to have been attended to by the granting either of a schedule or writing of objection, shewing that the Land had already been disposed of.

Judgemnt of the Supreme Court.

Judgment set aside, and the case sent back for the Magistrate to determine whether the defendant did or did not refuse to give to the complainant's brother a statement in writing of the grounds of his refusal to grant certificate of title.

Reasonable grounds for refusing Schedule.

It would appear that the Odear had reasonable grounds for questioning the title of the complainant to the land claimed by him, and that he stated them verbally to the applicant, the only other question is, whether he refused to state in writing to the complainant or his brother his reasons for the refusal and upon this point ,the Magistrate has given no decision, if he offered to either such a statement in writing, he is entitled to an acquittal.

No. 17,575.

Police Court, Chavagacherry.

Sillemberen Sitten of Vanny North... ... ...*Plaintiff.*

Vs.

Sidembrenader Verregetty Odear of Vanny North... ... ...*Defendant.*

Charge.

Refusing Schedule.

For refusing to grant Schedule, or allege sufficient reason in writing for refusing the same, in breach of the Ordinance No. 1 of 1842, clause second.

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Defence.

Mr. Ruloch files Copy of objection, Schedule B., sent by accused to Complainant, and contends that this is not an offence under the Ordinance, as he has given a written refusal.

Complainant denies having received the objection Schedule.

27th September, 1855.

WODEHOUSE, Judge.

On reading the two Documents filed, there is a material difference in the statement of the accused in them, and the objection schedule (Copy): he states, his reason for declining to give the schedule is "that Casinather Ramen of Vadaco Cooritchy and Casinather Covinther of Edecooritche objected;" but in his report to the Kutcherry he says he refuses to give the schedule as "Complainant is going (he, the accused, suspects) to encroach upon Government property."

Complainant says the Odear refused to grant schedule on the 22nd July, accused's copy of objection schedule is dated 16th July, again Complainant lodges his case on the 30th August, and on the 6th August accused makes a report to the Kutcherry: why did he not do so before?

Considerable difficulty occurs in dealing with parties under this Ordinance, and although in the present Case it may be true that the accused gave the schedule, a presumption arises as to whether Complainant was subjected to unnecessary delay, and whether the schedule given which set out a perfectly different ground of refusal to his report to the Government Agent, is such an objection schedule as the ordinance requires him to give. Some months ago I fined an Odear £1 for refusing to give a schedule, that fine was remitted by His Excellency the Governor, on an application from the Government Agent, and the letter conveying to me His Excellency's intention of remitting the fine contained the following paragraph "His Excellency has arrived at this decision not because you have misconstrued the law, but because the law is at variance with the custom, &c." A letter was

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also forwarded to me by the same opportunity, containing the opinion of the then Queen's Advocate, finding therefore, a difficulty in dealing with the present Case, and under the belief that the schedule (such as it is) has been given, I dismiss the present complaint, at the same time advising the complainant to appeal, in the hope that the Hon'ble the Supreme Court will enter fully into the way that this Ordinance should be construed and dealt with.

Appeal.

Complainant Appealed to the Supreme Court,

1st. That the sentence is contrary to the tenor of the Ordinanc e.

2nd. The accused having unnecessarily delayed the granting of the schedule is clearly liable under the Ordinance.

3rd. The complainant having denied the receipt of the objection schedule, it was the duty of the accused to prove to the cotnr ary.

A letter of the Magistrate to the Supreme Court.

Police Court,
Chavagacherry, 2*nd October*, 1858.

Sir,

I have the honor to forward an extract from the Record Book, taken in the Case No. 17,575, appealed for the review of the Hon'ble the Supreme Court as also copy of a letter from the Hon'ble Queen's Advocate to the Hon'ble the Colonial Secretary, to which allusion is made in the Case,

I have, &c.,
(Signed) W. Hay Wodehouse.

The Registrar
The Hon'ble The Supreme Court

Queen's Advocate's Office,
Colombo, 14*th July*, 1858.

Sir,

With reference to your letter No. 137 of the 10th Instant referring to me for report, the accompanying letter from the Government Agent for the Northern province, I have the honor to state, that I quite concur with that officer in opinion that, under the peculiar wording of of the Ordinance both the right to de-

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mand and the liability to give schedules must depend upon, and be determined by, the evidence of the existing custom; the question however as to the right of the Headman not to give a statement in writing of the ground of his refusing a schedule, is open to much doubt.

According to the plain import of the second Clause, a Headman refusing to grant a (not such) schedule to any party applying (not entitled to apply) for the same, is bound forthwith to give such party a statement in writing of the ground of his refusal and I should not hesitate to say that such is the correct construction, and that the Headman is bound to give a Statement to all who apply, without setting himself up as the Judge to determine who is and who is not entitled thereto, were it not for the wording of the third Clause, which makes the refusal penal, and which must be strictly constructed. It was not every Headman who shall *refuse* a statement, but who shall "unnecessarily delay" giving the same, that is guilty of an offence, words which would seem to have been used with the intention of grafting upon this and the second clause the qualification of the Preamble unnecessarily delaying to give to a party entitled to demand the same.

I confess, however, that I incline to the opinion that the plain import of the words will prevail, but it is desirable that an opportunity should be taken to settle this question by an appeal.

Considering however that the wording of the Ordinance is not free from doubt, that the custom of the Northern Province applies only to Sellers and not to Purchasers and that it was not the intention of the framers of the Ordinance to interfere with this customs, as shewn by the Government Agent, it is clear that the Headman referred to did not mean to commit an offence when he conformed to the ordinary practise, and refused to give a statement required of him. The case is certainly one therefore in which a pardon ought to issue.

I have &c,,

(Signed) R. F. Morgan.

The Hon'ble
The Colonial Secretary.

"A True Copy"
(Signed) J. Bailey.

"A True Copy"
(Signed) W. Hay Woodhouse.

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Supreme Court Judgment.

The proceedings in this case having been read, it is considered adjudged that the Judgment of the Police Court of Chavagacherry of the twenty-seventh day of September 1858, be set aside, and the Case remanded to be heard *de novo*.

The evidence in this case being insufficient, the case is remanded to be heard *de novo*.

The complainant should prove on oath his application for a schedule, and that it was refused him by the Headman: and further, that the statement in writing of the ground of such refusal, which is required by the second section, was unnecessarily delayed, or, which is tantamount, refused. A report made to the Cutcherry, obviously no compliance with the rrquirement of the second section of Ordinance No. 1 of 1842, and the receipt of any other statement having been denied by complainant, it was for the Headman to prove that he had given it forthwith, as prescribed by the Ordinance.

The object of the Ordinance was to enforce the speedy execution of a duty cast by custom on the Headman, and to prevent extortion, that custom required him to give to the seller the certificate or schedule in question and provided that he is satisfied that the applicant is boná fide going to sell, he has, it would seem, no right to refuse or delay the schedule. The power of refusing in the second Section mentioned, being, in the opinion of this Court, confined to cases where the Headman has reasonable grounds for believing that the applicant is not boná fide a seller and therefore not entitled to Schedule.

The construction to be put on the Ordinance is not free from difficulty, but any interpretation other than this would allow the headman to set himself up as a judge of the merits of the applicants title to the property, with which, he, the headman has nothing whatever to do. His simple ministerial duty as the custodian of the Thombo, is to give the schedule to a bonâ fide seller without delay, such schedule being nothing more than a certified extract from a public document, necessary as a matter of evidence to the Vendor.

Witness the Hon'ble Sir William Carpenter Rowe, Knight Chief Justice, at Colombo, the 15th day of October, 1858.

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Second hearing, 3rd June, 1859.

BRAYBROOKE, Judge.

Mr. Mutukisna, Deputy Queen's Advocate, appears for the defendant, charge explained, defendant pleads not guilty.

Complainant affirmed, states, I applied to the Odear of Vanny North, defendant, for a schedule, as I was desirous of selling three pieces of Lands, two parcels of Paddy culture and one of Varrago culture; I made the application on two occasions, the first application was on the 21st of July, 1858. The Odear refused to grant a schedule, as I applied for a schedule for twenty Lachams, and he asserted that the Land was not of such an extent, he said that he would grant me a schedule for a smaller quantity, but he did not mention the number of Lachams. I was alone when I made the application to the Odear, I did not ask for an objection schedule, nor did he offer to give me one. I went to the Cutcherry on the same day and made a complaint against the Odear to the Government Agent. The Government Agent said he would send for the Odear and inquire into the matter, my next application was made on a day I can't remember. The complainant is reminded of the day named in the complaint and told to think, as to whether the exact day cannot be remembered, he then says I made the application, the second time, on the 22nd July. The following day the Odear again refused to grant a schedule to me, I did not apply for an objection schedule. I *was not aware that it was customary to give one.* The Odear did not of his own accord give me a written objection, *either at that time or subsequently.* No one was present on either occasion of my demanding schedule from the Odear.

By defendant's Advocate.—The Odear made a report to Government that I was entitled to eleven Lachams of the twenty Lachams, the remainder belonging to Government. He did *not mention these facts to me*, the Odear said nothing to me about Crown Lands. The Government Agent furnished me with a copy of a report sent to him by the defendant. The defendant did not give me *an objection schedule at any time*, I am not aware whether the defendant came to my Land after I had made the application, I know "*Casenader Ponnair and Casenader Covender.*" These people are not in possession of the Land: *but they have a share according to*

the Thombo registry. They have a claim to the Land. There are *about sixty Lachams in all parcels, in all about one thousand Lachams, out of which I claim only twenty Lachams.* Before the 21st July, the day of my first application, no conversation took place between the Odear and myself.

Examined.—S. Saweremutto Mudliar sworn, states, I have been Cutcherry Mudliar for twenty-five years, I of course know well the custom of this Country very well. I am a land ed proprietor, and know all the customs relating to the schedule system generally. The custom of the country is, that when an application is made to an Odear for a schedule by any person previous to the sale or mortgage of a land, publication is made, that the intention of the applicant may be widely known. To a certain extent the duty of the Odear is to use his discretion in the grant of a schedule to an applicant. The Odear is expected to know the lands of which he is the Thombo keeper. He is also expected to make enquiries into the matter, to a certain extent, before granting schedule. It is not sufficient for him to be satisfied that the applicant wishes to sell, but he must satisfy himself that he has a right to sell. Having satisfied himself that the applicant has a right to sell, he is entitled to refuse the schedule, I know that an Odear improperly granting a schedule becomes (civilly) liable for the damage incurred by his so doing. He is therefore, as far as the granting or withholding of the schedule is concerned, the proper judge as to the merits of the applicant's title to sell or mortgage. I have not heard of any Odear being held criminally responsible for improperly granting or refusing schedule. A schedule is not only a mere Thombo extract, but it is moreover a certificate of publication, and always includes the statement, that the applicant is entitled to sell, and that no objection has been raised. The omission of such a statement would make it of no effect as a schedule.

The object of an objection schedule is to make it the foundation of any civil proceeding. The forms marked ⋈ and ⋈ those which are usually given by the Odear, according to the custom of this country, no transfer deed is valid without such a schedule (No. 102 Chavagacherry.) The whole value of the schedule depends upon the statement to this effect in writing.

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Sixth Witness.—A. Enaganatho Mudliar affirmed, states. I am an extensive landed proprietor, I was also Maniagar and Shroff, which offices I have since resigned. I know the custom of the country with regard to schedule. The duty of the Odear is to publish the applicant's intention, to make enquiries, to satisfy himself that the applicant possesses a right to dispose of the land, and if no objection be raised, and he feels perfectly satisfied as to the applicant's right so to do, to grant schedule as desired. It is for the Odear to judge of the applicant's right and title to sell or mortgage any land. It is the Odear's duty to make himself well acquainted with respect to the land with which he has to do. Should an Odear improperly withhold or grant a schedule, he is held civilly liable for the damage incurred in a Civil Court. The Odear should not give schedule to a bona fide seller (one who really wishes to sell) but to an applicant who has not only a wish to sell, but who has an uncontested right to dispose of the land as he desired. If the Odear finds that the applicant does not possess a right to dispose of the land, he has a right to refuse schedule. Such has been the invariable custom of this country since I was appointed as Maniagar in 1832.

Seventh Witness.—S. Amplevaner sworn, states, I have been Acting District Judge, and Police Magistrate at Cayts, since the year 1843, previous to that appointment I was Procter in Jaffna and Mallagam, and Deputy to the Queen's Advocate, I am an extensive landed proprietor. I have had an abundance of opportunities of becoming well acquainted with the custom in this country with respect to schedules, &c. The Odear before granting schedule to an applicant desiring to dispose of his land, transfer, &c., is bound to satisfy himself as to the title of the applicant, so as to dispose of the land. Should the Odear be satisfied, after previous publication made, that the Applicant has no right to transfer the Land, his duty is to refuse schedule, giving the Applicant his reasons in writing for his refusal. Should the Odear improperly grant or refuse schedule to an applicant, he is considered as liable to an action for the recovery of the damages incurred by his so doing ; as far back as I can trust myself to remember, this has been the invariable custom of this country. I am now 45 years of age. A schedule is not a mere Thombo extract, but a certificate to the effect that the Applicant's right to

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dispose of the Land as he wishes, has been enquired into, (and that publication having been made) no objection has been raised. Upon this certificate the value of a schedule depends, and for it the Odear becomes civilly responsible. The Odear is, therefore, the proper Judge as to the rights of the Applicant, but always subject to an action for damages in case of any impropriety in the matter. In refusing schedules on insufficient grounds I have not known any Odear who has been held criminally responsible for his conduct.

Eighth witness, James Thomas Anderson, sworn, states, I am a Proctor of the Supreme Court, and have practised for the last 23 years, I have had abundant opportunities of ascertaining all the customs of the country, with regard to schedules. When an application is made to the Odear for a schedule, he exercises his discretion as to the granting or withholding of it. He is not bound to give schedule to every one who is *bona fide* going to sell, he must satisfy himself that the Applicant has the right to sell. If the Odear is of opinion that he has not a right to sell, he is entitled to refuse schedule, and he is always held civilly liable for *impropriety* of conduct in this respect. It has been decided that any transfer deed executed with all other formalities, but without publication and *schedule*, is *invalid*. The whole value of a schedule depends upon a statement in writing of the Odear, that no objection has been made after publication. The Odear is therefore the proper Judge as to the merits and right (to dispose of the land) of the Applicant. The schedule is more than a mere extract from the Thombo, it is a certificate to the effect that the holder has a right to transfer the land. I have never known any Odear held criminally responsible *for refusing a schedule* under *improper grounds.* If an application be made, and the Odear refuses or neglects altogether to give an objection schedule, I consider that he would then be criminally responsible. I believe the custom of the country to be that an application should also be made for an objection schedule. In case of refusal, then the Odear would be criminally responsible.

Ninth witness, Onthal Cather Coovay Aliem Enayetollah, affirmed, states, I am a Mahomedan and Notary Public, also a Police Vidahn in the Jaffna District. I have been practising as Notary

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for the last 10 years. I am acquainted with the customs relating to the granting of schedules, an enquiry should be made into *the rights* of all applicants (by the Odear) before granting schedule. The Odear is civilly responsible for improperly or without good reason withholding or refusing schedules. The schedule is not a mere extract, but a certificate, shewing that the applicant is entitled to the Land, and that there are no objections to his claim.

Tenth witness, P. Bastianpulle, sworn, states, I am a Proctor of the Supreme Court, and am a landed proprietor. I have been practising as Proctor since 1844. I am well acquainted with the custom of the Country. As far as I am aware, the custom of this Country is, that when an application is made for schedule and the same is refused by the Odear, the odear, if the application be urged, ought to grant an objection *schedule*, not otherwise; and in the course of my experience I have known parties who had been refused schedule, apply for advice as to whether it would be safe to enter the action without objection schedule. I have heard the evidence of the other witnesses on this subject, I know that it is customary for the odears to use their discretion in the granting or withholding of *schedule*, of course they are at all times liable for damages for any abuse of their privileges and powers.

Eleventh witness—A. Sinnatamby, affirmed, states, I am a Proctor of the District Court of Jaffna, and have been practising for the last thirteen years, I know the custom of the Country with respect to the granting or withholding of schedules by odears. It is not usual to grant an objection schedule unless it is asked for, I have heard the statements of the other witnesses on this subject, and agree with what they said. The schedule is not only a thombo extract, but a certificate as to right and title of the applicant, and publication must be made, that any claimants or adjacent landholders may come forward to advance their claims or to exercise the rights of pre-emption.

There are five other witnesses, Notaries, &c., to be examined on the same points, but it is too late to proceed with the case, as unless their evidence be required, the defendant's Advocate is willing to examine them. The opinion of the Court on the subject will be

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deferred, and if further evidence be considered necessary or advisable, due notice will be given to that effect.

Judgment.

June 13th, 1859.

I consider it quite unnecessary that any other witnesses (on the list) should be examined in this case, for in the two main points which have been investigated, viz., first, the granting or otherwise of the objection schedule in this particular instance, and second, the custom of the country with regard to the duties of the odears generally in relation *to the granting* of *schedules*, no reasonable doubt can remain.

The question as to the custom that may exist with regard to the *granting* of *objection schedules* is, (for reasons which will be stated) in my opinion *immaterial* to the decision of the *case itself*, were the construction to be put upon the Ordinance *absolutely free* from *difficulties*, this matter in dispute might have been disposed of very easily. As the meaning however is not *exactly precise*, I think it advisable that I should in the first place give *that* construction which I have been led to put upon the Ordinance, and by which, of course, I have been guided in arriving at a *decision*.

The Preamble sets forth, that a custom exists peculiar to the *Northern* Province, for Headman (*i. e.* odears) to grant, on application being made to them, certain certificates and Extracts from the *Thombo* (called schedules), for which they are paid by the applicants on receipt, the said certificates and extracts being required to render valid any *deed* affecting land. To prevent extortion and delay on the part of the odears in granting schedules, certain provision is made.

Clause I.—The fees of the Odears are not due until every act connected with *the granting of schedules* shall have been properly performed *according to custom*. The scale of the fees is fixed.

" The particular acts and customs referred to are not entered " into or explained, but the *Odear* should of course be acquainted " with, and *invariably duly* perform them."

Clause II.—Any odear having reasonable grounds (*i. e.* knowing or believing them) for refusing schedule, *may do so*, but his *duty* is *forthwith* to give to the rejected applicant his reasons in writing for *so* doing.

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This written statement is called an "*objection Schedule*," any customs that may exist in this respect are *not referred to at all in the Ordinance*, and I am of opinion after very *careful consideration* of the matter, that the duty of every Odear (according to this second Clause) is to give an *objection Schedule* whether the Applicant for *Schedule demands it or not*.

I consider moreover, that such a step as a sequence to the refusal to grant Schedule would be *but natural* and proper conduct in a public officer, such as the Odear undoubtedly is :—

Clause third explains the penalty attached to any neglect or delay on the part of the Odear, in attending to a *proper application* for Schedule, or for unnecessary delay in granting the same, or in the performance of any of the other acts in connection therewith, which it is customary to do—for unnecessary delay in granting an *objection Schedule* where necessary in case of Schedule being refused, and lastly, for receiving or demanding a greater fee than that fixed by the Ordinance. Such appears to me to be the *plain* meaning of the Ordinance. The *Customs* of the Country in *granting Schedules* are to be attended to *carefully* : but no allusion whatever is made to any Custom relating to the granting of the *objection Schedule*, this, it appears to me, the Ordinance renders imperative, as part of the duty of the Odear which he should invariably *act upon*, for it *might occur* (as is indeed alleged by the Complainant in this very case) that an applicant for Schedule on being refused the same, was so ignorant of the Custom, as not to be aware that an objection Schedule was required. I will now turn to the evidence.

The Complainant states that he applied to the Odear twice for Schedule, and that it was refused on both occasions, he admits that he did not demand an objection Schedule, and says, that he was not aware that it was customary for the Odear to grant the same. He denies having received either then or subsequently any statement in writing of the kind. Complainant's witnesses are called to prove his right &c.

The first four witnesses for the defendant are intended to prove the granting of the objection Schedule by the defendant himself to the Complainant. The contradictions in their statements are of so gross and glaring a nature, upon broad and important facts too, that I have no hesitation in recording, that not only has the

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granting of objection Schedule not been proved in my opinion, but that (judging from the facts of the case, the *evidence*, and the manner of delivering the same by these four witnesses) the conviction forces itself upon my mind, that their evidence is *totally false and got up for the express purpose* of deceiving and misleading the Court, and that the objection Schedule (copy filed) *was not given at all* as alleged.

That the Odear went to the Land, measured it, and met the Complainant, is quite possible.

The remaining witnesses examined for the defendant are called to prove the Customs of the Country relating to the duties of Odears granting of Schedule &c. This evidence does not influence me, inasmuch as I have come to the conclusion that the construction of the second Clause has *no reference whatever to the Customs of the Country*, whatever they *may in reality be in this respect.* My opinion however is, that in order fully to ascertain the customs of this Country as to whether the objection Schedule should be *applied for or not*, the Odears *themselves*, and other natives who have had personal experience in the matter, should be carefully examined.

The Court is of opinion that the Odear is "*guilty*" of the charge of not having alleged sufficient reasons in writing for refusing to grant Schedule, or, in other words, for having *neglected to grant forthwith an objection Schedule* to the Complainant, as required by the second Clause of the Ordinance No. 1 of 1842, (Vide note.)

The sentence of the Court is, that the Odear do pay a fine of £5, or in default of payment, to be imprisoned for the term of one Calendar month.

N.B.—I have followed the wording in the charge or plaint in my judgment, in the first instance; by the word "objection Schedule" is meant of course "*a statement in writing of the ground of refusing to grant Schedule.*"

No. 17,575.

Police Court, Chavagacherry.

This case is of far greater importance than it would seem at first sight. With a view to forming a correct opinion as to the ques-

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tions involved, it would be necessary not only to look to the "Plaint" and the "Defence," which generally speaking should indicate the point or points at issue between the parties, but to the Judgment of the Magistrate, and the decision of the Supreme Court each enlarging the boundaries (if I may be allowed the expression) of the original charge, and taking in a great many more subjects than were embraced in the "Plaint" and "Defence." A proceeding perfectly unfair to the accused, as he must, from want of precision, be at a loss to understand what he is exactly charged with.

The Plaint states, "that the accused refused to grant a schedule to the Prosecutor, or allege *sufficient* reason in writing for the Refusal, contrary to 2nd Clause of No. 1 of 1842.

It may be observed in reference to this charge, that the Refusal to grant a schedule, is not made an offence by the Ordinance, provided the Headman gives a statement in writing of the ground of such Refusal. Surely it was never contemplated that the Police Court or any *Criminal* Court should enter into the question as to whether the ground stated was a "sufficient" ground or no. It should be borne in mind that the Police Court has no power to enquire into Title to property. A different construction would make the Odear *criminally* liable for any error of judgment, and would in fact constitute him the sole Judge of the ultimate rights of parties. If he urges an untenable or unreasonable ground he is *civilly* liable, and not *criminally* responsible. This view is corroborated not only by the evident object of the provision, for "the statement in writing," which no doubt was intended to be made the foundation of Civil proceedings to have the question of Title cleared up, but by the uniform practice of the Courts, who have cast the Odears in costs and damages for refusing without *reasonable* grounds, which can only be ascertained by a regular civil suit and Final Adjudication upon the right of the Applicant. If the Magistrate were allowed to go into the "sufficiency of the grounds" urged, he will have to solve these questions.

1. Has the Applicant a proper *Legal* Title?
2. Is he in a condition to part with it?
3. If any objection by a third party is "a sufficient ground" for the Odear to refuse, might not such objections be frivolous? Should he not investigate the soundness of every objection? In

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fact, the Title to property of the Applicant, and all claimants, will have to be minutely gone into before the "sufficiency" of the Odear's ground can be decided upon. Can it be urged that this was ever contemplated by the Ordinance "which makes refusal penal, and which must therefore be strictly construed"? If such a construction were to prevail, what Odear could be safe in refusing or granting schedule? If he refuses, he will be liable in the Police Court, if the Magistrate fancies the ground insufficient, if he grants, he will by existing Law and practice be made to pay costs and damages for not instituting proper enquiry and for granting schedule, where it ought not to have been granted. The following decisions by the District Court, which has far more extensive powers in Criminal as well as in Civil matters, will shew that "the reasonableness of the ground" is never considered by it in its Criminal jurisdiction. Indeed, in none of these numerous cases do the complainants charge the Odears with "not stating sufficient grounds in writing," but simply "with not stating *his* grounds in writing," clearly indicating that in a Criminal Court the "sufficiency" of the grounds *could* not and *should* not be gone into.

No.	When Instituted.	No.	When Instituted.	Charge	The Decision.
141	1851.	268 264 269 270 271 272 275 277 282 284 288 224 299	1854	Refusing Schedule or Refusing to state his Grounds in Writing	Objection Schedule is tendered and the Case immediately Dismissed. N. B.—The Odear not found "guilty" in any one of these Cases.
147 153 183 186 198 199 200 207 222 224	1852				
232 239 241 252 255 250	1853				

Special Cases.

No. 136. Instituted in 1850.

In this Case accused (Odear) gives in a Report stating "that he cannot give a schedule as the Children are minors, and the

Dowry Land of the Deceased wife of the applicant cannot be sold. The case is Dismissed. Here what becomes of the Doctrine of bona-fide going to sell"? If the Odear granted the schedule to the Husband who was bona-fide going to sell, he would have ruined the minors.

No. 178. Institnted in 1852.

Refusing Schedule. The Odear delivers an objection schedule and the Court informs the Complainants, without enquiry into the sufficiency or reasonableness of the grounds, that " that is all that can be done by the Odear," and dismissed the case.

No. 205. Institnted in 1852.

Refusing Schedule. The accused gives in an objection schedule, stating that " the complainant has not produced any Deed." Now this is manifestly an insufficient ground, for the party may have a right to the Land without a deed, and yet the Court without investigating the nature of the grounds urged, dismissed the case.

No. 214. Institnted in 1852.

The Grandfather and Guardian of a Minor Child complains that the Deceased Parents of the child had mortgaged certain Properties, and that the creditors were going to sue for the debt, and unnecessary expence, he applied to the odear for a schedule to sell the mortgaged Lands and pay off the debt, but that he refused. Here was apparently a reasonable application, and the applicant was in the words of the Supreme Court, " Bona-fide going to sell." But the Court held the odear was justified in not granting a schedule, as he alleged as his excuse that the applicant had not obtained letters of administration or guardianship.

No. 245. Instituted in 1853.

Complainant refuses the Objection schedule tendered by the Odear, but the Court without enquiry into the sufficiency of the ground dismissed the case.

The Defence made by the odear in the present case (17,575) is, " he has given an objection schedule" or what is the same " a statement in writing of the ground of such refusal," the complainant denies this fact, the only point for the Magistrate to decide was, " Was such a schedule given or no"? But he has thought proper to raise a variety of questions in his judgment.

The Magistrate enters into a discussion as to the difficulty of

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dealing with parties under this Ordinance, and suggests some further charges against the accused. "Unnecessary delay" and "not granting such an objection Schedule as is required by the Ordinance." "Unnecessary delay" as I understand it, is not (with all deference to the Supreme Court) included or implied in the charge of "Refusal." Refusal may arise from different causes. The applicant may be a minor, a Government Deb tor, the property may be encumbered. The Title may be disputed, but a delay contemplates cases where the Odear has already ascertained the absence of any objection, and unnecessarily puts off granting the schedule, a puts off attending to or doing any thing for the purpose of ascertaining whether a schedule could be granted or no. Then there is a remark quoted from a letter forwarded by His Excellency, that the fine in 16,716 was remitted "not because the Magistrate had misconstrued the Law, but because the Law is at variance with the custom." I confess I cannot see the bearing of this upon the present question, or the object of its import into this judgment. But I have referred to the case alluded to, and find nothing in the Law "*at variance* with the custom." The apparent difficulty raised, is owing to the party construing the Ordinance not having any Practical acquaintance with the *invariable* and *uniform* custom of the country. The framer of the Ordinance could not have provided for a case of an application by a *Purchaser* (as in 16,716. P. Cha.), because he could not, from his acquaintance with the custom, have possibly anticipated such a case. To test the soundness of this observation, I asked the most intelligent practitioners here (Burghers and Natives) what the construction of the clause (2) was, and they without hesitation went on stating cases *confined* to SELLERS and not an allusion was made to *Purchasers*, till I suggested the difficulty. It was the same case with Mr. Price, whom I consulted. So natural is it for one who writes a thing with evident reference to what is known to him, and what is passing in his own mind, to express himself in a way which another without that knowledge, and without that under current of thoughts consequent upon that knowledge, is often at a loss to comprehend. The very wording of a schedule and its object would have prevented any difficulty occurring to one acquainted with the subject. Schedule implies

"Publication," and no Publication can be made of property belonging to third Parties without their consent. The possibility of "*any* Party" being made applicable to a *purchaser*, did not for these 16 years occur to any one practising in the North, and indeed I have made every enquiry and find no case where the question has been raised, much less recognized. Even in the Chavagacherry case 16,716, the impression left on my mind from the proceeding, is, that complainant at first came forward more as an *Agent* of the *Sellers*, than as having a right as *purchaser* to a Schedule. The idea of a purchaser's right *as such* cannot enter into a native's head.* "But by far the greatest difficulty occurs in dealing with the judgment of the Supreme Court. I have already observed that "unnecessary delay" and "refusal" are two distinct things, and that the words are advisedly used in the Ordinance. But assuming "Refusal to be tantamount to unnecessary delay." What does the Supreme Court mean by "the applicant is bona fide going to sell," and "that he is not a bona-fide seller." Does it mean that the applicant is *really* going to sell (in opposition to a *sham* sale) or that the applicant *believes* that he has a bona-fide title or not, or that the applicant *is* a bona-fide Proprietor. Is the Odear then bound to give Schedule in every case when a party applying is *really* going to sell, no matter what or whose property? Is he bound to give Schedule without regard to prior disputes or encumbrances, if he is only satisfied that the applicant is in earnest about making a bargain, or in the words of the Supreme Court "that the applicant is bona-fide going to sell"! The Transfer Deed will be the best evidence of the Seller's bona-fide intention to sell. What then is the use of a document which the Law considers so important, that its absence, notwithstanding compliance with the Statute of frauds, renders the deed a mere nullity. If the construction of the Supreme Court were to prevail, namely, "that the power of refusing is confined to cases where the Headman has reasonable grounds for believing that the applicant is not bona-

* The Queens Advocate in his letter to Government, admits that "the right to demand and the liability to give should be determined by existing customs," then why should not the case of an intending Purchaser be determined by "existing customs? The headman would have been to blame if it had been the custom to give objection schedule to intending Purchasers.

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fide a seller, the whole schedule system as it has prevailed for at least half a century, must fall to the ground, and the series of decisions holding odears *civilly* responsib'e for their conduct, must be declared absurd and iniquitous! The custom of giving objection schedule too, must be overruled, for if the Odear is bound to give a schedule to every bona-fide Seller, (not Proprietor) what is the use of an objection schedule? Again if the Odear is not to certify that there is no objection to the property being transferred, but simply to state that he believes "that the Seller is bona-fide going to sell, what is the use of a schedule at all? What protection can it afford to the purchaser or mortgagees? On the other hand, if it is the odear's duty to ascertain the merits of an Appli cant's title, how can he be called upon to give a schedule with existing impediments, even though it be to one "who is going bona-fide to sell." Would not this defeat the whole objection of a custom consolidated by immemorial usage and numerous decisions. Would this doctrine not startle the public, and render property insecure?

Again, the Supreme Court, I think, is, (I say it with all respect) not quite correct in its definition of a schedule; but reference to the Ordinance, would have shewn that it is not a mere "certified extract from a Public Document." It is something more, it is a "certificate" of publication, "AND" an "extract from the Thombo." (See Preamble.)

The Court has held in the following cases the Odear liable for granting improper schedules, and for granting schedules to "people who were bona-fide going to sell" what turned out to be not their property.

No. 6,916. District Court, Jaffna.

No. 7,035. District Court, Jaffna.

P. S.—I am glad, I have since discovered some old Provincial Court Cases exactly in point.

No. 1,545, decided in 1821, by Mr. C. E. Layard.

Judgment.—"The second Defendant to pay costs, having granted schedule *Pattale* for the sale of the Land, when he must

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have known the parties were neither of age to make such Transfer or entitled to the property they were transferring."

No. 1,386, decided in 1821, by Mr. C. E. Layard.

Judgment.—"The Maniagar who granted schedule certifying the property to be the Vendor's is sued for the purchase amount, the Transfer Deed having been set aside, on the ground that the property was not the Vendor's, and he is condemned to pay back the money and costs of suit.

No. 5,048, decided 1827, by Mr. Price.

"The Maniagar made to pay costs for granting schedule for a Deed said to be executed by a *Minor*, that is, for not enquiring into the exact age of the Applicant. He was 24, whereas he should have been 25!" And yet the Supreme Court says, he is to grant schedule as soon as he is satisfied that the Applicant is a bona-fide seller.

No. 5,595, decided 1829, by Mr. Brownrigg.

"The Transfer Deed cancelled, and the Odear made to pay costs for granting schedules."

No. 5,548, decided 1829, by Mr. Price.

The Odear *Pattangketty* made to pay costs for granting illegal schedule.

H. C. W.

18th February, 1859.

PRE-EMPTION CASES.

From the Provincial Court Diary.

No 85.

16th May, 1806.

Ayampermal Teywil, and his wife Waratte, of Nallore ... ... *Plaintiffs.*

Vs.

Tisseweerasinga Modliar, Parpatiacaren of Nonawil ... ... *Defendant.*

Tranchell, Judge.

The plaintiff and defendant call their respective witnesses, who are sworn, examined, and cross-examined by the parties and the Court. The defendant produces an olah, exhibit, B. 85. which is read and filed.

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Proprietor must sell to Planter.

The plaintiff remarks that a proprietor of a Land has no right to give away or sell their half share of that Land to any other but to the proprietor of the planter's share, in preference to any other, he being willing to pay the value to Walliar, who has signed the Donation olah to the defendant conjointly with her husband and her sister's minor children, which value is ascertained by the evidence of the Maniager and other witnesses to be 15 Rds.

It is decreed that the plaintiff Ayempermal Tawasy be confirmed in the propriety of the Land Iropockadowalewoe, which he now possesses, on his paying into Court the sum of Rds. 15, which are to be distributed to Vinasy Segra Sinnatamby and his wife Valliar and their Co-heirs ; and it is ordered that the Surveyor do proceed to the said spot of ground, in order to survey the same, which survey is to be annexed to a copy of this decree, and that defendant do pay the costs of suit.

From the Diary of the Sitting Magistrate of Point Pedro.

No. 2,731.

6th June, 1809.

Weler Periatamby ... ... *Plaintiff.*

Vs.

Wally Canden ... ... *Defendant.*

METFIELD, Judge.

Son's right of pre-emption.

It is ordered that the Title Deed made out by the Schoolmaster, from Colendenatchy to *Soopremanier Walapole Ramen*,* dated the 21st May, 1809, of 2⅜ Lachams of the garden Coter Colletty, be cancelled, and that the plaintiff the son of the said Colendenatchy be by right of Pre-emption put into the possession of the said 2⅜ Lachams of the said garden, situated at Tumpale, and mentioned in the said Title Deed, upon paying 18 Rds., 1 f. to Colendanatchy, and to Weler Perian 5 Rds. 11 fs., partly otty and rent money to the said Colendanatchy, and that Tavisiar Comaravalen pay all the expences attending the suit.†

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* Evidently a stranger

† The Civil Diary is so imperfect that the facts necessary to complete the judgment, and make it useful, cannot be gathered.

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No 7—174.

19th May, 1818.

Welayder Casinader, and wife Walliamme, of Tillepalle ... ... *Plaintiffs.*

Vs.

Neelen Canden ... ... *Defendant.*

ST. LEGER, Judge.

The plaintiffs are partners of half, and the first and second defendants of the other half; fourth defendant is the Odear, and the fifth, the Notary; first and second sold away to third defendant. Plaintiff states he appeared before fourth and fifth defendants and stated his objection, but they would not listen. Plaintiffs say that the actual amount of the sale was 175 Rds., but the transfer was made out for 230 Rds.—third defendant is a stranger.

The plaintiff came to know of the sale after he instituted a case before the Sitting Magistrate's Court, for an encroachment of a part of his Land, against third defendant.

Judgment.

It is decreed that the Bill of sale in favor of the third defendant, under date the 30th October 1816, be cancelled and considered void, and that the plaintiff be ollowed to purchase the Land called Soenawatte, containing 3 Lachams, at the price of one hundred and seventy five Rds., being the sum originally agreed upon, in right of Pre-emption as near of kin and as possessor of a Land immediately adjoining.

Pre-emption.

The first, second, and fourth (Odear)* defendants to pay the costs of suit.†

No. 7—475.

29th Dec., 1818.

Sadelingam Weesearagoe of Nellore ... ... *Plaintiff.*

Vs.

Carelupulle Ianapurgaser ... ... *Defendant.*

ST. LEGER, Judge.

Want of publication fatal.

The Court does not consider it necessary to examine more witnesses, for it is allowed on all hands that due pub-

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* As the Schedule was granted without publication.

† Date of Bill of Sale 30th October, 1816. Date of sitting Magistrate's judgment 6th January, 1818. Date of the institution of action, 2nd February, 1818.

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lication was not made of the intended sale, which circumstance is sufficient under the Thesawaleme to annul it; the offer made by plaintiff being immediately after the sale, is also a sufficient reason for annulling it, as a month's time is allowed for such offers to be made.

It is decreed that the Bill of sale of the land Koedawoejendapalam, bearing date August 4th, 1808, is, and be considered, null and void, and that defendant do execute a Bill of sale of the said land in favor of plaintiff, on his paying the sum of Rds. 400. Defendant to pay the costs of suit.

And, on the application of defendant, it is ordered that previously to the above decree being enforced, the plaintiff do take oath in the most solemn and binding manner, by stepping over the body of his wife at the Tem ple of Pallai, that the defendant never did offer to sell to him the land in question for Rds. 400, and that the plaintiff never refused any offer of this kind.

18th April, 1820.

No. 7—831.

Cander Ambelam, for and on behalf of his wife

Parpaddy ... ... *Plaintiff.*

Vs.

Manuel Joan, and another ... ... *Defendants.*

LAYARD, Judge.

Daughter and Otty holder's right of preference.

Court calls as to custom Welleweraya Modliar and Welaida Modliar, they declare that the daughter has the preference to the otty holder to the right of pre-emption.

It is decreed that the second defendant do receive the Rds. 80 now deposited in the Cutcherry, deducting the interest therefrom at 12 per cent. per annum, lost to plaintiff by its being refused and his keeping possession of the land and its profits, from the date the said sum of 80 Rds. was therein lodged, and it is further decreed that second defendant do pay the costs of this suit.

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No. 2,064.

5th July, 1822.

Warey Sinnewen of Aweranecal ... ... *Plaintiff.*

Vs.

Coner Madewen and others ... ... *Defendants.*

FARRELL, Judge.

Publicatian necessary.

Otty holders right of preference.

It is the decree of this Court that the sale of the land in question by first and second defendants to third defendant is not valid, due notice not being proved to have been given to plaintiff (the otty holder of the said land) of such sale. It further appears that third defendant is not related to first and second defendants, and that plaintiff being otty holder is by law entitled to the preference on the land he holds in otty being offered for sale, no relation of the owner coming forward. It further is the opinion of this Court, that the well sunk by plaintiff does not belong to the land Manicandenolle, but to the land which the plaintiff purchased from Maniker Casinader. *Defendants* * to pay costs of suit.

No. 2,086.

8th August, 1822.

Weealatchy widow of Sooper Brahmin of Chavagacherry, and son Sandresegren ... ... *Plaintiffs.*

Vs.

Parpaddam widow of Sooper and eight others ...*Defendants.*

FARRELL, Judge.

Plaintiff, the daughter of the second bed and a widow of a son of the first bed, (sixth Defendant,) and her children the seventh, eight, and ninth Defendants sold the Land by a deed of 13th September, 1821, to the first Defendant, whose Father held the other half in otty, the fourth and fifth Defendants are the odear and Schoolmaster.

Held the Court does not require any further evidence on the part of Defendants, first Defendant being willing to surrender the one half of Mighielpulle Aratchy wayel to plaintiffs, on their paying the amount of the purchase money and stamp, and the first plaintiff not having proved that she was in the possession of the other half, which on the contrary

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* Fourth defendant is the Odear, plaintiff is not related, but an otty holder.

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appears to the Court to have belonged to first plaintiff's brother Kritner, and to have been sold in otty by him to second defendant's husband.

It is Decreed that first and second plaintiffs are to have the option of purchasing half the Land Mighielpulle Aratchy wayel from first defendant, for the sum of Rds. 145., 8 Rds. of the said amount being for the stamp, to be paid to first defendant, by fourth and fifth defendants, they as headmen having permitted an illegal sale. That one half of the Land Mighielpulle Aratchy wayel do belong to second defendant, in right of otty purchase, and do remain with second defendant, until the amount of the otty Bond dated 5th July, 1803, being Rds. 95, is paid, and that fourth, fifth, sixth, seventh, eight and ninth denfendants pay plaintiffs and first defendants costs, and plaintiff do pay second and third defendants costs.

Headmen.

23rd Jany. 1823.

No. 1,886.

Vader Sittambelewen of Valvettytorre ... ... *Plaintiff.*

Vs.

Andey Nagen and others ... ... *Defendants.*

SCOTT, Judge.

Plaintiff is proprietor of half the Land by purchase from first defendant, but second defendant is the husband of the first defendant's niece.

Part owner and near relation.

Held, the Court don't reqnire any further evidence touching the marriage of second defendant to first defendant's niece.

The first and second defendants are so nearly connected that the plaintiff's claim to preference cannot be admitted. The sale of the Land in question by first defendant to second defendant cannot therefore be disturbed, on the plea set up by plaintiff.

Plaintiff's Libel is in consequence dismissed with costs.

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No. 2,563.

21st Feby., 1823.

Sandamma widow of Tolisinarame Ayer, Brahmin, of Vannarponne... ... ... *Plaintiff.*

Vs.

Natchipulle widow of Pooder, and another ... *Defendants.*

Scott, Judge.

The Defendants agree to give up the Lands, agreeably to the Country Law, provided their relations will purchase the same at such a rate as to enable the plaintiff to recover her money advanced on the mortgage.

The offer of the defendants is in conformity to the Country Law and the Rule observed by this Court in similar cases, as will appear on reference to case 1,889.

Offer first made to Relations, then to Otty holders.

It is Decreed that the defendants shall offer the Land ottied for the value of the otty to their nearest relations, and provided no objections are made on the part of the relations, that defendants shall then make a transfer in plaintiff's name at plaintiff's costs, and that each party pay their own costs up to this day.

No. 2,767.

10th June, 1823.

Ramanader Nitsinger and brother Moorgen ... *Plaintiffs.*

Vs.

Komarevalen Soeritamby and three others ... ...*Defendants.*

Farrell, Judge.

Plaintiffs claim the Land Pannekowaddekko Selacademie, situated at Allewetty, 18¼ Ls., in right of purchase from the first defendant for 400 Rds., and states that they paid 250 Rds., and offered the remainder 150 Rds. to the second and third defendants to redeem the Land from otty, who refusing to receive the said amount and return the otty deed, plaintiffs pray that they may be compelled to do so.

First defendant states that the fourth defendant paid 150 Rds. to Ayen Soose, and redeemed the land, to whom first defendant had ottied it, and further, that he transferred the said land to plaintiffs, but that they must still account for 23 Rds , 9 fanams.

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The second defendant states that plaintiffs have no right to prosecute him, as he, neither his father, held the land in otty: third defendant states the same, with the exception that the land had been ottied by first defendant to his father Ayen Soose, from whom the fourth defendant redeemed it; fourth defendant maintains that he, as the neighbouring landholder, has a right of pre-emption, and states that the sale was conducted in such a private manner that he had no opportunity to make his objections, and that he, in consequence, instituted the suit 2,775.

It is to be observed, that the subject of litigation in the case No. 2,767, and in 2,775, is the same, the parties merely changing sides, the Court therefore heard the witnesses in both cases at once, all of whom have been examined, with the exception of eight witnesses on the part of the plaintiff, in the present case, waived by their Proctor.

It appears that first defendant is owner of the land Pannekowaddekko Seela Cadewa, and sold the same in otty to second and third defendants that same year; after, first defendant sold the same land in propriety to plaintiff, stipulating for the payment of the otty Bond for 150 Rds., held by second and third defendants; further, that second and third defendants had made over the otty deed granted them by first defendant to fourth defendant, who held the same at the time the bond in question was purchased in propriety by plaintiff, and that the said otty deed still remains unredeemed.

First defendant sues for a balance of 22 Rds. 9 fanams, which he states is still due by plaintiffs on account of the purchase of the land, independent of the amount of the otty deed Rds. 150; fourth defendant denies the sale of the land to be legal, the usual forms not having been observed, and wishes that it may be annulled, that he being the holder of the otty bond may have right of pre-emption according to the custom of the Country; upon which the Court has come to the following determinatien.—That the sale of the land Pannekawadden Sulacadawe by first defendant to plaintiff is to stand good, that plaintiff is to pay the amount of the otty bond granted to second and third defendants by the first defendant, being Rds. 150 to fourth defendant, and

Re-otty holder and Prior purchaser.

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that defendants do pay costs of both suits, that is, all the defendants in case No. 2,767 the costs of that suit, and the fourth defendant in case 2,767 all the costs of case 2,775.

Judgment affirmed by the High Court of appeal.

No. 1,499.

13th June, 1828.

Comareswamies, brought up daughter Walliamme. *Plaintiff*.

Vs.

Sinnetamby Wayremootto and others ... ... *Defendants*.

Farrell, Judge.

It appears to the Court that the Bill of Sale filed by plaintiff for half the land sold to plaintiff by second Intervenient is valid, and that plaintiff is rightful owner of such land. It also appears to the Court, the sale of the other half of the said land (which has hitherto remained in plaintiff's hands in otty) to second defendant by first defendant, has been suspiciously conducted, and so as to deprive plaintiff of the benefit of pre-emption, to which as otty holder she was entitled.

Otty holder's right and fraudulent sale.

The first defendant is indebted to plaintiff in Rds. 84, being amount due on otty bond for Rds. 168. 5., in favor of plaintiff's sister Sinnepulle, that third defendant received from plaintiff 144 Rds., to purchase the land in question from him, which sum is now deposited in Court.

It is therefore decreed that the whole of the land Anecaren Coorowelletotam belongs to plaintiff in right of purchase, second defendant receiving the 114 Rds. deposited in Court, which, with the amount due by him to plaintiff on otty bond, Rds. 84, makes up the sum for which the land was purchased by second defendant, and that defendants do pay costs of suit.*

No. 2,448.

1st July, 1828.

Nicholan Anthony of Sillale... ... ... *Plaintiff*.

Vs.

Joan Anthony, and another... ... ... *Defendants*.

Farrell, Judge.

The land Ellamanade at Chillale belongs to Phillippal, (vide Decree of Minor Court of Appeal of 5th June, 1819,

*Fourth defendant is the Odear.

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in Mallagam Case 2,055) in right of Dower, she is a widow without issue, and Defendants are her brother and sister. Phillippal sells her land to Plaintiff—Defendants have a right of Pre-emption, and wish the sale to be annulled on the score of informality and non-observance of term of notice, and the Court is of opinion, that due and customary notice has not been given, the land having only been proclaimed for sale sixteen days, instead of one month, as is required by the Country Law. It is therefore decreed that the sale of the land Ellemanade at Chillale to plaintiff by Philippal, is null and void, and that plaintiff do pay costs of suit.

16 days publication not sufficient.

However, plaintiff having paid Philippal, and there being little chance of his recovering that amount from her, the Court thinks it reasonable to warn Defendants, that if within one month from date hereof, they do not pay to plaintiff in Court the sum of Rds. 130, being purchase amount of the land in question, that the sale of the said land will therefore be confirmed to plaintiff.*

Paying money into Court.

22nd Sept., 1823.

No. 2,927.

Sandamma, widow of Tolesinarayaner and brother, Brahmins, of Vannarponne ... ... *Plaintiffs.*

Vs.

Tollesirama Ayer Nagendra Ayer and Soo premanier Welayden... ... ...*Defendnats.*

FARRELL, Judge.

The question before the Court is, whether plaintiffs, being Brahmins and nearest of kin to first Defendant, also a Brahmin, had due and legal notice of the sale of first Defendant's land Papanwayel to second Defendant, a man of different caste, so that plaintiffs might exercise their right of-pre-emption, and the Court is of opinion that legal public notice was not given of the sale of the land Papanwayel, the same having only been proclaimed once instead of three times.

Brahmin and one of different caste.

Publication.

It is therefore decreed that the sale of the land Papanwayel belonging to first Defendant, by first Defendant to se-

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* Plaintiff was a stranger, neither an Otty holder or relation.

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cond defendant, is null and void, and that Defendants do pay costs of suit

It is ordered that the Odear of Ariale south do pay a fine of 20 Rds. for his misconduct, in certifying that the notice of sale had been given, when, by his own admission, he was aware that due notice of sale had not been given, and that he be confined in the common Gaol of the District until the said fine be paid.

Odear fined.

No. 579.

2nd Nov., 1824.

Sitting Magistrate, Point Pedro.

MEYEBANK, Judge.

The Court, after perusal in this case, is of opinion that the defendant who purchased the land in question is a partner, and that her father had, previous to the sale, held the land in Otty, and that he is also a partner, upon this reason the plaintiff* cannot claim a pre-emption right, according to the Thesawaleme,Country Law.

Partner's right of pre-emption.

It is therefore ordered that the defendant's deed, dated 21st November, 1823, be enforced, and plaintiff's claim for pre-emption be rejected, and plaintiff pay the defendant's costs in the fourth class.

No. 7-144.

9th May, 1820.

Arolambela Modliar of Ploly... ... ... *Plaintiff.*

Vs.

Amblewana Swaminaden and another... ...*Defendants.*

LAYARD, Judge.

First defendant mortgaged land to the second defendant, who obtained Judgment and issued Writ, plaintiff claims the land by pre-emption, but does not tender the amount of the decree.

On reading the Pleadings in this case, it is evident that the plaintiff has no claim whatever on the second defendant, he acknowledging never to have tendered the amount of the decree in the second defendant's favour against his Cousin the

Claimant for preference must pay debt into Court.

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* It does not appear by the Diary by what right the Plaintiff claimed.

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first defendant; the land Pareihanoedel is liable to be sold in execution in satisfaction of the writ issued in the case No. 72 for Rds. 152, and interest at twelve per cent. per annum, from the 12th June, 1815, till the day of payment, and it is further decreed plaintiff's suit be dismissed with costs.

No. 3,788.

20th March, 1826.

Nagamany Winasytamby of Batticotta. ... ... *Plaintiff.*

Vs.

Muttocomaroe Annamaley and two others of Welene ... ... *Defendants.*

WRIGHT, Judge.

The plea of pre-emption set up by plaintiff in bar of the sale of the land in question, to third defendant, had one objection, namely, the superior claim on a similar plea of second defendant, but as it does not appear that he ever objected to the sale, and as it is understood that he is too poor to be able to pay for it, the Court must recognize the plaintiff as the next best claimant. The second plea of plaintiff, that is to say the non-publication of the intended sale to third defendant, the Court thinks has been established, though it will record its disapprobation of plaintiff's conduct in the business, as relates to his breach of promise to fulfill his engagement with the first defendant, and the Court cannot believe that he was ignorant of the intended sale to third defendant. However as the country law does enact that a proper notice shall be duly published, and as that notice was not so given, he must be allowed to benefit by the negligence of the Odear, whose testimony being virtually a self-defence, the Court cannot admit to be of itself of sufficient weight to stand in the way of an established custom, and it is clearly proved that plaintiff did make his objection to the sale in the former instance in due time, when the first defendant published his intention of selling the land to third defendant's brother. The Court cannot however compel the first defendant to sell his land to plaintiff, or to any other

Publication.

Compelling sale.

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person, but can do no more than annul the sale, which has been made irregularly to the third defendant.

It is decreed that the sale of the land named Sakawattewalewoe, by first defendant to third defendant, for the sum of 200 Rds., on the 19th February, 1825, be annulled, in consequence of the Odear of the village having failed to publish the sale according to custom. That the third defendant do however continue in possession thereof until the purchase money be re-paid to her, together with the expenses of the transfer by the first defendant, and that *Plaintiff* do pay the costs of this suit.

Right to posses till purchase amount is paid.

No. 4,673.

27th Nov., 1827.

Pooden Canden and others... ... ... *Plaintiffs.*

Vs.

Weler Sammander and others... ... ... *Defendants.*

BROWNRIGG, Judge.

The right of pre-emption is admitted, but it does not appear how the parties are related, their being no evidence.

The Court considers that, under the Thesawaleme, the 4th plaintiff, being distantly related to the four first defendants, can have no right of pre-emption while the nearer heirs (the second plaintiff in this suit and the plaintiff in the suit 4,717) are in existence, and willing to avail themselves of their prior right. The Libel therefore, as far as regards the fourth plaintiff, and her husband the third plaintiff, is dismissed with costs: with respect to the right of pre-emption of the second plaintiff in this suit, (also one of the plaintiff's in the connected case 4,717,) the Court considers that as they have brought these suits within the period of one month as required by the Thesawaleme, that they have such right, but as it does not appear from the evidence that they gave notice either to the Odear, the seventh defendant, or the Notary the eighth defendant in this case, in time to prevent the execution of the Deed, the Court considers that the fifth defendant is entitled to recover from them the expense of stamp and fees for the transfer of the

Action to be brought within a month.

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land, and that the costs of this suit and the other suit should fall on the plaintiffs.

It is decreed that the second plaintiff in this suit, and the plaintiff in the suit 4,717, are entitled to pre-emption of the Land Plettin, and that on their tendering to the fifth defendant in this suit the amount paid by him, with the value of the stamps and fees to the Odear and Notary, within one month from this date, the deed of sale dated 6th October 1826, in favor of fifth defendant, be set aside, and a new transfer made out in their favor. That the libel, as far as regards the third and fourth plaintiffs in this suit, be dismissed with costs, and that the other be borne by the first and second plaintiffs.

3rd June, 1828.

No. 4,612.

Soorierperian, wife Cottinachy, her Sister Sidovy, of Pandlipay... ... ... *Plaintiffs.*

Vs.

1 Permal Modelitamby, and
2 Madaver Siunatamby, Parpatiagers of Sodomalle, and
3 Comaravaler Weyramottoe, Parpatiagar of Amcotta... ... ... *Defendants.*

Brownrigg, Judge.

Seller of the land was sister to the Father of the second and third plaintiffs.

Held.—It appears clear to the Court that the second and third plaintiffs are, under the provisions of the Thesaweleme, entitled to right of pre-emption of the land in question as the nearest relations of the seller. The Court also feels convinced that no publication of the sale of the land ever took place in the village, and that the first and second defendants have attempted to conceal their fraudulent conduct by false witnesses. It is decreed that the bill of sale in favor of the third defendants, bearing date 24th February 1826, be set aside and declared null and void, that second and third plaintiffs as nearest relations to Madatte are entitled to pre-emption of the land Talchentalwoe, and that on their paying the value thereof within one month from this date, she de

Right of Nieces.

Publication.

Sale set aside.

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transfer the said land to them. The third defendant is left to his remedy against the sellers of the land to him. The costs of this suit to be borne by the first and second defendants.

No. 6,571.

7th Dec., 1830.

Rama Ayer Wengatta Rama Ayer of Valantalle... *Plaintiff.*

Vs.

Cranagasawe Modliar Amblewaner and another... *Defendants.*

PRICE, Judge.

Pre-emption. Invalid Sale.

On reading the proceedings in this case, it appears that no regular transfer of the land has taken place. Plaintiff's claim is therefore dismissed with costs.*

No. 2,781.

23rd Jany., 1853.

Kneesayer Mootayen ... . *Plaintiff.*

Vs.

Cadergamer Coanger and others ... ... *Defendants.*

TOUSSAINT, Judge.

Plaintiff, as a partner in the land, claims the right of pre-emption.

Partners and Relations.

The Court is of opinion that plaintiff proved no right of pre-emption for the purchase of the lands now said to be the purchase property of second defendant. By evidence it appears that second defendant is both related to the sellers and a partner to the land, the Court considers him to have a better right, so that the purchase must stand in force. It is therefore decreed that plaintiff's claim be dismissed, and that plaintiff do pay the second defendant's costs.

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* Defendants were in possession of the land under a verbal sale.

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1st March, 1833.

No. 8,345.

Soopremanien Chettiar Sinnayah of Vannarponne . *Plaintiff.*

Vs.

Walliamme widow of Apiearana Kneesayer, and two others... ... ...*Defendants.*

PRICE, Judge.

Adjoining Land-holder.

Plaintiff claims the land in question in right of pre-emption, and it appears from the evidence adduced to-day, and from a document he has filed, to have a prior claim to the second defendant, as he already possesses 50 Lachams which adjoined that in question, and in fact forms part of that land.

Publication for three Sundays.

Defendants attempt to prove that plaintiff declined giving more than Rds. 230 for it, and that it was sold to second defendant after due publication for Rds 330, the necessary publication in this instance, where the parties reside in the same village, would be for three successive Sundays for one month.

From the manner in which the defendants witnesses have given their evidence to-day, I entertain considerable doubts that the required publication was made.

Under these circumstances I consider the deed in favor of second defendant, dated 19th February, 1833, should be cancelled, thereby giving the plaintiff an opportunity of becoming the purchaser of the land, should it still be the intention of the first defendant to sell it, and defendants to pay costs.

The Assessors agree.—Ordered accordingly.

22nd Nov., 1834.

No. 848.

Waligammo.

Sinnecotty wife of Ramen of Sangane ... ... *Plaintiff.*

Vs.

Cadergamer Sanmogam and another ... ... *Defendants.*

BURLEIGH, Judge.

Plaintiff is sister to first defendant and adjoining Land-holder, second defendant is neither heir nor adjoining Land

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* Third Defendant is the Odear.

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owner, the deed is not filed in evidence, and it is therefore impossible to say whether it was executed upon schedule and publication; however the question as to whether or no there was publication is not raised. Date of Deed 4th October, 1834, action 11th October 1834.

Brother bound to give notice of sale to Sister.

According to the Country Custom the first defendant was bound to inform the plaintiff that he intended to sell the land to the second defendant for 20 Rds., he failed to do so. I therefore consider that the sale of the land should be annulled, and that the first defendant do pay back the purchase amount and costs of purchase to the second, with the present costs of suit.

The Assessors are of the same opinion.

It is decreed that the sale of the land be annulled, and that the first defendant do pay back to the second the purchase amount, and the costs (if any incurred there) also to be paid by him; first defendant to pay costs. The land must be sold to the plaintiff for 20 Rds., on her paying the 20 Rds. to first defendant.

No. 210.

District Court, Tenmorachy.

5th Dec., 1834.

Judgment of the Supreme Court. 5th December, 1834.

Mortgagee's Right of Pre-emption.

From the Thesawaleme (appended to Van Lewen's Commentary, p. 793-4.) it would seem that in the Northern Province the right of pre-emption only existed where the party claiming it held a mortgage or some other claim upon the land. At all events, it seems the height of injustice that this right should be enforced, except on payment of the highest price which any other person would offer for the land. The right must be founded on the contiguity of the land to be sold to that already possessed by the party seeking to exercise the right To him therefore the land must be more valuable than to others, and he ought consequently to pay the best price which could be got for it.

The highest price should be paid by party asserting right of Pre-emption. *

* From Morgan's Digest of the Decisions of the Supreme Court, the original Case not forthcoming.

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26th Nov., 1834.

No. 344.

Wademoratchy.

Cander Maden of Tumpalle ... ... *Plaintiff.*

Vs.

Winayeger Aromogetar Odear of Do. and Seedawy wife of Canneweddy ... ... *Defendants.*

Parpady, daughter of, Cander wife of Murgen...*Intervenient.*

TOUSSAINT, Judge.

Heir preferred to partners.

The Case is explained to the Assessors, as also the Country Law. The opinion of the Court is, that the preference of purchase must in the first place be given to the Heir, who is the plaintiff's sister, the Intervenient, and not to the second defendant, who came forward as a partner. The Assessors agree in opinion with the Court with regard to this. Next, the Court stated its opinion to the Assessors about the costs of suit, and stated as follows.—That as plaintiff did not give the preference of purchase either to his Heirs or partners, and the second defendant not considering that plaintiff had Heirs and persons that had a better claim to purchase the land, was so forward to object before a Transfer took place, or she knew in whose favour the Transfer is actually going to take place, and the Intervenient not having come forward to claim the right of preference until she saw the right was about to be given to the second defendant in the Case, she does not come forward to interrupt the same. The Court considers it advisable to make every party bear their own costs of suit.

It is decreed, that the right of preference to purchase the plaintiff's share in the land Osewekrochiwally be given to the Intervenient, and that both parties and the Intervenient do bear their own costs of suit.

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No. 1,375.

11th Aug., 1835.

Amerecoolasooria Modliar Innasitamby and wife Susannah of Pandeterrepoe ... ... *Plaintiff.*

Vs.

Ramer Innasy and Jeronimo Anthony ... ... *Defendants.*
Sawaoriapulle, wife of Seinanpulle ... ... *Intervenient.*

BURLEIGH, Judge.

It appears evident from what the Odear states, that the husband of the Intervenient was aware that the land was for sale, and had been, and I have no doubt whatever that the Intervenient was well aware that her Brother, the late Anthony, intended selling the land; there can be no doubt of this, she had then an opportunity of purchasing the land and failed to do so, and by the Country custom she cannot be allowed to have a second refusal; plaintiff's (after her) are the next heirs, and by the Thesawaleme are now entitled to purchase the land, for close relations are allowed the preference. I believe that they were not aware of the sale at the time it took place, and I further believe, that the Intervenient has stepped in merely to prevent their getting the land. I am of opinion that a decree should pass for plaintiff, I may mention that the sale is an illegal one, as it ought to have been published; the Assessors (who reside in the same village, and knew this case well) fully agree in opinion with the District Judge.

One offer sufficient.

Publication.

It is decreed that plaintiffs be put into possession of the land, on plaintiffs paying to the estate of the late Jeronimo Anthony the sum of 120 Rds. Defendants to pay costs borne by plaintiffs, Intervenient to pay her own costs.

No. 1,482.

20th Aug., 1835.

Punwen Chinnaven and wife... ... ... *Plaintiffs.*

Vs.

Chinneven Moorgen and wife... ... ...*Defendants.*

BURLEIGH, Judge.

The first plaintiff's mother purchased at the sale for the plaintiffs, who it appears were unable to pay the purchase money, had first Defendant received any earnest money (al-

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lowing that he promised to give the land after the purchase, which I doubt) from the plaintiffs, I certainly should have given a decree against the defendants. It is the custom to give earnest money, and the first defendant could not be considered *bound* if he did not get earnest money; the plaintiffs say in their Libel that the second is next heir, and therefore has the better title to purchase the land, the plaintiffs had an opportunity of doing so, in fact it was purchased for them by the mother, and they failed to pay the purchase amount. If such objections were allowed as are made by the plaintiffs, there would never be an end to vexatious law suits; I am of opinion that a decree should pass for defendants. The Assessors Agree. It is decreed that the claim of the plaintiffs be dismissed with costs.

Earnest money.

29th March, 1836.

No. 757.

Point Pedro.

Sidowy, wife of Canneweddy of Tumpale... ... *Plaintiff.*

Vs.

Canden Maden and another... ... ...*Defendants.*

TOUSSAINT, Judge.

The Country Law says that three months time is allowed for persons within the province, and out of village at the time, to claim preference.

Publication sufficient notice.

The publication made by the Odear is considered a sufficient notice, and as plaintiff did not institute this case until four and half months after the said transfer, the claim is not considered a grounded one, nor does it appear that plaintiff has proved her case.

The Assessors agree in opinion with the Court, that plaintiff has no right, under the circumstances of the case, to claim a right of preference to purchase the land in question. It is decreed that plaintiff's claim be dismissed, and that plaintiff do pay the second defendant's costs of this suit.

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No. 1,777.

Jaffna.

11th May, 1836.

Tawesiar Waritamby of Colombogam... ... ... *Plaintiff.*

Vs.

Plaintiff's brother Tavasiar Sidembrepulle and others... ... ...*Defendants.*

PRICE, Judge.

It appears by the evidence of one of plaintiff's witnesses, that it was well-known to plaintiff that the land in question was for sale. Plaintiff appears to have made two offers for the land, through the medium of his witness Sooper Sinnetamby.

One of plaintiff's witnesses also states, that he had heard that due publication of sale of the land was made.

Agreeable to the Thesawaleme, this suit, for the setting aside of the sale in favor of second defendant, should have been brought within one month after the sale, but the Libel appears to have been filed on the 30th December—nearly two months after the sale.

Action for preference within one month.

The Court and Assessors are therefore of opinion that plaintiffs claim should be dismissed, with costs.

Ordered accordingly.

No. 1,785.

Waligammo.

23rd May, 1836.

Oropulysinga Senaderaya Modliar Sangrepulle, of Tillepulle... ... ...*Plaintiff.*

Vs.

Comaravaler Welayder and others... ... ...*Defendants.*

WOOD, Judge.

I cannot consider the contract Bond filed by plaintiff to be a legal one, inasmuch as if it was intended to be binding on the first Defendant, a publication thereof ought to have been made previous to the Deed being executed, and a schedule from the Odear ought to have been produced. There is an attempt to prove that the consent of the Heirs and others, who had a right to claim pre-emption, had been obtained, which has failed in respect to the sixth defendant,

Schedule.

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and most completely as with respect to the fourth and fifth; the very fact of a contract Bond for the future sale of a land being executed, is in itself very suspicious, as if the consent of the parties had really been obtained there was no reason why a transfer deed could not have been executed upon payment of the amount the land was ottied for; first defendant has evidently been deceived by plaintiff, and has been persuaded by him to sell his land without the knowledge of the parties who had a right of pre-emption. I am therefore of opinion that the Bond should be cancelled, and that first defendant should return the 43 Rds. to plaintiff and bear his own costs, and that the costs, of second, third, fourth, fifth, and sixth defendants should be defrayed by plaintiff.

Parties' right of pre-emption.

The Assessors agree in this opinion.

It is Decreed that the Contract Bond*. in this case be cancelled, and that first defendant do return the 43 Rds. paid to him by plaintiff, and bear his own costs. The costs of the second, third, fourth, fifth, and sixth defendants be defrayed by plaintiff.

4th March, 1842.

No. 4,252.

Chavagacherry.

Cadergamer Soorier Sandanpoketty... ... ...*Plaintiff*.

Vs.

Cangeyar widow of Cadergamer and others... ...*Defendants*.

Wood, Judge.

The plaintiff, second defendant, and the Intervenient, are the three sons of the first defendant, plaintiff claims, first, his share of the otty amount for which the land in dispute is alleged to have been ottied to his late Father, secondly, the pre-emption of purchase as being a joint planter. It is alleged that the transfer has taken place to the second defendant, without due publication, but the plaintiff's own witnesses clearly prove it to have taken place, and why therefore first defendant did not come forward as the otty holder either to

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*. It is an Agreement for the future sale of Lands: the sixth defendant was a brother of the first defendant.

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pre-emption of purchase, both on the ground of being otty holder of the land transferred as well as owner of the other half share, does not appear, nor is it necessary in the present case for us to know. The only questions are, can the plaintiff claim any share of the otty amount during the lifetime of his mother, according to the Country Law, *he cannot,* and has he proved that he was a joint planter? Certainly not, except as an assistant to the first defendant, I think therefore he ought not to have brought this action. Plaintiff was certainly not ignorant of the sale, as it is proved he himself offered a price for it. Therefore *if there was any fraud on his mother, the first defendant, which I am disposed to think,* in the case he at least was not unwilling to become a party to it. If the first defendant had come as plaintiff *I should have little difficulty in at once setting aside the Transfer deed, upon the admission of the third defendant alone, as he admits* that the land *was in otty* to first defendant and yet he admits to have sold it to the second defendant, without any mention of the otty or even a reference to it and receives (if the evidence of the witnesses for the second defendant is to be believed) the *full amount* of the consideration money, which is a fraud upon the very face of it, but however the case does not come before me in *that* shape that I can feel myself justified *in touching the transfer deed at present.* It appears to me therefore, the plaintiff's claim must be dismissed, and that he should pay the costs of the first, second, and fourth defendants (upon whom there is no blame) previous to the intervention, and Intervenient to bear the subsequent costs, with the exception of the third defendant, who is to bear his own entire costs. The assessors concur in this.

Son cannot claim otty amount during life time of mother.

Transfer without mention of otty.

It is therefore decreed, that plaintiff's claim be dismissed, paying the costs of first, second, and fourth defendants, previous to the intervention with the exception of the third defendant's and intervenient, to bear the subsequent costs, with the exception of those of the third defendant who is to bear his own entire costs.

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24th Aug., 1836.

No. 2,214

District Court, Waligammo.

Cadrasipulle widow of Witrasie and her son Canden of Mavettiporam ... ... *Plaintiffs.*

Vs.

Sidembrenader Mader and another ... ... *Defendants.*

Burleigh, Judge.

Objection to be made upon publication.

I consider it quite useless to enter any further evidence in this case, according to the custom of the Country (Thesawaleme) the plaintiffs were bound to go forward and oppose the sale before the conclusion of publication, this the second plaintiff states they did not do, although they were aware that the second defendant had an intention of making the purchase at that time themselves, such cases are frequently brought forward. I am of opinion that a decree should pass for defendants.

The Assessors fully agree in this opinion.

It is decreed that the claim be dismissed with costs.

Judgment affirmed in Appeal 14th December, 1836.

31st May, 1837.

No. 2,272.

District Court, Jaffna.

Vissowenader Vaytienader and two others ... *Plaintiffs.*

Vs.

Sooper Amblewaner and four others. ... ...*Defendants.*

Price, Judge.

On hearing the statements of the parties, the Court and Assessors are of opinion that it is not necessary to take evidence in the case.

No action for preference after the Deed is cancelled.

It appears that a transfer deed was executed for the Land in question (copy of the deed is filed dated 11th July, 1835) that after its execution it was cancelled in consequence of an objection which was raised by second defendant before its execution ; first and third defendants having cancelled the deed, the Court is of opinion that the plaintiffs' claim should be dismissed, but as it does not appear that they were aware of its being cancelled, the Court and Assessors are of opinion that the costs of this suit should be borne by the first, third,

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and fifth defendants, as it appears that they were aware of the second defendant's objection before the deed in question was passed, and notwithstanding passed the deed.

Decreed that the deed alluded to by the parties, is considered by the Court and Assessors null and void, and that the costs of this suit be borne by the first, third, and fifth defendants.*

No. 2,431.

7th June, 1838.

District Court, Islands.

Ramenader Saugrepulle and Vissowenader Sittambelam of Caretivoe... ... ... *Plaintiffs.*

Vs.

Iakrepader Waytilingam and five others ... *Defendants.*

MOOTIAH, Judge.

Plaintiffs were the relations of the sellers.

First plaintiff's late father, and the second, third, fourth defendants father are brothers, first defendant is the otty holder, also an adjoining land owner.

The Court is inclined to believe the evidence produced on the part of the plaintiff to prove their having lodged their claim to become purchasers, of the land in question, in right of preference, before the first defendant, in the due time as prescribed in the Thesawaleme, with respect to the sales and purchases of lands. There is no sufficient evidence to support the publication of the sale, as provided for in the special law of this Province, Thesawaleme, by beat of tom-tom for three successive Sundays, under these grounds the Court is of opinion that the two Bills of sale dated 1st October, 1836, in favour of the first defendant, granted by the second, third, and fourth, selling ten Lachams by each of them of the land Kanane, should be set aside and cancelled, and that the second, third, and fourth defendants do pass fresh Bills of Sale in favour of the plaintiff for the said land before the sixth defendant, on paying to the first defendant the amount of the two cancelled Bills of sale, being

Publication by Tom-tom.

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* Fifth Defendant is the Notary.

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£17 8s. and the Notarial fee, in the course of a month from this date, and in default of doing so that the cancelled Bill of Sale in favor of the first defendant, be considered to be in full force to all intents and purposes—as if they were not cancelled, and that the first five defendants do pay costs to the plaintiff and the sixth defendant.*

No. 2,937.

4 th Oct, 1 838.

District Court, Jaffna.

Wessowenader Cander of Irrowale ... ... *Plaintiff.*

Vs.

Caderen Maden and another ... ... *Defendants.*

PRICE, Judge.

Plaintiff claims pre-emption as adjoining landholder and relation of the seller, the second defendant, and denies publication of the sale to first defendant (relationship of plaintiff's maternal grand father and second defendant's husband's mother are brothers and sister) first defendant is the otty holder of the *land sold.*

Plaintiff claims the land in question in right of pre-emption, and alleges that the land has not been sold according to the custom of the country.

The Thesawaleme, section 7, clause 1, treats of the sales of land, and the custom there laid down is, that "no sale of lands whatever, shall take place until the party willing to sell the land shall have caused publication to be made of their intention on three successive Sundays at the church to which they belong."

First defendant states, he does not know whether publication was made or not, and that he has no witnesses to prove the publication.

This being the case, the Court and Assessors are of opinion that the Bill of Sale granted by second defendant in favor of the first, dated 22nd January 1836, should be cancelled, Defendants paying the costs.

The Court cannot decree the land to be transferred to

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*Fifth Defendant was the Odear, and the sixth defendant the Notary.
Date of Transfer, 1st October, 1836. Date of action, 18th October, 1836.

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plaintiff, for the reason urged by him, viz., that no publication has taken place; if the second defendant still wishes to sell he land ,it must be done after due publication, and plaintiff will then have an opportunity of becoming the purchaser.

Publication necessary even after Decree.

It is decreed that the Bill of Sale, dated 22nd January, 1836, be cancelled, defendants paying the costs. *

No. 2,724.

14th Nov., 1838.

Chavagacherry.

Cadery widow of Walen and Children ... ... *Plaintiffs*

Vs.

Cadergamor Cander and another ... ... *Defendants.*

SPELDEWINDE, Judge.

Had the plaintiff's late husband paid a part of the purchase amount, together with the first defendant, to the seller of the land in dispute, in that case the deceased's name should have also been inserted in the said deed, exhibit A, which not being the case, the same cannot stand good in law, nor has the plaintiff in her summary Petition stated that she is at all events entitled to purchase the land in right of pre-emption from the first defendant, for the benefit of her minor children procreated by hero for her deceased husband, who was late brother to him (first defendant) instead of the second defendant to whom it is now sold exhibit B, he being a nephew to the first defendant.

Uncles Widow and Nephew.

Consequently her claim in the present shape is dismissed with costs, reserving however a right to plaintiff on behalf of her minor children, to institute a fresh action against defendants, if she chooses it, and claim the right of pre-emption.

No. 2,943.

15th March, 1839.

Chavagacherry.

Sinnepulle widow of Powalesingam and son Soopremanien... ... ... *Plaintiffs.*

Vs.

Poralesingam Mudliar Ramanader and others ... *Defendants.*

SPELDEWINDE, Judge.

Plaintiffs claim pre-emption as adjoining landowners and as the nearest heirs and relations to the seller the second

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* Date of action, 3rd February, 1836.

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Adjoining Land-holder and near Relation.

Otty holder.

defendant, and denies publication of the sale to the first defendant, who is the otty holder of the land in question and also an adjoining landholder.

Publication.

The Judge found the fact of due publication before the sale, and that plaintiffs were present when the deed in second defendant's favor was executed, and declined to purchase on the ground that they had no money. Evidence shews that plaintiffs and the seller, second defendant, were residing in the same house.

JUDGMENT.

The Judge and the Assessors are of opinion that the plaintiffs have entirely failed to prove the points of law couched in their libel, while on the other hand the defendants have fairly established the allegations set forth in their answer to rebut the plaintiffs vague assertions, and pretending pre-emption to the lands in dispute.

Libel dismissed with costs.

Judgment affirmed in Appeal, 29th July, 1839.

27th May, 1839.

No. 2,989.

District Court, Islands.

Ayen Aromogam of Velear ... ... *Plaintiff.*

Vs.

Potodencondar Moorger ... ... *Defendant.*

MOOTIAH, Judge.

Publication.

It is clear that the Bill of Sale in favor of the plaintiff for the Land in question, has been passed after regular publication of the intention of the sale of it, in the Village, and that the sixth, and seventh defendants have completely failed to prove that they claimed the right of preference to become the purchasers of this Land in due time, (that is to say) in course of a month, as laid down in the Thesawaleme, as they are living in the same village where the Land in question is situated, nor does it appear that they ever produced the amount of sale. Had the plaintiff or the Notary refused to receive the money in the course of a month after the date of the Bill of Sale, it was the business of the sixth, and seventh defendants, or either of them, to have prosecuted the plaintiff before the Court for redress.

Action within a month.

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Under these circumstances the Court is of opinion that the plaintiff is entitled to a decree confirming him in the possession of the Land purchased by him, by virtue of the Bill of Sale, dated 2nd June, 1838, and that the sixth, seventh, eighth, and ninth defendants should pay him the costs of suit, and that the plaintiff should pay the costs of the five first defendants, as he has failed to prove anything against them. Assessors agree in opinion. Decreed accordingly.

No. 3,734.

7th June, 1839.

District Court, Waligammo.

Edornayega Modliar Amblewane, of Batticotta ... *Plaintiff.*

Vs.

Ve layder Canneweddy, and another ... *Defendants.*

Burleigh, Judge.

From the plaintiff's own statement, the Land is worth 1250 Rs. and he wants to compel the second defendant to sell it to him for 1100 Rs., this appears to be a vexatious claim, and that it should be dismissed.

Value of Land.

The Assessors are of the same opinion.

It is decreed that the claim be dismissed with costs.

No. 3,176.

26th Nov., 1839.

District Court, Islands.

Cadramen Naranepulle ... ... *Plaintiff.*

Vs.

Wisentipulle, Matthewspulle Odear, and four others ... ... *Defendants.*

Mootiah, Judge.

There is no doubt as to the plaintiff being brother to the third defendant, and is holding a part of the same Land now in question, which immediately borders upon it according to the pleadings in this case, and consequently he is entitled to become purchaser of the Land sold to the second defendant in preference to the second defendant, and he further appears to have brought an action within the term of one month as laid down in the special Law of this Province, called Thesawaleme, after the sale of it—viz., the Bill of Sale in favor of

Brother and adjoining Land-owner.

Action within a month.

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the second defendant is dated, 1st May, 1839, and the Libel is filed on the 20th of the same month, and publication of the intention of the sale does not also appear to have been made regularly according to the evidence of the first witness, on the part of the two first defendant, for that part of the Thesawaleme which provides for the purchase and sale requires that notice should be given on three successive Sundays, but that witness says that he only published twice on the 12th and 20th of February last, which falls on Tuesday and Wednesday, even the sale of the Land does not appear to have been regularly conducted, as appears by the evidence of the second subscribing witness to it, produced by the plaintiff, although the Court cannot place much reliance on the veracity of it in consequence of their relationship with the plaintiff and contradiction in a material part of their evidence; on the other hand there is no proof adduced on the part of the two first defendants, to prove the regular execution of the Bill of Sale, or at least to confute their evidence in any way.

Publication twice.

Under these grounds I am of opinion that the Bill of sale in favor of the second defendant, should be set aside, and concelled as null and void, and that plaintiff should be decreed to be entitled to become purchaser of it in right of preference, and that a Bill of sale should be executed in his favor by the three last defendants, on his paying to the second defendant the amount of sale, being £1. 3., and that two first defendants should be condemned to pay the costs of suit incurred by plaintiff and the three last defendants.

Sale set aside.

The Assessors agree in opinion.

It is decreed that the Bill of sale filed by the second defendant bearing date the 1st May, 1839, be considered null and void and concelled, and that the three last defendants do execute a regular Bill of sale in favor of plaintiff selling the 30 Lachams of the land Korecado, situated at Carembeu, for the same sum for which it was sold to second defendant, being £1 3s., as the person who is entitled to become the purchaser of it in right of preference, on plaintiff's paying to the second defendant the said sum of £1 3s, and

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that the two first defendants do pay to plaintiff and the three last defendants the expenses incurred by them in this case.

5th Dec., 1839.

No. 3,365.

Waligammo.

Sangarer Tamer and another... ... ...*Plaintiffs.*

Vs.

Ramer Sidembery and others... ... ...*Defendants.*

Burleigh, Judge.

Paternal & Maternal Cousins,

It is clear from the evidence of the first defendant that the second plaintiff has the best right of pre-emption, first defendant's father and her mother were brother and sister, and first defendant's mother and fourth defendant's mother were sisters. According to the Tamil notion, the former are more closely related; the first defendant for instance could not marry the second plaintiff, but he could marry the fourth defendant, moreover, the second plaintiff has a land adjoining to that in question, which gives her a right of pre-emption. I am of opinion that a decree should pass for the plaintiff. I find I have made a mistake, as the first defendant could marry the second plaintiff, but not the fourth defendant—they are equally related.

The Assessors state that the second plaintiff has the first right of pre-emption, and they are of opinion that a decree should pass in her favor.

It is decreed that the land mentioned in the libel is the property of the second plaintiff by right of pre-emption, she paying the purchase amount, defendant to pay her costs, first plaintiff paying his own, the sale Bond is set aside.

The Assessors say that the fourth defendant must receive the purchase amount. Ordered so.

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16th May, 1840.

No. 4,840.

Jaffna.

Sooprcmania Chettiar Sinnayah of Vannarponne... *Plaintiff.*

Vs.

Walliamene widow of Adenarana Knees Ayer and three others... ... ...*Defendants.*

PRICE, Judge.

Combination to defeat right of pre-emption.

The Court has every reason to believe that there is a combination on the part of the defendants, to prevent the land in question from getting into the hands of the plaintiff, who has a claim upon it in right of pre-emption. The Court forms this opinion from the fact of the land in question only being worth 320 Rds. in 1833, and it appears by the Agreement, that the sum it is now to be transferred for is 1,000 Rds., nearly three times the value of the land in 1833, although the land does not appear to be in any way improved since that time.

The Court, however, in the absence of proof to shew combination on the part of the Defendants, is of opinion that the libel should be dismissed. The Assessors agree in the opinion of the Court.

The Assessors are asked their opinion as to how the costs should be paid. They state they are of opinion that each party should pay their own costs.

The Court concurs in this opinion. Libel dismissed, parties to pay their own costs.

4th June, 1840.

No. 2,599.

Point Pedro.

Waler Cander of Ploly... ... ... *Plaintiff.*

Vs.

Cadergamer Patter wife Sewagamy, and another... ... ... *Defendants.*

TOUSSAINT, Judge.

Plaintiff is the Nephew of the second defendant and shareholder of the land sold during plaintiff's absence at Madras.

The Assessors agree in opinion with the Court, that there is no necessity to hear the witnesses in this case on the part of

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plaintiff, for the witness third defendant called did not shew in his evidence that he spoke the truth, first and second defendants must undoubtedly make good all losses to third defendant, for entering into proof in this case. It is therefore, with the opinion of the Assessors, decreed that the transfer to third defendant be set aside, and the preference of purchase be given to plaintiff, third defendant is to recover from first and second purchase money, with interest at 9 per cent. from the date of the Deed, first and second defendants are to pay plaintiff cost of suit up to their filing their answer, and the cost after that must be paid by the third defendant.

Nephew's right of preference.

No. 4,428.

23th Sept., 1840.

Waligammo.

Swampulle Soosepulle of Alevetty... ... ... *Plaintiff*

Vs.

Ramenader Wayramottoe... ... ...*Defendant*

BURLEIGH, Judge.

The Court and Assessors consider that this case should be struck off, there is no proof whatever, a man may sell one parcel of land at a higher price than another, and it was incumbent on plaintiff to prove that the land in question was less in value than it was sold for, plaintiff,it may be observed, is a very. t igious person.

Price of Land pre-emption.

It is decreed that the claim of plaintiff be dismissed with costs.*

No. 4,407.

19th Oct., 1840.

Waligammo.

Omeal daughter of Comaren of Tillepulle... ... *Plaintiff.*

Vs.

Mootenachy widow of Rasingen and another ... *Defendants.*

BURLEIGH, Judge.

I am of opinion that the publication of the sale is clearly proved by the evidence for the defence, the case rests en-

* Right of Pre-emption is admitted, but Plaintiff maintained that he had a right to purchase it for his own price, which was that of another Parcel sold.

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tirely on this, according to the Thesawaleme publication on three days in three successive weeks is all that is required to constitute legal notice of sale. Notice need not be given to the adjoining landholder, as asserted to-day by Proctor for plaintiff, that custom was altered, as clearly appears in the Thesawaleme, and a land may be sold after publication has been made for three weeks.

Sale after due publication, binding.

The Assessors agree with the Judge, and are of opinion that the sale to the second defendant should be considered binding.

It is decreed that the claim of plaintiff be dismissed with costs, many of these applications are vexatious.

8th Dec., 1840.

No 3,280.

Chavagacherry.

Cadergamer Agilaser of Coilakandy... ... ... *Plaintiff.*

Vs.

Cander Varitamby, and others... ... ...*Defendants.*

Wood, Judge.

Plaintiff states, first defendant is my father's cousin, and sixth defendant is defendant's cousin's daughter.

There is no necessity to enter into evidence in this case as plaintiff claims the right of pre-emption to purchase the land claimed, his statement of his payment of 30 Rds. on account is . . . . . inasmuch as he says the payment was made in April, 1838, but was acknowledged to have been received in the presence of witnesses in February 1838. The Agreement move over was not reduced to writing as it ought to have been, besides which, sixth defendant he does not deny, offered a larger sum, and as he admits her to be a partner which she is not, also an adjoining land-owner and most as near a relation as himself, I think sixth defendant had the right of preference in the purchase, and therefore his claim to pre-emption should be dismissed with costs.

Neat relati on and Partner.

The Assessors fully agree.

It is therefore decreed that plaintiff's claim to the right of purchase, according to the Country Law or Thesawaleme

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be dismissed with costs, at the same time leaving him to his right of action to recover the 30 Rds. alleged to have been advanced by him as a breach of the alleged agreement.

17th Dec, 1840.

No. 3,239.

Chavagacherry.

Sinny Mootaven, and wife Wallial of Manthovil...*Plaintiffs*.

Vs.

Cander Velayden, and others... ... ...*Defendants.*

Wood, Judge.

Publication essential.

Plaintiff as adjoining Landholder claims the right of pre-emption, and denies publication of the sale by the first and second Defendants to the third Defendant. The Judge does not find the fact of publication. Evidence shews that Plaintiff objected to the Deed being executed and claimed pre-emption, offering the money, while the Deed was being written, and before it was completed.

I think that Plaintiff has plainly proved that he has a preferable right of pre-emption than the third Defendant, who is neither Heir, Partner, or adjoining Landowner, which Plaintiff is. He has proved his having offered the same, or even a larger sum, in sufficient time. I therefore think that the Transfer Deed to third Defendant should be dismissed with costs, but I am unable to decree that Plaintiff should be the purchaser, as there is another case pending between the same Defendants, for the same Land, with a person who is alleged to be both Heir and adjoining Landowner.

It is decreed that the Transfer Deed granted by first and second Defendants to the third Defendant, be cancelled to all intents and purposes, and that Defendants do pay Plaintiffs costs.—Third defendant is at liberty to bring an action against first and second Defendants for the amount paid by her.*

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* Odear was one of the Defendants. Date of Transfer Deed, 18th April 1838, Action, 10th May, 1838.

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17th Dec., 1840.

No. 3,240.

Chavagacherry.

Malaweraya Modr. Cadrasen, and wife Sadopulle of Manthovil... ... ...*Plaintiffs.*

Vs.

Cander Velaiden, and three others ... ...*Defendants.*

Wood, Judge.

Second Plaintiff is the daughter of the first, and sister of the second Defendants. Plaintiffs claim pre-emption and deny publication of the sale by the first and second Defendants to the third Defendant, who is a stranger.

Right of preference how forfeited.

It appears that due publication of the sale was made, and that the Odear sent information to the second Plaintiff, who is the next heir, and there was nothing to prevent her from sending information to her husband, if she felt inclined; besides by Plaintiffs' own statement, he must have been aware of the publication, he says that he went from his village two or three days before the Transfer Deed was executed, his witnesses prove there were three publications at the distance of one week each between them. Consequently, Plaintiff must have been in the village at the time. The case must be dismissed with costs. Assessors agree. Plaintiff's claim for pre-emption is therefore dismissed with costs.

21st April, 1841.

No. 5,646.

Jaffna.

Scoper Wayramoottoe of Copay... ... ...*Plaintiff.*

Vs.

Sooper Cander, and three others... ... ...*Defendants.*

Price, Judge.

The Court and Assessors are of opinion that the publication spoken to by the witnesses was made prior to the intended sale of the Land to the fourth Defendant, and are also of opinion that Plaintiff appeared before the Notary, and objected to the sale, claiming the Land in question in right of pre-emption.

Publication and objection.

The Court and Assessors are further of opinion, that as no further publication is proved to have been made, that the Bill

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of sale in favor of fourth Defendant, dated 23rd July, 1838, should be cancelled as far as relates to the Land in question, which will give Plaintiff an opportunity of purchasing the Land should the second Defendant offer it for sale again.

It is therefore decreed that the Bill of sale in favor of fourth Defendant, dated 23rd July, 1838, be cancelled as far as relates to the Land in questi on, and that first, second, and fourth Defendants do pay the costs.

Judgment in Appeal.

That the Decree of the District Court of Jaffna, of the 21st day of April, 1841, be reversed, and the Defendant be absolved from the instance, with costs.

29th June, 1841.

No. 4,139.

Chavagacherry.

Cadrasy, widow of Cadramen, of Codigamo. ... *Plaintiff.*

Vs.

Cadergamer Paramanender, and others... ...*Defendants.*

Wood, Judge.

Plaintiff was the owner of the Land, and the planters thereof, who were the first Defendant and his mother and sister, sold away the plantation share to the second Defendant, upon schedule of the Odear the third defendant. The second defendant is a stranger. Plaintiff denies publication. The plaintiff had ottied the land when the plantation share was sold, and states that she was ignorant of the sale, as she was residing in another village.

The plaintiff in this case being an ignorant female, I think that there has been a combination between the defendants, to deprive her of her just right. It has not been proved that plaintiff ever had intention of the proposed sale, nor is there any proof whatever that a publication had ever been made, plaintiff is, further, a resident of another village, and there is no evidence adduced to shew that there was ever a probability of her being aware of the sale, although so long a period has elapsed since it took place, except as

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stated by the plaintiff. I think therefore that the transfer should be set aside, and that plaintiff has the right to the preference of purchase. The cause of action having arisen either through the fraud or negligence of the third defendant in his official capacity as Odear, I think that he ought therefore to pay the costs of suit.

Odear.

Fraud and negligence.

The Assessors agree.

It is decreed that the transfer deed for the plantation share of the land in question dated 8th December, 1833, be set aside, and that third defendant pay the costs of suit. It is further decreed, that if plaintiff do not avail herself of her right of pre-emption within one month from this date, that she forfeit all further right and claim to the same.

Judgment of the Supreme Court.

That the decree be affirmed as to the transfer deed dated the 8th December, 1833, being set aside, and the third defendant being ordered to pay the costs of all parties in this suit, but the said decree be amended by its being further ordered that the first defendant shall upon tender of payment to him of the sum of £1 16s. by the plaintiff within the period of one month after the date of this decree, transfer over the land in question to the plaintiff, and in default of the plaintiff not availing herself of such her right of pre-emption within the said period, she shall thereupon forfeit all further right to the land.

3rd February, 1842.

4th Oct., 1841.

No. 3,815.

Chavagacherry.

Soorier Aromogam of Nonavil ... ... *Plaintiff.*

Vs.

Sinnatamby Cadrawalen and two others ... *Defendants.*

Wood, Judge.

The right of pre-emption lost by not objecting when publication was made.

Publication.

Right of pre-emption how lost.

It is quite clear that publication of the sale of the lands libelled has duly taken place, it is also equally clear that plaintiff was fully aware of the proposed sale, indeed the

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evidence adduced by himself at least proves his knowledge of that fact, otherwise how could he have offered the Rds. 100, for it as alleged but not proved by him. It appears to me that plaintiff having been disappointed in forcing a sale in the first instance at a depreciated price under the writ, and not having made up his mind to give more than a certain sum, he is now annoyed at defendant frauding a purchaser at a higher price, and therefore has brought this action, if he had really been in a position, and was willing to purchase the land at a higher amount, he should have either proved the tender or paid the money into Court.

I think therefore that this action should be dismissed with costs, in which opinion the Assessors concur.

It is therefore decreed that plaintiff's claim be dismissed with costs.

No. 3,574.

14th Sept., 1842.

Point Pedro.

Patteniar, widow of Coner... ... ...*Plaintiff.*

Vs.

Magaliar Welayden, and another... ... ...*Defendants.*

Moorger Sangrepulle and Yanemotiar Sangrepulle.

Toussaint, Judge.

Plaintiff claims pre-emption as a partner. The Land was sold to the second Defendant, who was neither a Partner nor Heir. First Defendant is the seller. The Intervenient was the husband of the first defendant's wife's sister, the property sold being Dowry property, a land publication was disbelieved.

The plaintiff proved that she was at Trincomalie and not here, while the Transfer took place, but Intervenients proved nothing, what made them be silent and did not come forward until the plaintiff has preferred her claim, which clearly proves that the evidence of the plaintiff's first and second witnesses are true, that they bore knowledge of the sale and consented to it, and only now come forward to prevent

Pre-emption.

Heirs first and Partners second.

plaintiff getting the preference, as the Country Law says that the Heirs should have the first preference and the partners the second. The silence of the first and second defendants, undertaking to give up the purchase sufficiently proves that the required warnings were not given to plaintiff before the sale, as it was required by the Country Law. The Court therefore is of opinion, that admitting the Intervenients are Heirs, that still under the circumstances of the case, the plaintiff should have the preference, and that what was endeavoured to prove, that the first Intervenient was not able on the day of the execution of the Deed to walk to the Notary's House, the Court does not credit.

The Assessors agree in opinion with the Court, and say that preference of purchase must be given to plaintiff.

It is decreed that the Transfer to second defendant be set aside, and the preference of purchase be given to plaintiff: that the Intervenients do bear their own Costs of suit, and their claim be set aside, and that the first defendant do pay the plaintiff's and second and third defendants' costs of suit.* Judgment affirmed in Appeal, with costs, 2nd March, 1843.

19th Dec., 1842.

No. 4,985.

District Court, Jaffna.

Tirrokoner Sooper, and wife Sinnepulle of Cokkowil... *Pltfs.*

Vs.

Mootan Veneditar and others... ... ...*Defendants.*

PRICE, Judge.

Adjoining Landholder.

Objection to sale.

The Court is of opinion that first plaintiff has a prior claim to the third defendant, on the Land in question, it is proved by the witnesses on both sides, that first plaintiff has Land immediately adjoining that in question, and the fourth defendant's witnesses prove, that before the sale in favor of the late third defendant was completed, the first plaintiff objected to the sale and offered £2, (the amount the Land is stated to have been sold to the late third defendant for) the

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* Date of Transfer 6th April, 1842. Date of actien 20th May, 1842.

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fourth defendant's witnesses prove that the late third defendant was not an immediate Landholder, or rather had not Land immediately adjoining that in question. The Court is therefore of opinion that the Bill of sale in favor of the late hird defendant, dated 16th February, 1838, should be set aside, the estate of the late first and second defendants paying all costs.

The Assessors state, they are of opinion that the late third defendant had a right to purchase the Land in question in preference to the first plaintiff, because publication had been made, and a schedule obtained before the objection raised by the first plaintiff, it also appears that the late third defendant had offered £2. for the Land before first plaintiff raised his objection. We are of opinion that the first plaintiff should have raised his objection on the first publication being made, and he should have deposited the money with the Notary. We are of opinion that the Libel should be dismissed with costs.

Publication and Schedule.

When objection should be made.

Money deposited with the Notary.

It is decreed that the Bill of sale in favor of the late third defendant be set aside, the estate of the late first and second defendants paying all costs.*

No. 4,383.

Chavagacherry.

16th Oct., 1843.

Sidemberam, widow of Pooder, and son Aromogam... *Plffs.*

Vs.

Canneweddiar Nagenaden, and others .... *Defendants.*

Wood, Judge.

It is unnecessary to enter into evidence in this case, as it can be disposed of on the pleadings. Plaintiff brings her action on the grounds that she being the owner of one-half share of the land called Odopallamwalewoe, the plantation of which was granted by her late husband to the first defendant, who also holds her ground share in otty, has a right of pre-emption to the said plantation share, which has been sold by the first and third defendant, who is his next heir, first defendant has also given the ground and plantation share of the other

* It does not appear that either parties were related to the seller.

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Heir and part-owner preferred to part-owner.

half of the ground to the second defendant, consequently the second defendant, as heir in the first place, and as the owner of the other half share of ground and plantation, has an undoubted preference over the plaintiff; besides, the plaintiff has evidently not been in a position to avail herself of her supposed right. It is not probable she would have purchased the plantation share when her own ground was in otty, besides if she had been in a position to purchase, the money should have been paid into Court, which she did not do.

It is therefore decreed, plaintiff's right to pre-emption to the land called Odopallamwalewoe, registered on the name of Waratey wife of Modalitamby, be dismissed with costs.*

2nd June, 1845.

No. 4,192.

Point Pedro, transferred to Jaffna.

Waritamby Weeregettiar, and wife of Wareny Navetkadoe... ... ... *Plaintiffs.*

Vs.

Ponner Sitter and others... ... ...*Defendants.*

Price, Judge.

By the Court to the plaintiff's Proctor.

My witnesses are to prove that defendants never gave any information of the sale of the land in question to my clients.

No direct information required. Publication sufficient notice.

The country Law does not require direct information, the usual information is given by publication in the village.

The Court and Assessors are of opinion, that defendants should be absolved from the instance with costs.

Defendants absolved from the instance with costs.

25th Sept., 1845.

No. 6,515.

District Court, Jaffna.

Wesentipulle Anthonipulle of Carreoor ... ... *Plaintiff.*

Vs.

Diogopulle Davidpulle and another... ... ... *Defendants.*

Price, Judge.

Plaintiff and his "she cousin" and first defendant were part owners, of a land and first defendant sold to second

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* The second defendant is said to be Heir of first defendant, but it does not appear how.

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without publication, plaintiff who has the right of pre-emption brought the action to set aside the sale.

The Court and Assessors are of opinion that the Deed dated 3rd April, 1839, in favor of second defendant, should be cancelled, and the land be declared to be the property of the first defendant. Defendants paying all costs.

Sale set aside for want of Publication.

Ordered accordingly.

No. 1,853.

6th Jany., 1847.

District Court, Jaffna.

Sidemberen Pandary and wife Walliar of Neervelly ...*Pltffs.*

Vs.

Sinnepulle widow of Sooper and others... ..., *Defendants.*

WOOD, Judge.

The property in question was donated by the mother (first defendant) to second plaintiff and his brother, the brother died without issue and the property reverted to the mother, and she sold her sons share to third defendant upon a schedule. Plaintiff claimed pre-emption, but did not deposit the money. Defendants demurred—Held

Judgment on the demurrer.

On reading the demurrer of the defendants' Proctor and the answer given to it by the plaintiffs' Proctor, the Court and Assessors are of opinion that the demurrer should be overruled with the costs, as the Court considers * that the deed being in favor of the third defendant, it is not in the power of the plaintiffs to file it, and the Court further considers that it is unnecessary that any money should be paid in Court for enabling plaintiffs to claim the land in right of pre-emption.

Money need not be paid into Court to claim pre-emption.

Demurrer overruled with costs.

Judgment affirmed in Appeal, 20th February, 1847.

On the merits.

30th April, 1847.

The Court and Assessors are of opinion that the Libel is not proved, and that plaintiffs' claim should be dismissed with costs.

Plaintiffs' claim dismissed with costs.

Judgment affirmed in Appeal, 16th August, 1847.

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* This is not supported by any Customs, and is contrary to Practice.

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15th March, 1840.

No. 3,252.

District Court, Jaffna.

Paremer Cander of Ploly ... ... *Plaintiff.*

Vs.

Paremer Aromogam and others ... ... *Defendants.*

Price, Judge.

Brother's right.

Plaintiff claims Pre-emption as the brother of the seller and joint shareholder, and denies publication which the defendants have failed to prove.

Plaintiff's right of Pre-emption is nowhere claimed, first and second defendants file no answer; the third defendant does and alleges that he purchased the Land in question after due publication, third defendant calls no witnesses and says he looks to the first and second defendants, from whom he purchased the Land to support his title.

The Court and Assessors are of opinion that the sale of the Land in question to the third defendant by the first and second defendants should be declared void, the original Deed is not before the Court, but a copy is filed marked A, and dated 1st November, 1847. First and second defendants to pay all costs.

Decreed Accordingly.

2nd May, 1853.

No. 74.

Court of Requests, Jaffna.

Velaider Nagenaden, of Batticotta ... ... *Plaintiff.*

Vs.

Velaider Vadaramen & Irregonader Aromogam... *Defendants.*

Price, Judge.

The Court is of opinion that the plaint should be dismissed with costs, and the £2 this day deposited by plaintiff, be returned to him. Plaintiff claims the Land in right of pre-emption, it is admitted that he is the brother of the first defendant, the seller to the second defendant, and that he has Land adjoining that in question.

Publication. Presence of party interested.

It is admitted that no publication was made or Schedule granted. By the evidence it appears, that plaintiff was aware of the transfer and present at it, and raised no objection, this,

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the Court considers, does away with the necessity of Publication and Schedule.

The plaint is therefore dismissed with costs.

Judgment of the Supreme Court.

That the Decree of the Court of Requests of Jaffna of the second day of May, 1855, be set aside, and the plaintiff be decreed to be entitled to his claim of pre-emption with costs of suit, and the Deeds to the second and third defendants are cancelled. If evidence of the nature relied on by the Court below, were to prevail against the custom under the Thesawaleme, requiring a Schedule and publication (which are admitted to be wanting in this case,) then it would lead to very dangerous consequences and abuse, as proof of the party claiming pre-emption having received notice of the Sale, prior to the Transfer, and not objecting to it, or having given some parole or tacit consent to the same, would easily be procured in this Colony. In the present case the implied full consent is not even clearly proved.

Dated 9th October, 1855.

No. 3,547.

Court of Requests, Chavagacherry.

Sitter Coner and wife Marodattey, of Navelcadoe... *Plaintiffs.*

Vs.

Wedenayegam widow of Ayengen, and Sinnatamby Cartigasen ... ... *Defendants.*

Birch, Judge.

The plaintiffs as heirs (son-in-law and daughter) of the first defendant, claim the right of pre-emption to the Land Cunjercoolamwayel, situate at Pandisootan, which, they complain, the first defendant has sold away to the second defendant, without giving previous notice thereof to the plaintiffs, who as nearest heirs have the preference to purchase. The plaintiffs tender the money in Court.

7th March, 1854.

First Plaintiff states I am a near relation, defendant is a distant relation: defendant has the next Land.

Defendant states the Deed was granted on Odear's schedule and publication.

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The Court calls on plaintiff to prove that there was no publication, which he states he is unable to do.

Case dismissed with costs.

Judgment of the Supreme Court, 12th May, 1854.

Set aside, and the case be remanded back for a new trial.

The plaintiffs have under the Customs, a right of Preemption, which they could be divested of only by defendants' deed being executed on the proper schedule and publication, of which the defendants should adduce proof, as being a fact particularly within their own knowledge.

Schedule essential to transfer.

Second Trial. 27th June, 1854.

Defendants call

Cakeyar Vissowenaden, affirmed, states, I am Odear of Pandisootan. I know the land Coonjicoolamwayel, I recollect Vedenayegey selling it to the second defendant, I do not know what relation he is. I gave schedule. I made the usual publication. I gave a notice to the Pariah man, and he published it in the village.

By Plaintiffs' Proctor. I heard the Pariah making the publication *once*. It was made at Pandisootan village, the plaintiff came there as the deed was just executed. He said he had the money. The deed was completed when he came.*

Judgment.

Plaintiffs case dismissed with costs.

No. 488.

4th Aug., 1856.

Court of Requests, Chavagacherry.

Weeregettiar Welayder wife Parpaddy and Welayder Vinasitamby ... ... *Plaintiffs.*

Vs.

Punnier Sidembrepulle and three others ... *Defendants.*

WOODHOUSE, Judge.

Plaintiffs complain that first, second, and third defendants have transferred to the fifth defendant the land in question, to which the plaintiffs agreeable to Thesawaleme, have the right of pre-emption in preference to the fifth de-

* Date of the Deed, 18th July, 1853. Action 17th August, 1853. Plaintiffs called three other witnesses, one of whom was an adjoining landowner who prove that *they* did not hear any publication, there was no appeal against the second judgment.

fendant, as the first plaintiff is the paternal Uncle to the sellers.

27th May, 1858.

First defendant questioned by the Court.

I admit that plaintiff is entitled to one quarter of this land. It was while he was in gaol in Colombo I sold this, land, before I sold the land, I asked the consent of plaintiff's son who stated he did not wish to become a purchaser, I therefore conceived that I had a perfect right to sell. I sold one quarter, and the other one quarter belongs to plaintiff. We possessed in common.

Fourth defendant states that as he originally held half of the land by possession, he had stronger claims to pre-emption than the plaintiff. Plaintiff questioned by the Court.

I admit that fourth defendant was originally entitled to half of the land by right of his mother.

In this case plaintiff and first defendant held the half of a land in joint share, and entirely separate from the remaining half, which fourth defendant held as his modisium or hereditary property.

In 1855 the plaintiff was convicted before the Supreme Court, and sentenced to a certain term of imprisonment in Colombo, from which imprisonment he received a discharge and general pardon from the Governor, some months since; but previous to the plaintiff returning, the first defendant sold his share of the half land to the fourth defendant, without giving plaintiff the right of pre-emption, which he is entitled to by the Thesawaleme. The first defendant, as his defence stated, that he (first defendant) had made the offer to plaintiffs son in his father's absence, who declined to avail himself of the privilege, and that accordingly first defendant and his sister sold the half share to the fourth defendant. There can be no doubt that this proceeding was according to the Country Law illegal, for the plaintiff's son (who is unmarried) had no right whatever during his father's lifetime to dispose of any of his father's land, or to

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One year's notice.

Notice when due.

Publication.

make any arrangement which concerned his father's interest as far as landed property, moreover the Country Law lays down the rules, that where the shareholder who is entitled to pre-emption is absent from the Country, notice for *one year* previous to the transfer shall be publicly made, which was not the case in this instance, and the Transfer deed conveying the one quarter share of the fifteen and one quarter of the land situated at Allare, and registered in the thombo on the names of Vinasy Veeregetty and Sidemberen Vinasy is therefore declared null and void. The first, second, and third defendants paying costs, and the fourth and fifth defendants are instructed to claim the amount of the transfer &c. from the first, second, and third defendants.*

26th Oct., 1855.

No. 2,548.

Court of Requests, Point Pedro.

Cadernayega Mapana Modliar Cander and another of Odeputty ... ... *Plaintiffs.*

Vs.

Velaider Vairewen and others ... ...*Defendants.*

TOUSSAINT, Judge.

Partners' pre-emption.

Plaintiffs as partners claim the right of pre-emption, and seek to set aside the sale of the land by the first defendant to the second. The Judge does not enter into the question of publication, which was raised by the defence.

It is decreed that plaintiffs have a right to purchase the share in question, and that the sale to second defendant by the first defendant be set aside, defendants to pay costs of suit.

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* The Court does not enter into the question of publication, which is not denied or even mooted, nor does it appear why the Plaintiff is entitled to preference more than the fourth and fifth defendants who are also shareholders. No evidence was heard. Date of deed 4th July, 1857, Action 17 August, 1857.

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No. 593.

Court of Requests, Jaffna.

Sinnatamby Vatharanier *alias* Richard of Colombotorre ... ... *Plaintiff.*

Vs.

Parpady widow of Paramo, and others ... ... *Defendants.*

PRICE, Judge.

Adjoining Land-holder. Pre-emption.

Plaintiff as adjoining landholder claims the right of pre-emption, and complains that first and second defendants who were the owners of the land have in collusion sold it out and out to the third defendant, the fourth defendant was the Notary who executed the deed. Plaintiff deposits the money in Court, third defendant is neither an adjoining landholder nor relation of first defendant.

Defendants Proctor moves for judgment at once, without waiting for the evidence of the Odear, no collusion is proved as alleged, and publication is admitted, there is no proof of any tender being made.

Case postponed till to-morrow, for the evidence of the Odear.

8th March, 1860.

Plaintiff withdraws this case. Case struck off with costs.*

31st Jany., 1859.

No. 9,699.

District Court, Jaffna.

Sandresegra Mudliar Sawrimotto Mudliar of Jaffna. *Plaintiff.*

Vs.

Tilliambelam Sangrepulle and two others ... *Defendants.*

PRICE, Judge.

This action is brought to cancel and set aside a Transfer agreement, dated 4th December, 1856, granted by second and third defendants in favor of the first defendant, for the sale of a certain land which plaintiff alleges has been fraudulently got up without due publication, to deprive him (plaintiff) of his right to purchase said land in right of pre-emption, he being an adjoining landholder and a relation of one of the grantors (third defendant.)

An attempt has been made to shew that the real amount agreed for the purchase (as alleged) to have been £48 15s.,

* Date of Deed, November 1859. Action, December 1859.

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and not £60 as stated in said agreement, but the proof as to this fact is by no means clear, on the contrary the evidence is stronger in favor that the sum agreed for was £60, this is the sum stated by first defendant in his *viva voce* Examination on the 14th January, 1859, in which he is supported by the evidence of plaintiff's first witness, and defendants first and second witnesses. It is only the evidence of first* defendant and plaintiff's second witness that fixes the sum agreed for to have been £52 10s.

Transfer agreement set aside for want of publication.

The Court is of opinion that the transfer deed in question should be cancelled and set aside, for want of due publication.

Publication necessary even after a Decree.

The plaintiff has proved that he is an adjoining landholder, which first defendant is not, but if the Court adjudged the land to plaintiff, the publication required by the country law would be evaded, as has been attempted by the parties to the transfer agreement.

The transfer agreement in favor of first defendant granted by second and third defendants, dated 4th December, 1856, for the land Verayel, in extent 20 Lachams P. C., registered in the thombo on the name af Retnasinga Modliar, situated at Pandaterropoe, is cancelled and set aside for want of due publication. Defendants paying the costs, reserving a right to plaintiff to recover the otty amount Rds. 150 from first defendant, to whom it is alleged plaintiff paid it, and which is not denied by first defendant, the evidence that first defendant admitted the receipt of the otty money.†

21st Feby., 1859.

No. 10,275.

District Court, Jaffna.

Canneweddy Ayer Nagase Ayer ... ... *Plaintiff.*

Vs.

Sangeyamma daughter of Murgasse Ayer and Irregonada Mepana Modliar ... ... *Defendants.*

PRICE, Judge.

Mr. Advocate Mutukisna for Defendants.

Mr. Chinnappah for Plaintiff.

On the motion of defendants' proctor of the 9th Instant

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* Should be second Defendant.

† Date of action January 1858.

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Mr. Advocate Mutukisna in support of the motion asks for a deposit of £100.—being the amount of the consideration mentioned in the agreement filed by plaintiff.

Quotes Decided Case of the District Court of Jaffna, No. 9,699.

Plaintiff's Proctor contends that he is only bound to deposit £41. 5 which is the actual value of the land which has been settled between the parties, and which sum plaintiff says in his libel, he will pay to first defendant, as otherwise a party might raise a fictitious transfer agreement for so great an amount, that it might not be in the power of the party claiming the land, to raise, and thus defeat the wise provisions of the law.

Secondly. The defendants have no right to ask plaintiff to deposit the sum of £100 unless they promise to allow judgment for plaintiff, without contesting the claim, for if defendants are to deny our right, it matters little to them whether the money is deposited or not.

Thirdly. The money could be deposited at any time before trial, which will save the parties depositing interest on the money, besides if, on looking at the answer of the defendants plaintiff be advised to withdraw his case, which might be done even against all conviction, by the advice of his counsel, Plaintiff saves a great deal by not depositing the money with the libel. Defendants' Advocate in reply, draws the attention of the Court to the libel (Prayer)—"The sum of £41 5 or any sum or sums of money, the Court may fix."

Purchase amount to be deposited with the Libel prior to answer.

The Court is of opinion that properly speaking in cases of this kind, the purchase amount should be deposited with the libel, or prior to the answer being filed.

With regard to the amount to be deposited, the Court must look to the amount of consideration stated in the agreement, which the Court must consider to be the correct amount until the contrary is shewn.

The Pre-emption cases money to be deposited in Court.

The Court therefore calls upon plaintiff to deposit £100.

14 days time for Deposit.

Plaintiff's Proctor applies for 14 days to deposit the money; defendants' Advocate consents, and the Court allows

(a) See Grotius page 335 Section 17.

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fourteen days upon the understanding that if it is not deposited within that time, the plaintiff will be nonsuited.

Motion allowed.

11th May, 1860.

No. 10,690.

District Court, Jaffna.

Cadiritamby Ramelingam of Niervely... ... ... *Plaintiff.*

Vs.

Sinnetamby Vinasitamby, wife Cadeliamme
Cadraser Casinaden and Sammogam Werasingam Odear of Niervely ... ... *Defendants.*

PRICE, Judge.

Mr. Advocate Mutukisna with Mr. Anderson, for plaintiff.

Mr. Advocate Wyman with Mr. Chinnappah for Defendants.

Plaintiff's Advocate examines the defendants, and moves that the documents be read in evidence and closes his Case

Defendants' Advocate declines to call evidence, and moves that plaintiff's claim be set aside with costs, upon the following grounds.

1. One of the issues in the case being whether the real consideration that passed between the parties, was £10 or £28, it will be for plaintiff to call evidence to prove that it was £10, one issue being upon plaintiff, it will be for him to lead evidence of the other issues.

2. Fraud is never presumed.

Pre-emption. Heir & Relation.

3. The Thesawaleme states that the right of pre-emption belongs to an Heir, and not to a relation, and first and second Defendants being admitted to have children, plaintiff cannot go in the line of an Heir.

4th. Third defendant being admitted to be an adjacent landholder, it is plain that plaintiff cannot have a preferable right to third defendant.

5th. The Original Deed in favor of third defendant not being in the case, and defendants not having been noticed to produce the same, it is clear that the prayer of the Libel cannot be granted.

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6th. It was admitted by the opposite party that he was aware of the sale, before the time of the execution of the Deed in question, and he took no steps to purchase the Land, the report which he admitted to be in the neighbourhood, goes a great way in support of defendants' statement with reference to the publication, the Deeds alluded to by plaintiff's Advocate, are no evidence as to the consideration which passed between the parties.

The third defendant is ordered to produce on Monday next, the Original Deed in his favor. Plaintiff's Advocate hands in Cases 74, Court of Requests, Jaffna, 3,547 Chavagacherry, 344 District Court, Wademorachy, 9,699 Jaffna District Court.

Case postponed for Judgment till Monday next.

PRICE, Judge.

14th May, 1860.

The points at issue in the case are—1st. Is the plaintiff brother of second defendant, and has he Lands immediately adjoining to that in question, to entitle him to the right of pre-emption he claims.—2nd. Was the Land sold by second defendant to third defendant for the sum of £10 or £28.—3rd. Was it sold to third defendant after due publication as required by the Country Law.

Adjoining Land-holder Brother.

The first issue is proved, and in consequence, there was no necessity of adducing evidence on the second issue which might be treated as surplusage, and struck out of the Libel.

Plaintiff having proved his right of pre-emption, it was for defendants to adduce evidence in support of the third Issue, viz. that the Deed granted by second defendant in favor of third defendant, was executed upon schedule after due publication.

Transfer set aside for want of publication. Want of proof.

Having failed in this proof, the Bill of sale in favor of third defendant, of date the 13th October, 1859, is cancelled and set aside, with costs to be paid by defendants.*

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* Date of action, 21st October, 1859.

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RESIGNATION OF PROPERTY,—CHILDREN'S OBLIGATION TO SUPPORT PARENTS, &c. &c. &c.

16th March, 1803.

No.

DUNKIN, Judge.

Cannerretna Wissowenathen Villale of Sooliporam, a man of 80 years of age, complains that his son Cannager and sons-in-law Comaraperomal Supper, and Comaraperomal, Periatamby, Vellales of Sooliporam, refused to support him notwithstanding he has given to them all his landed property as Dowry to their wives. The son says, the produce of his field will amount to 300 Lachams, with which he is to support himself and his son a minor.

Refusal to support Father.

Resignation of property.

The two sons-in-law say, they have yearly income of 100 Ls. of Paddy each, with which they must support their family.

Ordered that the son do pay two Rds. and sons-in-law one Rd. each per mensem for the support of their father.

22nd June, 1803.

Periar Amblewaner and his wife Tannekoody ... *Plaintiffs.*

Vs.

Their children Amblewaner Ramen, Amblewaner Perian, and Parpaddam married to Caralepulle Amblewaner, Vellales of Batticotta...*Defendants.*

DUNKIN, Judge.

The plaintiffs complain that they have no property, and are in distress, and that their children would not support them.

The first and second Defendants say, they have no property of their own, and that they are obliged to support their own wives and children from the properties of their wives.

The daughter offers to support her father and mother, if they will come and live with her.

The father and mother refused to live with the daughter without assigning any reason.

Children bound to support Parents.

Ordered that all the defendants do pay 5 Rds. or each of them 20 fanams per mensem for the support of their father and mother, the first payment to commence on the 1st of next month.

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No. 2,373.

16th Feby., 1809.

Sitting Magistrate Point Pedro.

Cadramer Sooper... ... ...*Plaintiff.*

Vs.

Sember Arromogeton... ... ... *Defendant.*

MEETFIELD, Judge.

It is ordered that the Defendant do pay to the plaintiff, the brother-in-law to Teywer Kanneweddy, the amount 100 Rds. with interest from the 1st July, 1799, (the interest not to exceed the principal), due under an obligation dated June 1798, with costs of suit.

Interest not to exceed Principal.

No. 7,138.

29th April, 1819.

Kenedesinga Mudliar Poodetamby of Araly ... *Plaintiff.*

Vs.

Kenedesinga Mudliar Amblewaner of Do ... *Defendants.*

ST. LEGER, Judge.

Upon reading over the two separate reports of the Commissioners, it appears that they both agree in declaring the lands in dispute to belong to the common estate of the parties parents. This property therefore should remain with the mother till her death, but as she is blind and so old as to be evidently unable to manage her affairs, the Court is of opinion that the Lands should be divided into equal shares between the male children, and that they should support their mother.

Widow's property to be divided between her Male Children, when she is unable to manage.

It is decreed that the lands called Candanattenachutacho, in extent 27 Ls., and Tetaarodewemechetty in extent 27 Ls., situated in Araly west, be considered as the property of the parties parents, that the same be divided in equal proportions between the male heirs, and further that the heirs do support their mother during the remainder of her life.

Childrens obligation to support Parents.

The Defendant to pay costs of suit.

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25th Nov., 1819.

No. 124.

Commissioner's Court of Jaffnapatam.

Wissower Sidembrenaden of Manipay ... ... *Plaintiff.*

Vs.

Aandar Maylen ... ... *Defendants.*

Mooyaart, Judge.

Slavery.

Decreed that the eight slaves be considered the Legal property of the Plaintiff, and that Defendant do pay the costs.

Ordered that the slave Sidowy Nagy and her son Nagy Welen, Madende, Nagey Nagey Sinny and her Children Sinny Sidembretty, Sinny Caderen, Sinny Winasy and Sinny Pooden, with the exception of Sidowy Wayrewen and Madende Wally, be registered on the name of plaintiff, and the latter on the name of the defendant.

Registration.

23rd Aug., 1820.

No. 1,024.

Wengedaselam Naraenpatter of Ninvely ... ... *Plaintiff.*

Vs.

Amblewer Velen ... ... *Defendant.*

Layard, Judge.

Plaintiff claims certain land given on an agreement dated 10th December, 1809, to defendant, to plant with cocoanut trees, on the ground that defendant has failed to plant the land, a purchase deed dated 29th July, 1805, is filed as plaintiffs title to the land, which deed defendant calls a property.

The Court examining the Voucher finds the permission to plant to defendant that was given by Swamenader Yanesegerer, under date the 10th December, 1809. The Transfer in favor of plaintiff by Swaminaden dated 20th July 1805, and this very plaintiff is witness to the planting agreement granted again by him in 1809. Further, the plaintiff can derive no legal right or title upon this Transfer Voucher, executed in the lifetime of Yanesegerer's father, when he Swaminaden was only a child of 11 years of age, and unmarried and under his Father's care. Plaintiff then having no legal title, case dismissed with costs.

Deed executed by minor invalid.

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No. 1,957.

17th Dec., 1822.

Silemby Soopen of Odoputty ... ... *Plaintiffs*

Vs.

Nallie Paramen and others ... ... *Defendants*

FARRELL, Judge.

It is the opinion of the Court that plaintiff has proved the transfer of 6½ Ls. of the Land to him by the heir of Sidowie, and that they had a right to make such transfer, saving the plantation share. That defendant has failed to prove the Transfer of the land aforementioned by Sidowie and her husband to his mother, the only witness brought forward by him and examined on that point, declaring his ignorance of such transfer, but it is the opinion of the Court that defendant is entitled to the planting share of the land in right of his Uncle who planted it. It is therefore decreed that the said land belongs to plaintiff by right of purchase from Caderase and Moorgen Canden, children of Sidowie, save and except the planting share of the said land, which belongs to defendant.

Plantation share.

Defendant to pay costs of suit.

No. 2,701.

17th Sept., 1823.

Sidemberen Canden of Mandowil ... ... *Plaintiff*

Vs.

Mapane Modliar Cander ... ... *Defendants.*

FARRELL, Judge.

The Court is satisfied that all the trees on the Lands in question were planted by plaintiff's father, but not that plaintiff's father purchased the Lands from the rightful owner It appears to the Court that defendant is owner of the Deeds. in question in right of purchase, exclusive of the planting share of the trees. It is decreed that one half of the trees on the Lands in question belong to plaintiff in right of his father who planted the trees on said Land, and that the parties do each pay their own costs.

Plantation share.

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24th Sept., 1823.

No. 2,911.

Ayate widow of Tanmer, of Vannerpone ... *Plaintiff.*

Vs.

Ayate widow of Soler, and four others ... *Defendants.*

FARRELL, Judge.

First defendant and her husband Tanmer Ayen Tolernaden had four Sons, *i. e.* second and third defendants, first plaintiff's late husband and second plaintiff's father Tolernaden Tanmer, the two last died some years ago, leaving children first defendant's husband died on 10th October last.

Transfer by Parents to Son.

The question now before the Court is, whether a Transfer by first defendant and her late husband, dated 27th Septemd ber, 1823, of certain of their Lands to their Son, the secondefendant, is a forged one; or if really executed by them, whether it is legal, not having been done with the consent or privacy of plaintiff, especially the second plaintiff; upon which the Court decides, that, as it appears from comparing the evidence of Areser Amblewaner and Cadergamer Arnaselam witnesses on the part of defendants, that the Transfer in question was not made out on the day of its date, that is, the 27th September, 1822, but some following day, what day it is not known, that the said Transfer is null and void.

Consent of Heirs.

Transfer Invalid.

It is therefore decreed that the Transfer Deed dated 27th September, 1822, said to have been executed in favor of second defendant by first defendant, and her late husband, being the same as filed by second defendant in present case, is null and void, and that defendants do pay costs of suit.*

2nd May, 1828.

No. 1,836.

Sitting Magistrate, Point Pedro.

Ayengen Veeregetty ... ... *Plaintiff.*

Vs.

Cadergamer Wenden, and Cadergamer Maylen... *Defendants.*

TOUSSAINT, Judge.

By the statement of the defendants this day (and as far as the Court understands) and according to the two witnesses

* Evidently this means that it was a forgery, having been executed after death of the grantor, the point of law raised is not decided. Fourth, and fifth defendants were the Odear and Notary.

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they called, the Court finds that the Lands in question although purchased by the plaintiff's first witness, who is their elder brother, still that they were possessed in common by all the brothers, considering it as the common property acquired during the time he was under the roof of his parents, according to the meaning of the Country Law. It is therefore a dispute that should be settled between the first witness and his brothers the defendants, but he, it appears, to avoid that, sends forward his father-in-law the plaintiff. There being no sufficient proof to make the Court believe that plaintiff planted those Lands, and that the crop defendants reaped belongs to the plaintiff.

Property acquired during Bachelorship common.

It is decreed that plaintiff's claim be dismissed, and the plaintiff do pay the defendants costs of this suit.

No. 5,325.

1828.

Samaresegra Modr. Anthonipulle and another ... *Plaintiffs.*

Vs.

Anthonipulle Arolappen and others ... *Defendants.*

BROWNRIGG, Judge.

Held, that if a father resigns his property in favor of his son, it would bring him under the eighth Clause of the first Section of the Thesawaleme, and deprive him of the right of disposing of his Lands in mortgage, otherwise he has under the 7th Clause of the same Section, a full right to mortgage his Lands.

Resignation of property by Father.
His right to mortgage or otherwise alienate.

No. 5,723.

3rd April, 1829.

Soorier Welayder *Bellale* of Arahly west ... *Plaintiff*

Vs.

Soopremanier Sidembrenader *Parpatiager* of same place ... ... *Defendant*

BROWNRIGG, Judge.

Libel.

That plaintiff's ancestors were of *Malliagam* Caste, but plaintiff was afterwards registered as a *Bellale* upon a license of the Dutch Common, and that defendant who is the Parpatiagar refuses to grant him a schedule to sell his Land, styling him as *Bellale*.

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Answer.

Deni al of license having been over granted as alleged, by plaintiff, but that plaintiff is of the Malliagam Caste.

Evidence.

Mr. J. A. Dorenieux sworn, was a clerk in the Thombo office in the Dutch time, when a person applies to the Commandeur for an oppum to be enrolled in a higher Caste, the Commandeur used to send instructions in Dutch to the Thombo holder, who, after making the entry in his Thombo, sends orders to the keeper of the Church Roll in Malabar to make the entry, in his roll. The oppum to the Schoolmaster should bear the initials of the Thombo holder. The Conicoply would know of the manner of business in the office of the Thombo holder. Plaintiff could not be registered as a Bellale without the orders of the Commandeur.

Enrolling in a higher caste.

The Court considers that the plaintiff has not proved that he has obtained from any competent authority, an order to enregister him as a Bellale. The Court must therefore consider that the plaintiff is of the Malliagam Caste, and cannot grant the prayer of the Libel.

Order to ra ise the caste of a person.

Libel dismissed with costs.

No. 2,079.

24th July, 1829.

Sitting Magistrate, Point Pedro.

*Wally widow of Amblawen ... ... *Plaintiff*

Vs.

*Mootey, widow of Sooper ... ... *Defendant.*

TOUSSAINT, Judge.

The Court is of opinion that as the otty deed for the Land in question is on the name of the defendant's husband, and he married and left the parents roof long ago, and there was no division made of the property by any regular deeds of division, the same cannot be considered as the acquired property of the defendant's husband while *under* the roof of his parents, to be divided as such now, nor does it appear that the parties husbands were children of regular

Property acquired after leaving the Paternal roof.

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* Widows of two Brothers.

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married parents to be considered as such, consequently the proof of possession (which is also doubtful) is not considered by the Court a sufficient ground to give plaintiff a share of the Lands, which is purchased on the name of the defendant's husband.

It is therefore decreed that plaintiff's claim be dismissed, and that plaintiff do pay the defendant's costs of this suit.

No. 5,992.

13th Nov., 1829.

Walliamene widow of Aronaselam and two Sons...*Plaintiffs.*

Vs.

Wiresegra Mapane Modilar, his sons, and others...*Defendants.*

PRICE, Judge.

Father incapable of managing property.

1. Defendant appears very old, and the Court conceives would be incapable of managing his own property; he states, his reason for mortgaging the Lands in dispute was to pay a debt due to first Plaintiff, on account of costs of suit, for his own support (his children having refused to maintain him) and for performing a Festival at a Temple. By the evidence it appears that first Defendant's property had been managed by his children for some time, on the condition that they supported him with the produce of it. The Court believes it was in consequence of the dispute between defendants and first plaintiff, that the first defendant resumed possession of his property, for the purpose of making-away with part of it so as to injure the plaintiffs, for it so appears, to pay a debt of £3 10*s.* 3*d.* first defendant mortgages property to the amount of £18 15*s.*

Alienation by him.

The Court (although first defendant states himself capable of managing his own property) does not think, from his appearance, that he is able to do so.

It is decreed that plaintiffs claim to set-aside the mortgage Bond be dismissed, but in order to prevent first defendant from making away with any more of his property, (which might tend to the injury of plaintiff,) it is ordered that he do appear before this Court, and state his reasons,

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or the absolute necessity of a further sale of his property for his own support—parties to pay their own costs.

3rd April, 1824.

No. 30.

District Court, Tenmorachy.

Cadrasy widow of Mootetamby of Mattowel ... *Plaintiff.*

Vs.

Cander Sidembery and others... ... ... *Defendants.*

SPELDEWINDE, Judge.

The Court, adverting to the Book of the Thesawaleme or the Customs and laws of the Natives observed in this Country, under the head of "Possession of Grounds, Gardens, &c.," passes the following judgment, to wit,

Improved portion to be possessed by the Heir.

Heir improving.

It is decreed that the plaintiff do uninterruptedly and peaceably possess their cultivated share of the portion of the land lying at Mattowil "Palekenywade Kowayel," situated on the east side to those other cultivated shares of the said land, belonging to the defendants and the individual named Periar Welayden, (of which their real extent are unknown), both in right of prescription as well as in terms of the Thesawaleme, under the head of "Possession of Grounds, Gardens, &c.," therein enacted, until the necessary division of the same can be in future effected, as per the above article of the Native Laws and Customs observable here, and that defendants do give up to plaintiff the encroachment; defendants to pay costs.

1834.

No. 713.

District Court, Waligamo.

Innasy Nicolan of Pirrowolan ... ... *Plaintiff.*

Vs.

Calengeraya Mudr. Cadergamer and sons ... *Defendants.*

BURLEIGH, Judge.

Slaves. Succession to property.

Answer of Slaves.

According to the Custom of the Country, if Ayal had died without leaving heirs, her land would have devolved to the master, but no owner of a slave can claim the property of one who has died leaving heirs. It appears that the plaintiff is Heir to Ayal, and therefore is entitled to the

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land in dispute ; the first defendant at first wished to prove that his father purchased the land, he admits himself, to a Proctor, so I cannot conceive how he could have made a mistake, he first attempts one line of defence and then another.

Thombo is produced in evidence, I consider that plaintiffs should have a decree according to the Thombo. The Assessors agree.

It is decreed that plaintiff be put into possession of the land. As the defendants state they have a right to all Ayal's property, I consider that they have objected to plaintiff's possession.

It is therefore decreed that they do pay costs.

No. 387.

14th May, 1834.

District Court, Waligamo.

Wessowenader Amblewaner of Araly ... ... *Plaintiff.*

Vs.

Wissowenader Cadergamer and others ... ... *Defendants.*

Burleigh, Judge.

Division of property before death of parents.

I am of opinion that the lands were divided before the death of the Parents, and that the plaintiff's claim should be dismissed.

The Assessors agree. It is decreed that the claim of plaintiff be dismissed with costs.

No. 535.

District Court, Walligammo.

Muttopulle widow of Cadergamer of Allewetty ... *Plaintiff.*

Vs.

Cadergamer Sinnetamby ... ... *Defendant.*

Burleigh, Judge.

Libel.—Plaintiff's Husband died now upwards of eighteen years, by whom the plaintiff had three sons and two daughters, obtained their dowry and were married out, the three sons remained under the guardianship of plaintiff, the eldest son

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inspecting and managing all the property of plaintiff, that ten years ago the plaintiff married out his eldest son and sent him away to reside with his family, after which the plaintiff's second son (defendant) took charge of all the plaintiff's property under his management.

Property acquired by Bachelors.

The defendant has now, without the consent of plaintiff, executed a Notarial Interest Bond for £7 10s., out of the income of the plaintiff's property in his own name; and further, forcibly took possession of three jars belonging to plaintiff, and in April last performed a marriage to his own accord without delivering up the plaintiffs property to her, and lives by himself; moreover, defendant has opposed the plaintiff from watering her Coraken Crop.

Whereupon the plaintiff prays to decree defendant to pay plaintiff the amount of the Notarial Bond, and the value of the three jars 18s., and Coraken Crop 15s., with costs of suit.

3rd Sept., 1834.

Judgment.

This action appears to have been brought against the defendant by his mother, merely (it appears to me) from ill-will, which appears to have arisen in consequence of the marriage contracted by the defendant, and without the consent of the plaintiff and her eldest son; in the Libel the plaintiff claims in the first instance 15s., value of the produce from a piece of land, it appears even from the evidence of defendant's elder brother (who is on bad terms with him) that defendant sowed this land after his marriage, I therefore consider that the plaintiff must have permitted him to cultivate and take the produce of the land to assist in supporting himself and his wife, as this was done after his marriage the plaintiff cannot claim the whole of the produce (as her due), even if the custom of the country is strictly adhered to, it would be a great piece of injustice, and I may say cruelty, if the plaintiff had a right to take the produce of land which the defendant has worked hard for, and which land he was truly permitted to cultivate until some private dispute arose.

Property acquired by Sons before Marriage.

The only doubt I have in this case is respecting the jars, the general custom of the country is, that acquired property by sons before marriage goes to the common stock. I

should suppose that this applies merely to the produce from the lands of the Father, and the plaintiff in this Case has not proved that defendant has taken to himself any part of the produce previous to his marriage, except from what the elder brother states, and I do not believe him, for he is not on terms with the defendant; if the plaintiff considers that all the acquired property previous to marriage should go to the common Estate, she ought to have put in a claim for the money, the defendant recovered as an informer, which I believe was considerable, I am of opinion that a decree should pass for the defendant.

The Assessors are also of this opinion.

It is decreed that the plaintiff's claim be dismissed with costs, she is at the same time recommended to Appeal.

Appeal Petition of the Plaintiff.

SHEWETH,—That in the suit No. 535 instituted in the District Court Walligammo, by the Appellant against her son the Respondent, the Court passed and pronounced a decree on the second instant in favor of the Respondent to her great prejudice, and against the native laws which had been framed by an authoritative Gentleman in Dutch time, through the assistance of twelve sensible Modliars, after their long experience with the customs and usages existing amongst the natives from period immemorial, for the purpose of better safety and security of the property and persons of the natives, and which were approved and sanctioned by the Dutch Governor in Council, and promulgated as a Law Code in the year 1707, and were afterwards enforced under the English Government by the Regulation No. 18, December 9, 1806, and by which the inhabitants have ever since regulated their transactions, and Court of Justice decided Cases of different natures, and consequently the Appellant being aggrieved with the said decree of District Court, appeals against it to this worshipful Court, and explains in the following how her case stands, namely,

That the Appellant has had two daughters and three sons, including the Respondent, during whose minority her Husband departed this life, and when her two daughters married out and their respective portion of dowry allotted to them, her eldest son

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Ramanathen commenced to manage her remaining property, which consisted of seven pieces of lands and appurtenances thereunto belonging, at her own permission, by the help of the Respondent and his youngest brother.

That with the produce of the said property, realised in money after all the expences defrayed for the support of the Appellant and his three sons, several pieces of lands and other property were purchased in otty and taken in mortgage in the name of her eldest son Ramenathen, who at the time of his marriage had restored to the Appellant all the property gained during bachelorship, according to the native laws, although certificates or deeds for the said acquired property were passed in his own favor; and then the Respondent by the assistance of his youngest brother undertook the management of the said property in the same manner at the request of the Appellant, during which management two Interest Bonds for two different sums realized from the produce of the Appellant's said property, were executed in favor of the Respondent, which facts had been admitted by himself.

That besides, the Respondent purchased for trade certain tobaccos with the Appellant's money, and afterwards in the year 1829, the said tobaccos purchased for trade, together with other tobaccos, the produce of the Appellant's garden, were sold for the sum of Rds. 100 to one Vessawenader Regoopulle on credit by the Respondent, who being the principal manager of Appellant's property took an Interest Bond in his own favor for the said sum of Rds. 100 from the said Regoopulle the Tobacco purchaser, and three Jars purchased by the Respondent for securing Arracknut for trade, as well as the ground share of Natchecny crops planted by the Respondent and his brother before, and reaped after the marriage of the Respondent, were appropriated by him at the marriage of the Respondent, which marriage took place in April last; the facts aforesaid the appellant proved satisfactorily to the District Court by the said Regoopulle the tobacco purchaser, (his) the Respondent's brother Ramanather and other witnesses, whereas the Respondent adduced two witnesses who stated that 100 Rds. in dispute were their own money, because the Tobacco sold were theirs, and Interest Bond for the said sum was executed upon good faith in favor of the Respondent, because he was a broker

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in the bargain, and consequently they received the said sum afterwards from the Respondent, but at the same time the witnesses did not shew any plausible ground why they made such a Bond in favor of the Respondent for the money due to them by the tobacco purchaser, had the tobacco been theirs, as stated, while they might have as easily made the Bond in their own favor, which would have been for their own safety, and the Court may judge how far credit should be given to such ungrounded statement.

That in case the Respondent be allowed to appropriate to himself the said acquired property so unjustly against the native laws, which in the 9th clause of the 1st article, page 3rd, and in the 5th Clause of the tenth page respecting gifts or donations, plainly intimate, that even the acquired property of sons by their own personal and separate industry &c., during their bachelorship, without any recourse to the property of their parents, should be brought to the common Estate, with the only exception that wrought Silver and Gold ornaments worn for their bodies and donations obtained may be claimed in the lifetime of their parents; the Appellant's eldest son too, who had already let the acquisition during his bachelorship to remain with the common Estate, according to the precepts of the said native laws, would take encouragement to come forward, and to resume the property left, and besides it is too hard and great loss to the Appellant and her other two sons, that the acquired property by the Respondent during his bachelorship with the assistance of his youngest brother from the very source of the common property, should be appropriated by the Respondent exclusively, if this Court will be good enough to refer to the said two Clauses of the native laws the Appellant humbly submits would undoubtedly convince the Court, that the decree of the District Court is palpably a wrong one.

That the Appellant further begs leave to observe, that she being confidenton the sufficient security provided by the said two Clauses of the said native laws, was chiefly induced to appoint the Respondent to the management of her property, and to make the deed for the said acquired money in his favor, while she might have made it in her own favor at the time without any obstacle, and when such native laws by which parents, sons and daughters &c.,

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are guided in cases of this kind fail, what better or more firm guidance have they to take recourse to, for the safety of their property.

That the intention of the appellant in prosecuting the Respondent is not to injure him, but to obtain an equal justice to be done to all her sons the appellant is greatly anxious, must be evident to this Court, and convince it, that she would not have carried the case thus far, unless she had been strongly impressed with the injustice and losses perpetrated by the Respondent.

That the District Court without considering and weighing the foregoing circumstances, and the said two clauses of the native Laws, dismissed the Appellant's well-grounded and clearest claim with the costs of suit.

Under these circumstances the Appellant most humbly prays this worshipful Court, after a due consideration of the case, to reverse the Decree of the District Court, and adjudge that the property acquired by the Respondent during his bachelorship, should be restored to the appellant. 11th September, 1834.

Judgment of the Supreme Court, 15th October, 1824.

That the Decree of the District Court be affirmed. The Supreme Court concurs in the reasoning on which the Judgment of the District Court is founded. The law or custom on which the plaintiff relies may be very correctly stated in her petition of appeal, but she has completely failed in establishing by evidence that her son the Defendant has by any acts of his, made himself legally responsible to her, according to that law or custom, on any of the grounds on which the action is brought.

26th Sept., 1834.

No. 461.

District Court, Teamoratchy and Patchipalie.

Philipatte widow of Maden of Vertelpulle ... ...*Plaintiff.*

Vs.

Sandy Philippen ... ... *Defendant.*

SPELDEWINDE, Judge.

The Judge is of opinion from what has been adduced in evidence in this case by both parties, that the land in dispute had been planted by the plaintiff and her four sons, viz.

Mader Anthony, the defendant's wife Christinal's deceased father, and his brother Porengy, and Marian now alive with the late Sntiagoe, and it being proved that the said plantation took place after the marriage of the said Anthony with his wife Helenal, one-half share of the Cocoanut, Jack and Mango trees, ought to be applied for the use of the ground owner who is the defendant's wife Christinal, and out of the remainder moiety with the exception of the one-fifth share which the said Christinal is entitled to, from her said late father Anthony, as one of the joint planters, the rest four-fifth shares ought to devolve to the plaintiff alone and not to her other sons Porengy, Santiago and Marian, as it would appear that at the time of planting the trees, they were then not married but were under the control of the said plaintiff, but as to the palmirah trees it seems they are as yet not bearing fruit. Consequently the parties may hereafter divide their shares agreeably to the custom of the Country, that is to say, the ground owner is entitled to three-fourth shares, and the other one-quarter share is to go to the planters, in which opinion all the Assessors fully agree.

Plantation share.

Proprietor's share.

Planting share.

It is decreed that from the plantation standing within the land in dispute called Aladycadoe, consisting first of Cocoanut, Jack and Mango trees, the plaintiff is entitled to a four-fifth share from the one-half part thereof for plantation share, and the other half portion ought to devolve on the defendant's wife Christinal as ground share, together with the other one-fifth plantation share from the other first item which has been attached to the plaintiff's plantation share, and with regard to the palmirah trees standing within the said land, save and except the three-fourth shares which devolve in the said Christinal for ground share, from the other one-fourth Christinal is entitled to one-fifth share, whilst the other four-fifth share devolves on the plaintiff on account of plantation share. It is further decreed that each party do bear their own costs.

Judgment affirmed in Appeal, 3rd December, 1834.

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24th Aug., 1835.

No. 471.

District Court, Jaffna.

Sidemberam wife of Sooperayen ... ... *Plaintiff.*

Vs.

Appoo Sooperayen Husband of plaintiff ... ... *Defendant.*

PRICE, Judge.

Divorce.

Division of property.

Plaintiff states the property she claim sis acquired property. The Court and Assessors are of opinion, that as it does not form part of the prayer of the libel, that the parties should be divorced, that the Court cannot order any division of the acquired property.

Case dismissed with costs.

8th March, 1836.

No. 1,534.

District Court, Waligamo.

Wally Caderen Covia of Tillepalle ... ... *Plaintiff.*

Vs.

Narresinga Mudliar Wayrewenaden and others... *Defendants.*

BURLEIGH, Judge.

Succession to Slaves.

Owners of Slaves.

On reference to the Church Roll, I find that Moote Natche had a son and a daughter Vannien, and Vannetche, these are slaves or one-half belong to Rasenayega Mudliar; according to what the plaintiff admits he is not by the custom of the country, entitled to the land, he does not descend directly from the person who formerly possessed; the last possessor was Moote second Cousin to plaintiff, the land therefore belongs to the owners of the slaves. I am therefore of opinion that the plaintiff's claim should be dismissed.

The Assessors are of the same opinion.

It is decreed that the claim be dismissed with costs.

2nd May, 1836.

No. 1,389.

District Court, Chavagacherry.

Wenayegen Welaiden of Caytaddy ... ... *Plaintiff.*

Vs.

Wenayegen Casenaden and daughter ... ... *Defendants.*

SPELDEWINDE, Judge.

The Judge is of opinion that plaintiff has failed to prove his claim on defendant, whereas it has been fully established

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in evidence, that the plants which plaintiff now lays pretension to, were actually planted by the first defendant himself, since the demise of the mother of both parties, and during his marriage, and therefore the Court conceives that the first defendant is solely and exclusively entitled to possess the same, without bestowing any share whatever therefrom to the other partners.

Heir planting entitled to possess the trees planted by him.

The Assessors agree in opinion.

In consequence whereof plaintiff's claim in right of his late mother, is dismissed with costs, and the plaintiff be only entitled to possess (save and except 16 Coconnut trees and 20 Jack trees, with one Mango tree lying on the west side of it, which had been solely planted by the first defendant) the remainder of all the other separate trees standing within its boundaries, to a third share undividedly, which are proved to have been planted in the lifetime of their said deceased mother Cadrasy, and plaintiff do not molest the first defendant in the trees that have been planted by him exclusively.*

No. 2,524.

17th April, 1837.

District Court, Jaffna.

Cartigaser Aromogam, and son Poodetamby... ...*Plaintiffs.*

Vs.

Toler Covinder of Serroputty... ... ... *Defendant.*

PRICE, Judge.

Plaintiffs admit second plaintiff was unmarried, and under the protection of the first plaintiff when the land in question was purchased in the name of second plaintiff.

Property purchased in favour of children while under paternal roof.

The Court and Assessors are of opinion that the Libel is proved, with the exception of that part of it which claims the sum of £1. 17s. 6d., amount of damages likely to have occurred, and consider that a Decree should go in favor of the general Estate of first plaintiff, (agreeable to the Thesawa-

* There was no division of the Land between the parties, who are children of same parents; the *date* when first Defendant planted does not appear, but the evidence shews that the first defendant planted *after* the death of his mother.

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leme, as it appears second plaintiff was unmarried at the time the Land was purchased) and that first plaintiff be put in possession of the Land.

The Court and Assessors also consider that defendant should be made to pay double costs in this suit, as it appears that he had a case with the original purchaser of the Land in question, and that a decree was passed against present defendant, in favor of the said original purchaser, on the 24th of October, 1819, and notwithstanding, he again objects to the possession of the Land.

It is therefore decreed, that the Land in question belongs to the general Estate of first plaintiff, and that first plaintiff be put in possession of the said Land, which he is entitled to, in right of purchase, as per Bill of Sale in favor of his son, (second plaintiff) who was unmarried at the time of the purchase, and that defendant do pay double costs.

1837.

No. 2,683.

District Court, Walligamo.

Tamer Amblewaner and wife, of Batticotta... ...*Plaintiffs.*

Vs.

Peromeynar Sinnatamby and wife... ... ...*Defendants.*

Burleigh, Judge.

A and B were married sisters, their mother died, and their father became blind, A and B each claimed the right of possessing the Lands of their blind father.

Evidence.

Father's right to retain his own property though blind.

Aromogam Caderasen, sworn, deposes. The Land in question is my own property, my wife's Dowry property was given to my daughters (second plaintiff and second defendant,) but I kept my own Lands, because if I gave it to them they would not support me. Formerly I cultivated the Lands, and after I became blind I gave them to my sons-in-law to cultivate, as they promised to give me the produce, which they have not done. I divided the Lands in question in two parts, my sons-in-law promised to give me each 25 Parrahs of Paddy a year.

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Last Paragraph of the second defendant's answer.

"That the plaintiffs or defendants did never pay to the aforesaid Aromogam Caderasen 36 Parrahs of Paddy as tithes, as stated in plaintiff's Libel, and the said Caderasen is not a man, of wealth that can expense the above quantity of Paddy, because he is a blind man, and he is considered to be a madman like a devil, the second plaintiff and second defendant supported him, and do many aid."

Judgment.

In this case, I think it quite unnecessary to enter into any further evidence, the plaintiffs in their Libel claim the Lands as their property, when they really belong to the witness. I consider that a Decree should pass for the defendants.

The Assessors agree in opinion.

It is decreed that the claim be dismissed with costs.

No. 1,910.

14th June, 1838.

District Court, Chavagacherry.

Vairewen Pandary and others .. ..*Plaintiffs*.

Vs.

Murger Amblewaner and others... ... ...*Defendants*.

Speldewinde, Judge.

The Judge and the Assessors are of unanimous opinion that the witnesses on both sides have fully testified that the 25 young Cocoanuts and 3 Jack plants have been planted by the second defendant, and the husband of the third defendant, since deceased, as this number is also admitted by plaintiff. It further transpired in evidence, that the third defendant's late husband cleared the whole of the jungle, and converted the ground to a fertile soil after many labours bestowed on it, which facilitated the second defendant to plant, consequently they are equally entitled each to the plantation share thereof, a quarter share to each from the whole plantation, while the other half belongs to the plaintiff as the ground owner thereof.

Planter's share.

Proprietor's Share.

It is decreed that the plaintiff, agreeable to his prayer in the Libel, is bona-fide the real owner of the land in dispute, as well as of half of the plantation share of the 25 Cocoanuts and 3 Jack plants, together with the other trees standing

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therein now not in dispute, whilst the other moiety of the said above-mentioned number of Cocoanut and Jack plants, belong to the second and third defendants, each to a half share in right of plantation.

Parties to bear their own costs.

23rd May, 1838.

No. 3,187.

District Court, Walligamo.

Cadergamer Caylayer and wife... ... ... *Plaintiffs.*

Vs.

Cander Venayeger and others... ... ... *Defendants.*

BURLEIGH, Judge.

Right to possess by Planter.

The principal point in this case (indeed the only one) is a very simple one to decide; according to the Thesawaleme the plaintiffs have a full right to possess the trees they planted, together with the land they stand on, confining themselves to the quantity they are entitled to (*i. e.* one-third share from the whole.) It appears that plaintiffs were opposed in their possession; the fourth defendant admits this in his replies to the Court. There is no sufficient proof before the Court, that fourth defendant's mother-in-law received one Lacham of the land exclusive of her own share. I think there can be no doubt, that the land was equally divided between the sisters; fourth defendant states that the young trees were possessed by turns, this is quite contrary to custom, and his statement is contradicted by his own witnesses. I am of opinion, that a decree should pass for the plaintiffs, that they are entitled topossess in the centre of the land.

Assessors agree.

It is decreed that defendants do pay to plaintiffs, 7s. 6d. damage for having prevented their taking the produce of the Cocoanut trees, and for having opposed their possession, and it is further ordered (to put a stop to future dispute although the land is not claimed in the Libel) that the plaintiff be put into possession of one-third share of the land, and in the centre. Defendants to pay costs.

1838.

Judgment of the Supreme Court.

That the decree of the District Court be affirmed to the

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extent of the claim in the Libel, viz., for the trees and their produce, but a Court cannot award anything beyond the demand, and (the ground not being claimed) it should not have been adjudged.

No. 2,576.

21st August, 1838.

District Court, Chavagacherry.

Wayrewen Welayden of Caitaddy... ... ... *Plaintiff.*

Vs.

Andappar Soopen and others... ... ...*Defendants.*

SPELDEWINDE, Judge.

The Judge and Assessors are of opinion, that the possession of the whole share by the plaintiff, and the first defendant by rotation, was duly proved as changing annual sides by them, from North to South. The first defendant being privy to this suit in a fradulent and crafty manner, after selling the best North part of the entire share to the second defendant, by a barefacedness now stands to deny his own unlawful action, after having in a cunning manner allowed the second and third defendants to make several improvements therein, which he in combination with his shareholder or Cousin, the plaintiff, wishes to deprive them of their valuable possession, so that the Court thinks that both parties, viz., the plaintiff and the second defendant, ought to be permitted, agreeable to law and justice, to enjoy possession of the whole land in extent 9½ Ls. from North and South, by changing sides of it annually in rotation, as had been the practice before.

Possession by rotation.

Decreed that plaintiff, as well as the second defendant, be confirmed in possession of the land Cottanwallitotam 9½ Ls. W. C., of which only a half part thereof being 4¾ Ls. has been discovered in the Thombo, Page 82., and to be mutually possessed by them, by changing annually the North and South sides in rotation, notwithstanding the seemingimposture practised by the first defendant on plaintiff, to deprive him by an outward show, of his just interest to the best North part of the said land, and now trying to injure the interest of the second defendant, in her having improved her new acquisition, for which fradulent conduct, the Court

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adjudges him (first defendant) to make good to the second defendant by way of remuneration, the sum of fifteen shillings sterling.

It is further decreed that each party do bear his or their own costs incurred in this case.

6th September, 1838.

No. 3,395.

District Court, Walligamo.

Vayrewen Sidemberem of Tayetty... ... ... *Plaintiff.*

Vs.

Ponny wife of Maden and others... ... ...*Defendants.*

Burleigh, Judge.

I am of opinion in this case, that the plaintiff wanted to get his share from the good part. He was quite right to have a division made, because they are always fighting and have already had another case, in which the present plaintiff made a claim on this land during his father's lifetime, but he could not properly claim the full extent he is entitled to from the good land : both, I think, are in the wrong, plaintiff in having wanted to get this part, and the first defendant in refusing to come forward when the Odear sent for her ; she was wrong in refusing to agree to a division, I therefore think that a decree should pass for the lands to be divided according to custom and justice, allowing her the difference in the good and bad land, first defendant paying the costs borne by himself, plaintiff his own and those borne by the other defendants who do not appear to have opposed.

Division of Lands.

Assessors agree in opinion.

It is decreed that a division of the land do take place according to usual custom, allowing for the difference in the quality of the land, plaintiff being put in the South-west side, on account of the trees planted by his father, first defendant to pay her own costs. Plaintiff his own, and those borne by the other defendants.

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No. 2,862.

24th October, 1838.

District Court, Walligamo.

Paramer Cadergamer of Sangane .. .. *Plaintiff.*

Vs.

Paramer Murger and others .. .. *Defendants.*

Burleigh, Judge.

In this case the plaintiff prays that the sale of the land to the second defendant by the first, may be set aside, and that he may be allowed to purchase it for the sum of Rds. 91, or that it may be considered as common property, in accordance with the Rules of the Thesawaleme.

The first question to be considered is, did the first defendant purchase the land with money borrowed from the second, and was he, if so, obliged to resell it from incapacity to liquidate the debt? He states in his answer that he sent word by Ponnen Colendeyen (see 1st witness for the defence) to the second defendant, to receive the land for the above amount (*i. e.* 100 Rds.,) and that a regular transfer should be executed in his favor, consequently second defendant paid the sum of 100 Rds., and the second defendant in his answer corroborates this, and says he paid 100 Rds. into the hands of this Colandeyen; so far they agree, but Colandeyan gives evidence very contradictory to this. he states that 90 Rds. were paid, and that it was not said then that second defendant was to get the land, he further states in another part of his evidence, "only we four (*i. e.* himself and the three defendants) were present when the money was paid." In case No. 2,386 the first defendant, in a Petition he presented to the Court which is filed in the case, says "the defendant (himself) and his mo-
"ther Ramssie made enquiry for money from Ponnen
"Colendeyen (first witness) who refused to assist, and in-
"formed that one Modelitamby Omayer (second defendant)
"has money and promised to get from the said Omeyar,
"consequently defendant *and his mother* borrowed with
"promise to pay in the term of two months, but they fail-

"ed to comply with their promise, the aforesaid Colendeyer "persists to transfer *their* land aforesaid to Omeyer, &c." The mother, who is the second witness, says nothing of this, and indeed does not know whether he paid any money or not. By this Petition the first defendant admits that he himself and his mother borrowed, (which I do not believe); it must be considered as belonging to the general estate. It was my opinion in that case, that the sale to second defendant was made merely to prevent the plaintiff (not a party in this one) recovering what he claimed.*

Property purchased while under paternal roof, common.

I am of opinion that the first defendant did not borrow 100 Rds. from the second.

The second question is, was the sale of the land to the second defendant a legal transfer, I have not the least hesitation in saying that it was not, inasmuch as no publication was made, in accordance with the Thesawaleme and present universal custom, this sale should have been published for three successive weeks.

Publication.

The first defendant's Fiscal's Certificate of sale was granted on the 27th April, 1836, and the Bond in favor of the second defendant *on the same day*. I am of opinion that the sale should be set aside with costs, as a fradulent transaction, and the property be considered general, the mother paying the purchase money between them, if any part of the purchase amount was borrowed from any one. I have said before, I have little doubt that the second defendant did not lend the money. It is said he did. It must be clearly shewn that the first defendant borrowed money, and the whole family may join in the judgment of what was borrowed and keep the land.

The Assessors are of the same opinion.

It is decreed that the sale of the land to second defendant be set aside, and that it would be considered, general property. Defendant to pay costs.

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* Plaintiff and Defendant were brothers.

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No. 6,723.

10th June, 1839.

District Court, Jaffna.

Sinnewen wife of Ayen and Soopen Moorgen, of Colombotorre ... ... *Plaintiff.*

Vs.

Caderen Cooronaden, of do. ... ... *Defendant.*

Burleigh, Judge.

The Court is of opinion that the case rests entirely on this —was Nagen father to the first plaintiff, if so, she is legally entitled to a share of this fishing ground with the defendant, the Court has no doubt whatever from the evidence which has appeared that first plaintiff is daughter of Nagen, and therefore that a decree should pass for the plaintiff. The Assessors agree in opinion.

Right of fishing

It is decreed that the plaintiffs are legally entitled with the defendant to the right of fishing in the lands mentioned in her libel that is to say the parties are entitled as follows. Plaintiff to a moiety of the lands possessed by the late Vinasy Agen, and the defendant to a moiety. Defendant to pay costs.

No. 3,389.

29th June, 1839.

District Court, Waligamo.

Ramer Winaygen, of Batticotta ... ... *Plaintiff.*

Vs.

Winayeger Canneweddy ... ... *Defendant.*

Burleigh, Judge.

This was an action upon a Bond dated 24th January 1825, by which the son (defendant) undertakes to support his father (plaintiff) for life.

Evidence.

Son's liability to maintain father.

Ramanaden Narrasinga, sworn, deposes, plaintiff informed me that the defendant did not maintain him properly, and requested me to tell him to give him back his money and interest; defendant said he would maintain him but would not pay the money; I told plaintiff to go and eat with him as

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before, but he replied he would never eat there; I told defendant to give him two parahs of paddy per month, which he said he would not do; then I told him to give 18 parahs a year which he agreed to do and at the same time gave plaintiff 14 fanams for one parah of paddy, telling him to come again when he had expended that; after that, he came again, when defendant said there is no rain, borrow from some one, and I will give it afterwards, defendant told plaintiff he had no money, and to borrow from others, twice or thrice he told him to borrow, he did not give any thing after the fourteen fanams. The custom is that the father must remain with the son; defendant told him to come and live with him, plaintiff said it was not lawful to take food from defendant's wife, there are no other females in the house of defendant, but his wife; according to the custom of the Malabars, the father cannot look at his daughter-in-law.

Father should live with son.

Father-in-law.

Daughter-in-law

Judgment.

The plaintiff has failed to prove that the defendant has failed to support and clothe him, rather the contrary; the fact is, I believe, that the plaintiff wants to live in another parish. I consider that he is bound to live with his son; the observed custom mentioned by one of the witnesses is in a measure true, but the plaintiff it has been proved, has already lived with defendant, and therefore has broken through the custom. I believe that the plaintiff wanted to have the land sold to obtain money, which he will expend and afterwards come again on his son for support, this of course defendant must do when the father is unable to support himself. I am of opinion that the claim should be dismissed. I do not think the land should be sold, which would be the case if a decree passed for plaintiff.

The defendant offers very fairly to day in his representation, which offer is rejected. The Assessors agree in opinion with the District Judge.

It is decreed that the plaintiff's claim be dismissed with costs.

Judgment affirmed in Appeal, 15th February, 1840.

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No. 2,755.

14th Sept., 1839.

District Court, Waligamo.

Candatey, widow of Cadergamen, of Cattowen ... *Plaintiff.*

Vs.

Wedatey, widow of Sidembery and another, of Elale ... ... *Defendants.*

BURLEIGH, Judge.

I have before stated that it is clearly shewn that the five Ls. now in dispute is that which the second defendant has cultivated for many years. The exchange alluded to in the Libel (even if true) has nothing to do with this case, because, according to the Thesawaleme, he who improves a particular part of a land in which there are several owners, must exclusively remain in possession of that which he has improved with the sweat of his brow—it is a very proper law, and is invariably acted up to in this district; the evidence is quite clear on this point, and I am therefore of opinion that a decree should pass for the defendants. The Assessors agree in every respect in opinion with the Judge.

Improvement of Lands.

Party improving entitled to Land improved.

It is decreed that the claim of plaintiff be dismissed with costs.

Judgment of the Supreme Court, 5th August, 1840.

Judgment modified, plaintiff is decreed to be entitled to five Ls. out of the fifteen, exclusive of the two and-a-half Ls. thereof cultivated by defendant as a garden; both parties to pay their own costs.

No. 4,307.

29th Aug., 1840.

District Court, Waligamo.

Pooder Cowger, of Tillepalle ... ... *Plaintiff.*

Vs.

Mootenachy widow, of Cander and another ... *Defendants.*

BURLEIGH, Judge.

It is a very frequent practice in this district, for parties who have a *bad* case, to attempt to prove an admission on the other side; such evidence must be regarded with suspicion, and where a clear and satisfactory explanation as to the

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cause, and motive, for such an admission, is wanting, the evidence should be entirely rejected : the first witness tells a very unsatisfactory story, he says that last year an objection was made on the part of the defendants, and he therefore should on no account have attended to the plaintiff; when he subsequently applied to him for a schedule to dispose of the land, he should have said to him I cannot interfere, an objection to the transfer was made in April or May, 1839, you must prove your right before the Court. The witness tells the Court that he never goes to the lands to make inquiry as to whom they belong, unless an objection has been made, yet he admits that he went to the land in question, and made inquiry of the second defendant, *before* he made any objection. It appears that the first defendant has no concern with the land in question. The Court has no doubt that the witness had invented this story, and that no admission was ever made, he qualifies the admission of the first defendant by introducing the objection he alleges her to have made, this convinces me of the invention, because had an objection occurred he would undoubtedly have refused to act when subsequently applied to by the plaintiff; he is an old Odear, and knows well that he was bound in duty not to attend to him until after the matter had been decided by the Court; the Court suspects that he never saw the land, for he says that the Margosa trees have only borne fruit since *two* or *three years*, the second witness swears that the plaintiff has taken the produce from the branches since *twenty* or *twenty-five years*, the third witness makes it out six or seven; the first witness states that the land was *never* cultivated (this I believe) the others say it was, it is difficult to say who is wrong, the first witness or the other two. It is admitted by the first witness that his father held the Thombo of this land before him, therefore if the land claimed by the plaintiff is the one mentioned in the Division Deed, that instrument is an illegal one, the schedule having been granted by the Odear of another division who had no concern with this land: the Purchase Deed filed by the plaintiff has every outward appearance of being a forgery, on the other hand the defen-

Schedule by Odear of another District, illegal

ant's deed has all the appearance of being a genuine one, plaintiffs purchase deed is also irregularly drawn up, no Thombo or extent is mentioned, and it would appear by it that the whole extent which the mother of defendants was entitled to, is transferred; it says, " the whole of our share,' now the whole of our share is 11¼ Ls., and the plaintiff says that he only purchased 3¼ Ls., it must be understood that the second defendant as well as the plaintiff, hold more than the land in dispute; there is much contradiction in the evidence for the plaintiff, respecting the Margosa fruit and the sowing of the Kurukan, and from the manner in which the witnesses gave evidence, I believe they have not told the truth, the Court very seldom believes the 1st in any case.

It is decreed that the claim of the Plaintiff be dismissed with costs.

No. 4,261.

District Court, Waligamo.

26th Nov., 1840.

Innasiar Santiago, guardian of his grand-daughter... ... ... *Plaintiffs.*

Vs.

Anthony Nicholan andanother... ... ... *Defendants.*

St. Diago Soose and another... ... *Co-Defendants.*

BURLEIGH, Judge.

Division of Lands.

The second Plaintiff's father and Defendants were brothers and sisters, Plaintiff brought the action to compel a division. The District Court held that a division ought to be made by appointing Commissioners; the Supreme Court set aside the Judgment.

Judgment of the Supreme Court, 1st March, 1841.

It is considered and adjudged that the Defendants and Co-Defendants be absolved from the instance, the Plaintiffs having failed to shew by evidence why the lands which the respective parties are in possession of for the last fifteen years, should be divided anew among them; the attempt to prove that the Co-Defendants have received some of the

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lands in dowry, has totally failed. The Plaintiff to pay all the costs from his privy funds.

28th Aug., 1841.

No. 4,723.

Moogen Amblewaner, of Sangane... ... ... *Plaintiff.*

Vs.

Amblewaner Sanmogam... ... ... *Defendant.*

BURLEIGH, Judge.

Last paragraph of the Libel.

" The above pieces of lands and thereof are the immove- " able property of the Plaintiff, as no dower was given to " his daughter Cadrasy, wife of Welayden Smnetamby, when " she was married, the Plaintiff wanted to give in dower to " her two-thirds of all that land abovementioned, with their " appurtenances, and two-thirds of his moveable property, " when the Defendant who is the Plaintiff's son, very unlaw- " fully objected to his doing so, and took away from him the " title Deeds of the above said lands, (except the dowry " deed of his late wife) and four Interest Bonds in his " favour."

Judgment.

Father's right to dower and to divide properties.

The Court and Assessors consider that the Plaintiff should be permitted to divide his property in the manner he wishes, which is just and equitable, the Defendant being directed not to interfere with him, unless he makes an improper division, should the Court allow this very high class case to go on, it will entail great expense on the property, without doing the least good.

It is ordered that this case be struck off, the Defendant being directed as above, not to interfere with the father's desire with regard to a division, unless an unfair one is proposed; the Court cannot make the son pay costs, he being under his father.

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No. 3,451.

25th Feby., 1842.

District Court, Islands.

Alegappa Mudliar, Santiagopulle and others, of Pandatenopo, residing at Narantanne... ... *Plaintiffs.*

Vs.

Anthonial Bastian and others... ... ... *Defendants.*

MOOTIAH, Judge.

It is clear that the defendants and their Ancestors served the second plaintiff's parents, and plaintiffs themselves for a period of 40 years at least, as their slaves, and that the defendants served the plaintiffs for about 22 years, since the certificate of registry obtained by them respecting defendants' slavery, that the defendants moreover appear to be the same persons as mentioned in the duplicate copies of the certificates filed in the case. With reference to their age, caste, and proprietorship, as well as their names, the slaves in this district are well-known to bear the names of their mothers before their own, as pointed out in the Thesawaleme, and under these circumstances, and as the defendants have produced no act of freedom as alleged in their answers, I am of opinion that the defendants should be considered as plaintiffs lawful slaves, and decreed as such to return to their service, and to pay the costs incurred in this case.

Slavery.

Slaves take their Mother's name.

The Assessors agree in opinion.

It is decreed that the defendants be considered and declared as the second plaintiff's slaves, and they do as such return to her service forthwith, and they do pay the costs of suit.

No. 5,230.

29th Nov., 1842.

District Court, Waligamo.

Veeregettiar Cadergamer, of Tillepalle... ... *Plaintiff.*

Vs.

Valer Cadergamer... ... *Defendant.*

BURLEIGH, Judge.

Plaintiff planted some Cocoanuts, plantains, and Murokko trees, and wanted to transplant them into his own land.

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There is no proof in this case except with regard to the Murokko trees, and that is imperfect and unsatisfactory. Plaintiff should have cited Vallinachen to prove his case, and even allowing that plaintiff did plant the Murokko trees, the Court doubts very much that he has the power to remove them.

Power to transplant trees.

The Assessors agree with the Court, that there is no proof, especially that plaintiff has not proved that he obtained permission to plant the Murokko trees there, they say he would have been entitled to them* by the custom, had he proved his case

Plaintiff non-suited with costs.

6th April, 1843.

No. 11,219.

District Court, Jaffna.

Sangerapulle Welaythen, of Anecotta... ... *Plaintiff.*

Vs.

Cotten Veeregetty and others... ... ...*Defendants.*

Burleigh, Judge.

The Court and Assessors are of opinion that the plaintiff is entitled to the full cultivation share on two-thirds of the crop of all the straw, and he is unquestionably entitled to recover what he paid for the perpetual redemption of the land from tithe.

Cultivation share.

It is decreed that the plaintiff do recover from the second defendant £2 19s. 4½d., and costs.

28th April, 1843.

No. 5,301.

District Court, Waligamo.

Sitter Sinnetamby, of Tellepalle... ... ... *Plaintiff.*

Vs.

Mootenachy widow of Sinnawen of Do... ... *Defendant.*

Burleigh, Judge.

An aged person cannot mortgage without consent of authorities.

By the Thesawaleme, Clause 8, an aged person like the defendant, cannot mortgage her property without the consent of the authorities, the Court and Assessors are therefore

* To a share of the produce.

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of opinion, that the plaintiff's claim should be dismissed, it is evidently a fraudulent transaction.

It is decreed that the claim of plaintiff be dismissed with costs.

No. 3,881.

19th Dec., 1843.

District Court, Chavagacherry.

Modely Ramen, and others of Chavagacherry ... *Plaintiffs.*

Vs.

Cander Ponnen, and others ... ... *Defendants.*

Wood, Judge.

By the evidence it would appear that the plaintiffs are the owners of $\frac{3}{4}$ share of the land in dispute, and the defendant the owner of the other $\frac{1}{4}$ share but the planter of the whole, which it would appear by the Libel that the plaintiffs are unwilling to admit, and therefore the defendant alleges the sale of the Land to him, which he totally fails to prove. According to the Country Law prevailing in this District, when a person plants the Land of another person without his permission, it is considered sufficient if he gave the owner the ground share called "Tarrevarum," therefore in the present case the plaintiffs are entitled to $\frac{3}{4}$ share of the land and ground share of the plantation thereof, and the defendant to $\frac{1}{4}$ share of the land and ground share thereof, and to the plantation share of the whole ground, but as each party has not told the truth, each party ought to bear their own costs.

Planter's ground share.

Assessors concur in opinion. Decreed accordingly.

No. 5,518.

20th Dec., 1843.

District Court, Walligama.

Cadergamer Periatamby, of Alewetty ... *Plaintiff.*

Vs.

Cadergamer Innasitamby and another ... *Defendants.*

Burleigh, Judge.

The Court and Assessors consider it most clearly proved that the alleged exchange never took place, and they consider that the land in question belongs to plaintiff.

Exchange of Lands.

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It is decreed that the land Ambatan half from 16¾ lachams W. C. as claimed in the Libel, is the property of the plaintiff, the defendants to pay costs of suit.

From the prevaricating evidence of the first witness for the defence, very little credit can be placed in his statement, especially in regard to what he says of first defendant's possession of plaintiff's share of the land, he however admits, that the plaintiff held his share in common with the first defendant's share for about twenty years subsequent to the execution of the land certificates, which proves clearly that those documents did not entitle first defendant to become sole possessor of plaintiff's share, and this part of the witness's evidence is confirmed by the third witness; it was a very common practice to register lands in the name of one brother although belonging to several brothers, which was done to save expense, there can be no doubt that the defendants lately applied to the plaintiff to otty the share in question to them, which is quite conclusive that the land does not belong to the first defendant.*

Registry of Lands in the name of one of the Brothers.

25th April, 1844.

No. 4,039.

District Court, Islands.

Pitchen Sangaren, and Parpaddy, widow of Valen of Pungodotiooe ... . *Plaintiffs.*

Vs.

Colandey widow of Mootan and Mootan Soopen...*Defendants.*

AMBALAWANAM, Judge.

Improvement of Lands.

It is proved to the satisfaction of the Court that the defendants possessed the land in dispute for several years and improved it, therefore they are entitled to it according to the Thesawaleme; the District Judge believes the evidence of defendant's witnesses, but does not believe the evidence of

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* In the Provincial Court Record Books of 1833-4, and 6, I find there are several cases brought, and order made to execute land Certificates of them, making publication in the Village. Application is made, and the Maniagar in ordered to get publication made, and on his certifying that publication has been made the order is made to pass the Certificate.

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plaintiffs' witnesses, therefore the claim of the plaintiffs should be dismissed with costs.—Assessors agree.

Decreed that plaintiffs' claim be dismissed with costs.

No. 13,702.

District Court, Jaffna.

Andries Sawarian, and wife Lujuspulle, of Carreoor ... ... *Plaintiffs.*

Vs.

Swam Santiago and wife Weresedal, and two others ... ... *Defendants.*

PRICE, Judge.

Libel.

That the second plaintiff, second defendant, and the third and fourth defendants' late mother are sisters. That as the second defendant is barren, after her death half of her property would devolve on second plaintiff, and the other half on third and fourth defendants, according to the Country Law or Thesawaleme; but, some time since, the first and second defendants in consequence of a variance with the plaintiffs, and intending thereby to deprive them of their share, are disposing of and alienating their property in different manner; that first and second defendants are entitled to half share of a piece of land lying at Carreoor "Sidembrenadentarre," in extent 4¼ lachams W. C., which they, in combination with the third and fourth defendants, without any publication being made throughout the district, and without obtaining schedule from the Odear, transferred the said for £4 in favor of third and fourth defendants, upon a Bond executed by the Notary, although the first and second defendants had never received any money from third and fourth defendants.

By defendant's Proctor to first plaintiff.

25th May, 1844.

The land in question is the purchased property of the second defendant; second plaintiff also admits that it is the purchased property of the second defendant.

Mother's right to sell.

There is nothing whatever in the Country Law to prevent sales of this description; it appears that the land in question is the purchase property of the second defendant,

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and the Court and Assessors are of opinion she has a right to dispose of it.

Libel dismissed with costs.

23rd November, 1849.

No. 3,427.

Ramer Velaiden of Caretivoe ... ... *Plaintiff.*

Vs.

Comaravalen Cadergamer and others ... ... *Defendants.*

PRICE, Judge.

Division of Property.

The Court is of opinion that the three bonds produced in evidence to-day, have been proved; the Court is further of opinion, the three lands mentioned in those bonds have been divided amongst the three sons of Somer Ramer, and must be considered liable for their debt.*

The Court is further of opinion that plaintiff's libel should be dismissed with costs.

Decreed accordingly.

31st Aug., 1854.

No. 13,934.

Court of Requests, Jaffna.

Santiago Anthony ... ... *Plaintiff.*

Vs.

Manuel Sawarimottoe, wife Maria, and Son Philipoe, ofNavontorre ... . *Defendants.*

HUME, Judge.

Second and third defendants examined, admit the bond, but deny having received the consideration stated in the same: first defendant pleads total ignorance of the matter, and does not appear to have been a party to it; second defendant being wife of the first, is discharged from the liability.

Judgment against the third defendant for the amount claimed, and costs.

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*Somer Ramer was father of plaintiff, who was living at this time, and would have had a life interest but for the division.

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Judgment of the Supreme Court. 17th January, 1855.

Property of wife liable for her Debts.

That the decree of the Court of Requests of Jaffna be set aside, and judgment given for plaintiff against second and third defendants.

It appears from the bond that the second defendant has been living separate and apart from her husband, the first defendant, (who is no party to the bond,) for ten or fifteen years, and was so living at the time she and her son the third defendant entered into the bond.

Her own separate property is therefore liable. The bond, however, being only joint and not several, the third defendant is only liable for his moiety of the debt.

18th February, 1857.

No. 172.

Court of Requests, Jaffna.

Vallipulle widow of Velayther of Kaytaddy ... *Plaintiff.*

Vs

Varetamby Neylwangenam and others ... *Defendants.*

PRICE, Judge.

Plaintiff having failed to prove an exclusive right to the land in question, her claim is dismissed with costs, and the land is ordered to be sold under Writ 14,690.

Property purchased during Marriage.

Acquisition.

The land appearing to have been purchased after plaintiff's marriage with her late husband, it must (in the absence of proof to the contrary) be considered as acquired property, and liable for the debt of her husband.

MINORITY.

28th Nov., 1805.

No. 326.

Anandam and Marrimutto, daughters of Santherasegre Anesenasinga Mudliar Kanakasinga Mudliar Madappaly of Enowill ... ... *Plaintiffs.*

Vs.

Weder Caylayan of Navaliley... ... ...*Defendants.*

DUNKIN, Judge.

The above cause is brought for re-hearing, upon the prayer of the defendant. Read the former proceedings had in the above cause.

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Singakawala Mudliar Madapalle of Enowill, being duly sworn, declares, he knows both parties: he says he has no interest, either gain or loss, in this cause. He says he was married to Teyvane the daughter of Kamanagasingam. He says Kamanagasingam died in the year 1792, and at that time Anandam the first plaintiff in this cause was about 12 or 13, and Marimutto, the second plaintiff, was about 10 years of age. He says Anandam was married in the month of January, 1796, (which agrees with her dowry ola produced in this Court.) The heads of the caste, Paramanada Mudliar and Komarokollasooria Mudliar; being asked as to the minor and full age of a native girl, under the country law, they say that there is no particular clause about the age or minority of the natives under the Malabar code, because it is customary among them to marry out their daughters when they are very young, in which case the husbands as guardians, are to aid them, but if a girl remains unmarried till 20 years, she is then considered able to manage her own affairs.

Minority.

Absence of any provision in the Thesawaleme.

The Court confirms its decree.

23rd January, 1821.

No. 1,556.

Cander Alwan of Ploly... ... ...*Plaintiffs.*

Vs.

Canegesagera Mudliar Sanier and others... ... *Defendants.*

LAYARD, Judge.

Minority. Acting as security—and Marriage.

What effect.

The Count finds the plaintiff has certainly recovered the money, and is of an age capable of employing it, having been accepted as a security before the Collector to a Government debt, and also having recorded his marriage before the schoolmaster of his Village, his guardian Cadergamer Valen also is one of the witnesses to the sale.*

Judgment against the plaintiff in favor of the first defendant, Rds. 85 borrowed, 15 for improvements, and interest on this 100 Rds. to the day of payment, with costs. Interest to be calculated from the date of Bond.

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* Age does not appear, but under 25 years.

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No. 280.

23rd May, 1821.

Teywane wife of Sooper ... ...*Plaintiff.*

Vs.

Neeler Murger Gobale Chilliar Walopoe Comaro Sanmogam ... ... *Defendant.*

LAYARD, Judge.

The Court considering the merits of Claimant's demand, is of opinion that any money lent the son of the defendant, and admitted and proved, may be recovered from the defendant's son as a liquidated debt, but that he can have no preference either by virtue of the orignal Bond, or subsequent transfer of the land ordered to be sold in execution as the property of the defendant, although purchased in his son's name, and which at the date of the Bond, 30th October, 1820, the son had not the land to mortgage. Tamil law being specific, that no son in his minority can acquire property independant of his parents, a thing which the claimant evidently was aware of, or he would not have made defendant's wife, mother of the purchaser, a joint party to the transfer, or have taken Defendant as a witness to the transaction.

Property purchased in son's name.

Son during minority cannot acquire property.

It is therefore decreed, that claimant's suit be dismissed with costs.

No. 3,130.

23rd March, 1824.

Cander Morgaser at Mampay ... ... *Plaintiff.*

Vs.

Alwar Pooder and wife Cadrasy ... ... *Defendants.*

FARRELL, Judge.

The defendants were the Father and Mother-in-law.

It is the opinion of the Court that plaintiff's son is to be under plaintiff's charge, as well as plaintiff's late wife's dowry property (the same being in trust for plaintiff's son) as long as plaintiff continues unmarried.

Guardianship.

2nd Marriage.

The Court considers the Dowry Ola filed by plaintiff as sufficiently proved, but the Court is not satisfied that such property is in defendants' possession.

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It is decreed that plaintiff is entitled as guardian of his son to the property mentioned in plaintiff's wife's Dowry Ola, that plaintiff's son is to be delivered up to plaintiff by defendants, as well as any dowry property belonging to plaintiff's wife which defendants may have in their possession

Defendants to pay costs of suit.

No. 3,561.

Year 1825.

Arolappar Saveremootto of Sirovolan ... ... *Plaintiff.*

Vs.

Anthoney Sawery and Retal wife of Anthony ... *Defendants.*

FORBES, Judge.

Father of minor entitled to Guardianship.

Held, the father of a minor child by the first bed entitled to its guardianship, even after he has married a second time, in preference to its maternal grandfather.*

No. 3,998.

Year 1826.

Nagamotto daughter of Pattan, of Sangode ... ... *Plaintiff.*

Vs.

Ayen Weeden ands ons, Amblewen and Raman ... *Defendants.*

WRIGHT, Judge.

Wife.

Purchase from husband.

Debt contracted for Minor.

Held, that a widow has no right to sell the inheritance of her deceased husband when he has left a child behind, and held also, that no custom ever existed of such a thing as a wife buying from her husband his hereditary lands.

Thirdly—Held, that an otty by the mother in conjunction with two of the minor's nearest relations, for the benefit of the minor, was valid incidentally; held that there can be no sale of lands without a return of the thombo registry, which, now-a-days, is called a Schedule.

No. 5,075.

Year 1827.

Ramanader Pulleynaer and daughter Cadery of Narantanne ... ... *Plaintiffs.*

Vs.

Ambalawanan Mooten ... ... *Defendant.*

Point raised,—Is A. who is in possession of his deceased wife's property, as the guardian of his minor child, bound to

* See case No. 10,3 63, District Court, Jaffna.

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give security for the proper management of the property. No Judgment. Case struck off.

Security.

No. 4,047.

Year 1827.

Sewenadian Muttovaloe by his Uncle and guardian Muttovaloe Sinnatamby of Vannarponne ... *Plaintiff.*

Vs.

Coornaden Sewanadian and another ... ... *Defendants.*

Brownrigg, Judge.

The guardian of a minor child should pay his own costs for bringing an unfounded action.

Guardian. Costs.

No. 4,482.

Year 1828.

Parpaddian, widow of Alwan of Sonale ... ... *Plaintiff.*

Vs.

Walliar wife of Canden and sister ... ...*Defendants.*

Brownrigg, Judge.

Held, that by the 7th clause of first section of the Thesawaleme, all property acquired by sons while unmarried and under the care of their parents,* shall become part of the common stock, and that after the death of the parents it is to be considered the modisom or hereditary property of all the sons, and that the widow, of one of the sons has no right to any share, and that his brothers should succeed to the same exclusively, share and share alike.

Acquisition of minor sons.

Common property.

Widow of one of the sons.

No. 5,230.

11th Dec., 1828.

Tayebpager Aromogam, his wife and son ... ... *Plaintiff.*

Vs.

Canneweddiar Cadergamer his wife and daughter of Sarasale ... ... *Defendants.*

Brownrigg, Judge.

In this case, there appears to be three points for the consideration of the Court.

1st. Whether the Deed filed by the plaintiff is or is not a genuine one.

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* Minor about 9 years old at the execution of the marriage agreement.

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2nd. Whether it is to be considered thereby as a marriage contract or as an agreement.

3rd. Whether the third defendant, as a minor at the time of its execution, is bound by it.

On the 1st point, I am of opinion that the Execution of the Deed is supported by six witnesses whose testimony is not in my mind shaken by those adduced by the defendants. I therefore decide that the Deed, dated 15th November, 1821, is genuine.

2ndly.—I consider that the Deed alluded to, is an agreement, and subject to the provisions of the different Regulations of Government, respecting agreement, therefore a suit is maintainable if brought within ten years from the date of the Deed.

Agreement. Minor. Consent of parents.

3rdly.—As the Agreement appears to have been executed by third defendant, with the consent of and in conjunction with her parents, I consider it is binding upon her.

It is therefore decreed that plaintiffs do recover from the defendants, the sum of one hundred and fifty Rds., and costs.

3rd December, 1829.

No. 5,548.

Pooder Caderin and others... ... ...*Plaintiffs.*

Vs.

Mootar Teayer and others... ... ...*Defendants.*

PRICE, Judge.

Minority. 15 years of age.

It appears to the Court that the second plaintiff is too young to be a party to any Deed, as he does not appear to be more than 15 years of age. The third plaintiff's right in the Land also appears to have been transferred by second plaintiff and second defendant. Third plaintiff appears about 8 years of age. First defendant appears to have made a return of the Land in question, as entered in his thombo, which appears, on reference to copy of information taken before the Collector, not to be the case, and first defendant also admits the entry is not in his thombo.

It is therefore decreed that the Bill of sale filed in this case dated 4th July, 1821, as well as the Mortgage Bond for Rds.

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29, in favor of third plaintiff, bearing same date, be set aside as illegal. First and second Defendants to pay costs of suit.*

No. 5,595.

28th March, 1829.

Provincial Court.

Walliamme, widow of Arnasalem, of Batticotta ... *Plaintiffs.*

Vs.

Supermannur Winasietamby, and others ... *Defendants.*

BROWNRIGG, Judge.

The Court considers that the transfer in favor of the first and second defendants cannot be maintained, as it has been executed by the third and fourth defendants, who were minors at the time of its execution; and the Court considers the Odear and Notary, the fifth and sixth defendants, as highly culpable in having, the former given a schedule, and the latter executed a transfer, of the property of minors without their consent of their legal guardians.

Minors.

Schedule.

Consent of guardians.

It is therefore decreed that the transfer of the Land Kottesilly, bearing date 15th November, 1823, in favor of first and second defendants, be cancelled and set aside, and leaving them at liberty to recover from the sellers any portion they may have paid on account of the purchase money.

That plaintiff be established in the possession of the said Land in right of her late husband, and that defendants do pay the costs of this suit.†

No. 5,048.

10th February, 1830.

Walliar Mapanar and wife Paropaddy ... ... *Plaintiffs.*

Vs.

Komaran Sangrepulle and Manesegra Modliar Waritamby Maniagar of Odoputty, and Welayder Teromany of Valevettetorry ... ... *Defendants.*

PRICE, Judge.

First defendant as well as the other defendants admit the minority of the first defendant at the time he executed the

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* First Plaintiff is the uncle of the second and third Plaintiffs. First Defendant is the Pattengatty (Odeyar.)

† The age does not appear of the third and fourth defendants, but the whole evidence simply shews that they are *underaged.*

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Transfer
Minority.

Transfer Deed filed on his case dated 28th November, 1826, first defendant stating he is more than 22 years of age the second and third saying he is 24 now, which, allowing it to be the case, he could only be 20 when he executed the Deed.

Set aside.

It is therefore decreed that the Bill of sale dated 28th. November, 1826, in favor of third defendant, be considered illegal, and be cancelled accordingly, and that costs of suit be paid by second and third defendants.

22nd March, 1830.

No. 5,600.

Nagy Wayrawen and others of Mottowill ... *Plaintiffs*.

Vs.

Sinny Wayrawen and others of the same place ... *Defendants*.

PRICE, Judge.

Plaintiff's having failed to prove the purchase of the land in dispute, in favor of the third plaintiff, subsequent to her marriage. Case dismissed. Plaintiff's to pay costs.*

26th February. 1838.

No. 7,455.

Sangrepulle Vilayder of Innovil ... ... *Plaintiff*.

Vs.

Ramanader Supar and others ... ... *Defendants*.

PRICE, Judge.

Father of minors.
Guardian.
Schedule.

Held, the father of minor children should, as Natural guardian, join the sale by them. Deed aside. The sixth defendant, Odear, was condemned to pay all costs for having mislead the parties in granting schedule.

Judgment.

I consider that first defendant should have been a party to the Transfer in question, as the natural guardian of the second and third defendants.† It is stated that he

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* The land was purchased in favor of third plaintiff when a child, by the first defendant, her father.

† The second and third defendants must have been minors, but it appears from the pleadings that the second defendant was a major. It does not appear therefore upon what ground the District Judge set aside the sale. As far as the second defendant's share was concerned, the sale was valid, subject to father's life interest.

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signed the Bill of sale as a witness, but there is no proof to this point. It is therefore decreed that the Bill of sale produced by Sangauta Wayrewy, dated 11th July, 1831, be set aside, and that the costs of this suit be paid by the sixth defendant, who should not have mislead the parties in the transaction.

No. 3,262. Nov. 26th, 1838.

Somenader Lupporomaniar, and his daughters,

Brahmin, of Copay ... ... *Plaintiffs.*

Vs.

Wissovanader Soopayar, and others. ... *Defendants.*

BURLEIGH, Judge.

Step-father no right to bring action.

Plaintiff does not prove anything. The plaintiff in this case is not married to the mother of the minors, and has therefore no right to bring the action in favor of the children, two of whom only are in this District, the mother is absent, it is supposed at Colombo, with one of them, and the first and second defendants are the proper guardians of the children.

I am therefore of opinion that the claim should be dismissed. The agreement itself is an illegal one, the parents of the concubine of the plaintiff give her a Dower on a regular deed, and this agreement goes to cancel this, which they have no right to do. The property mentioned in the agreement must be kept in security on behalf of Manicapulle or her children.

The Assessors agree.

It is decreed that the claim be dismissed with costs, the first and second defendants* giving security for the amount mentioned in the agreement.

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* The first and second defendants are the parents of Manicapulle.

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Year 1842.

No. 5,061.

Paramar Morgar of Sangane ... ... *Plaintiff.*

Vs.

Paremer Cadergamar and others ... ... *Defendants.*

Burleigh, Judge.

Acquisition by minor.

Debts.

Held, that if a child, while under the guardianship of his parents, acquires property, that it should be considered as part of the general estate, but his debts, also contracted for the purposes of that acquisition, should be paid out of the general estate.

Year 1843.

No. 5,437.

Pooder Omeyer and sons, residing at Elale ... *Defendants.*

Vs.

Murgar Sidemberen and another ... ... *Plaintiffs.*

Burleigh, Judge.

Guardian.

Costs.

First plaintiff as guardian of his minor son, on whose behalf he sued, was made to pay all costs. The plaintiff's claim is dismissed, the first plaintiff paying the costs of the defendants, as his sons, the other plaintiffs, are yet under his guardianship.

May 2nd, 1844.

No. 5,446.

Mannyar Walaydan of Eldomatual North ... *Plaintiff.*

Vs.

Wallay widow of Candan, and others, of the same place ... ... *Defendants.*

Wood, Judge.

I am of opinion that the plea of the Proctor for the second and third defendants, is valid, and that the action cannot be maintained. In which opinion the Assessors concur.

It is therefore decreed, that plaintiffs be nonsuited with costs.*

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* Action instituted by plaintiff as guardian to his cousin Canden Caderan, a minor : property belonged to minor's father, by purchase. Plea, that the plaintiff is not the legally appointed guardian, and that the minor's mother is alive. Reply charges minor's mother with collusion to favor defendants.

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No. 1,828.

March 21st, 1854.

Coner Sidembrenader of Ploly ... ... *Plaintiff.*

Vs.

Podiatey wife of Cadergamar and Cadergamar Wayrawe. ... ... *Defendants.*

LIESCHING, Judge.

At the time the deed on which plaintiff grounds his his claim purports to have been signed, neither of the Defendants were in a position legally to do so. Consequently, even if Plaintiff proves that the deed is genuine, he cannot recover under it. The first Defendant was at the time a married women, and second defendant a minor, Plaintiff is not in a position to prove that any legal separation took place between first defendant and her husband.

Married woman. Deed by her.

Case dismissed with costs.

Affirmed in Appeal. Colombo, 29th June, 1850.

No. 7,199.

23rd May, 1854.

Jaccovapulle widow of Sinnatamby... ... ... *Plaintiff.*

Vs.

Mariah daughter of Philip, and Revd. Stephen Sameria... ... ... *Defendants.*

PRICE, Judge.

Report of the Proctor on a Pauper application referred to him for report.

There is no fixed custom or usage among the Tamils in this Province, as far as I am aware, as to how long children should remain under parental power, without being permitted of their own free will and accord to contract marriage, but it entirely depends upon circumstances. In this case, although it is alleged in the pleadings that the Plaintiff's son Abraham was under twenty-one years of age at the time his banns were published, yet it being admitted by the Plaintiff that previous to that period her said son had been employed, and also it appearing, on enquiry made, that he lived separate from her, and also the first Defendant alleging that she is now big with child by him, I think under these circumstances, he ought to be allowed to marry the first Defend-

No fixed custom as to minority.

Minor living separate, and from mother.

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ant in exercise of his own will and discretion, and that the Plaintiff has no right to interfere and prevent it taking place, and therefore I am of opinion that the Plaintiff has no good cause of action.

(Signed) A. SINNATAMBY,
Proctor.
22nd May, 1884.

23rd May, 1854.

PRICE, Judge.

Mr A. Sinnatamby reports that he has made the necessary enquiry upon the application of the Plaintiff to proceed in *forma pauperis*, and in his opinion the Plaintiff has no good cause of action. Application rejected.

Judgment of the Supreme Court.

It is considered and adjudged that the interlocutory order of the District Court of Jaffna, of the 23rd of May 1854, be affirmed.

The report of the Proctor, Mr. Sinnatamby, is very creditable to him.*

Colombo, 29th June, 1854.

3rd May, 1859.

No. 22,191.

Court of Requests, Jaffna.

Conapper Murgaser, father and natural guardian of the minor Sidembrem ... ... *Plaintiff.*

Vs.

Sitter Sinnetamby... ... ... *Defendant.*

CAMPBELL, Judge.

No Prescription against minors.

Father, as natural guardian of his minor, sues for the value of produce of dowry lands for six years.

Defendant denies the claims, and pleads prescription.

The Commissioner gave judgment for two years *produce.*

Supreme Court Judgment, 27th June, 1859.

That the decree be set aside, the Supreme Court being of opinion that the minor being the substantial Plaintiff in this case, is exempted from the operation of the prescriptive act by the proviso in section 10.—Judgment is therefore entered for the Plaintiff for the full amount claimed.

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* Mr. Sinnatamby is generally known as Mr. Brown.

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ADMINISTRATION.

No. 7,678.

In the Matter of the estate of Walliar, wife of Welayden, deceased.

Year 1819.

St. Ledger, Judge.

A.'s Aunt and her son and Grandson having died without issue, held A. was heir to all of them and entitled to Administration.

Aunt. Nephew. Administration.

No. 1,601.

Provincial.

Year 1821.

In the Matter of the estate of Sinnewen Carea of Tellepalle.

Plaintiff is the widow and Defendant the brother, of the deceased.

Layard, Judge.

The Administrators disagreeing about the division, take the opinion of the Court, and request that Senaderaya Modliar, late Maniagar of Copay, be umpire in the division of the estate to be made between them.

Acquired property—Modisium.

The Court considers the wife entiled to half the acquired property, the brother to the remaining half, and the whole of the Modisium property.

November 16th, 1821.

The Court having considered the case and the evidence taken before it, finds the marriage of the Plaintiff to have taken place with Conen Sinnewen in 1807. Approves of the division of property as laid down in this report,* only with the difference that all property acquired since 1807, the date of the dowry Ola, be considered as the joint acquisition of Plaintiff and her deceased husband, and divided accordingly.

No. 2,312.

April 9th, 1822.

In the Matter of the estate of Venayeger Coomarewalen Carrea of Colombogam, deceased.

Mooyaart, Judge.

Read petition filed by the sister of the deceased, objecting to Letters of Administration being granted to the widow, on the ground that she is entitled to no share of the estate, having brought no property in dowry at her marriage.

* There is nothing special in the report.

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Acquired property.

The Attorney of the widow only claims the half of the acquired property, during her marriage with her deceased husband.

Sister. Widow. Administration.

The Court foreseeing only confusion by granting Letters of Administration to both parties, prefers the widow as Administratrix, on her giving adequate security for the due performance of the trust reposed on her by the Court; the sister's objection is thus entirely overruled.

May 14th, 1822.

No. 2,377.

In the Matter of the Estate of Wayrawanaden Cander of Warany Mandowil.

Sedopaddy, widow of the deceased, *Applicant.*

MOOYAART, Judge.

Sister. Widow.

The Court sees no reason for granting Letters of Administration to the petitioner (sister) in preference to the widow of the deceased, should the petitioner feel an interest in the child, and should she be able to prove that the estate amounts to more than what is said to have been returned by the widow, the Court will readily receive the statement and institute an inquiry.

16th Dec., 1822.

No. 2,391.

Patty wife of Sidemberen and daughter of Wallie of Sangane ... ... *Plaintiff.*

Vs.

Pooder Ramer and wife Wayrewe ... ... *Defendants.*

FARRELL, Judge.

Administration not necessary. Division of property.

Plaintiff admits that second defendant in this case, is eldest sister to Carpie, deceased, and that the second plaintiff is youngest sister of the deceased. It appears to the Court unnecessary to hear witnesses in the case, or to grant Letters of Administration, where the property can be ascertained at once and divided among the parties according to the Law of the Country. It is therefore ordered, that three Commissioners do divide the deceased's estate among the parties, and do make report thereof to this Court on the 30th instant, when the parties will attend.

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The Commissioners' report is read, and also the objections made by the parties.

4th Feby., 1823.

The second plaintiff admits that she was not married before the death of her sister Catpakam.

It is decreed that plaintiff's Libel be dismissed with costs.

No. 2,325.

March 6th, 1823.

In the Matter of the Estate of Pitchemootoo, daughter of Ramse Chetty, widow of Cadresen.

SCOTT, Judge.

The Applicant contends that Sewagamy and Parpaddy were sisters, Sewagamy was the mother of Pitchemootto; Parpaddy had a daughter Moottonachie; Moottonachie had a daughter Tangam, Tangam is the Applicant.

Evidenced closed.

The Court is of opinion that the Applicant is the second cousin of the deceased, on her mother's side, and that the plaintiff is the first cousin on the father's side.

Maternal 2nd Cousin preferred to Paternal 1st Cousin.

The question now, is, under such circumstances, which of them is entitled to administer to the Estate.

The Court having attentively read the 26th article of the Thesawaleme, is of opinion that Letters of Administration should pass in favor of the Applicant, reserving to the plaintiff the right of suing the Applicant as Administratrix of the Estate, for such proportion of it as by Law he is entitled to.

It is therefore ordered and decreed, that Letters of Administration do pass in favor of Applicant, on her giving the usual security.

No. 2,924.

April 11th, 1825.

In the Matter of the Estate of Sinnetamby Wayrewenader, late of Mayletty, deceased.

FORBES, Judge.

Applicant having failed to proceed on with this Case for this length of time, the same is struck off, the Thesawaleme giving her full power to administer her husband's Estate.

Widow's right to administration.

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May 26th, 1829.

No. 5,798.

In the Matter of the Estate of Francisco Anthonipulle of Vannarpone, deceased.

BROWNRIGG, Judge.

Without entering into the question of the legality of the marriage between Marimootto and Francisco Antho, although I entertain considerable doubt how far the Provisions of the fourth Clause, Regulation 9th of 1822, could be considered to have been fulfilled, I think that the parties having lived entirely separate from the very next day after the ceremony, is sufficient to preclude the administration being given to the first appellant Marimooto.

Separation a day after marriage.

It is ordered that the second applicant being the Sister-in-law of the deceased Francisco Antho, be entrusted with the administration of his Estate, on tendering full and sufficient security for the due administration of the same; further, costs to borne by the Estate, and those of the first applicant by herself.*

Sister-in-Law preferred to Widow.

11th February, 1832.

No. 6,516.

Provincial.

Application for Letters of Administration of the Estate of Sewagamy daughter of Alwar (wife of the Applicant.

Kander Cardergamer ... . *Applicant.*
Alwar Candappen ... ... *Opponent.*
Candapper's mother Walliar. *Opponent* in 2nd instance.

PRICE, Judge.

The Court is of opinion, that the Dowry Ola filed in this Case, was not executed at the time it purports to have been, but anti-dated for the purpose of avoiding the Stamp duty.

Applicant and his wife must have been very young in 1805, as it appears by the evidence that the marriage did not take place until some years after the Dowry olah purports to have been executed.

The Court (applicant having married for the second time) considers the second objector to be the proper person to

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* Second Applicant is the widow of the deceased's brother, who left children

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take charge of the Estate (if any) and child of Sewagamy, deceased.*

Grandmother preferred to Widower

It is therefore ordered accordingly. Applicant to pay costs. Dowry olah, dated 18th November 1805, to be cancelled. Application for administration rejected, without however, the grand-mother being compelled to administer.

No. 7,355,
Provincial Court.

In the Matter of the Estate of Maria, widow of Philipo, of Claly, deceased.

12th October, 1833.

1, Santiago Nicolan... ... ...*Plaintiff.*

Vs.

2, Manuel Francisco and wife Innasiapulle... ... ...*Defendants.*

PRICE, Judge.

The Thesawaleme after explaining the manner of marrying out daughters and granting them property in dower, provides for the disposal of such property. In the event of the one or more of them dying without issue, the property indisputably devolves to the other sisters, their daughters and grand-daughters, but if there should be none of them in existence, the property in such case falls in succession to the married brothers, their children and grand-children, if any, if not, the property reverts to the parents, if alive, and if not, the husband's hereditary property (after deducting therefrom the half of the debts) devolves first to his brother or brothers, then to their sons or grand-sons, and the wife's dowry, together with the other half of the acquired property (after deducting therefrom the remaining half of the debts) devolves to her sister or sisters, their daughters or grand-daughters.

How Sister's Property divided.

Property of children reverts to parents.

Hereditary how divided.

Dowry how divided.

The Defendant Innasial was the first Applicant, and she grounded her claim to the property in question upon this Law, as the heiress of Marial, on the part of her mother (the plaintiff) Santiago Nicholan likewise applies for Letters

* The Applicant was the Husband, the Opponent the brother, and the Opponent in the 2nd instance the mother of the Intestate.

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of Administration, calling himself to be one of the heirs of Marial, and states the property was originally the property of the Ancestors of thefather of Marial.

Defendant would only be entitled to any property that Marial might have inherited from her mother.

The property in question appears to have devolved to Marial by way of inheritance from her mother.

I am therefore of opinion that plaintiff is the person in whose favor Letters of Administration should be granted. All the Assessors are of the same opinion.

Ordered accordingly. Costs to be paid by defendants.*

22nd June, 1840.

No. 1,601.

District Court, Wanny.

VANDERSTRAATEN, Judge.

In the Matter of Estate of Waity Adirianpulle late of Mulletivoe, deceased.

Crop. Labourers. Jewels Mortgaged.

Upon the Petition of the widow, it is ordered that the just half of the produce of the fields, or from the crop, be given to her, and from the remaining half, the labourers be paid, and the balance appropriated to redeem the jewels mortgaged by the husband of the widow to raise funds for the cultivation of the fields, and the articles belonging to the widow given over to her.

29th Sept., 1848.

No. 5,068.

District Court, Jaffna.

BURLEIGH, Judge.

Estate of Mootar Cander, late of Awerankal, deceased.

Widow's right of Administration.

It appears to the Court a mere waste of time to enter into evidence in this case, it is fully admitted by the Applicant, that the objector, as she is called, is the lawful widow of the deceased Mootar Cander, and she unquestionably has priority of right to administer to the estate of her late

* The Applicants are styled "Defendants," and the "Objector" plaintiff.

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husband; the Applicant appears without a legally constituted Guardian, and he can in no way be permitted to administer his father's estate—he will hereafter be entitled to his share of the estate.

Son no right to Administer.

No. 1,416.

23rd April, 1846.

District Court, Jaffna.

Price, Judge.

In the Matter of the Estate of Soopermanien Chettiar Sinnayen, of Vanarponne, deceased.

Moorgasen Aromogam ... ... *Applicant.*

Sadopulle widow of Sinnaya ... ... *Opponent.*

The Applicant, nephew of the deceased, applies for administration; the widow, who is unmarried for the second, time, and in charge of deceased's children, opposes.

On reading the motion of the Opponent's Proctor, Mr. J. T. Anderson, and the statement in answer to it by the Applicant's Proctor Mr. Waytalingam, the Court and Assessors are of opininion that, under the circumstances of the case, the sequestration should be dissolved, and the case struck off, with costs, it appearing that this is not a case in which the Applicant had any right whatever to apply for Letters of Administration, when the widow of the deceased is unmarried for the second time, and the children being under her guardianship.

Administration. Nephew. Widow.

Case struck off accordingly with costs, and the Sequestration dissolved.

Supreme Court, Judgment in Appeal.

Affirmed with costs; the Applicant is clearly not entitled to Administration, the widow being unmarried, and children alive; and the Applicant on the 8th of April, ultimo, got a *notice* for Opponent to shew cause on the 23rd, why Letters of Administration should not be granted to the Applicant.

At Jaffna, 27th July, 1846.

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Nov. 10th, 1846.

No. 1,362.

District Court, Jaffna.

Wood, Judge.

In the Matter of the Estate of Venasy Cannaweddy, of Nurwaly, deceased.

Mr. Bastianpulle for the Opponent, who has moved the case to be set down for argument, is first heard, and he argues that the deceased Vanasy Cannaweddy, whose estate the Applicant has now applied to Administer, having died a minor, and a bachelor, without having brothers or sisters, the Opponent, who is the father of the deceased, is the legal heir according to the Thesawaleme, to succeed to all the property left behind by him on his death, and that the Applicant has no right whatever to disturb the lawful succession of the property to the Opponent.

Father legal Heir to Son's property.

The applicant's proctor, Mr. Van Rassum, is heard in reply, and admits the facts advanced by the opponent's proctor, but argues at the same time, that the property left behind by the deceased, having been given to him by his maternal Grand-mother, that the heirs on the female line, of whom the second applicant is one, are therefore entitled to administer to the estate; and he further argues, that even if the right of the Opponent to administration be considered preferable to that of the Applicants, and conced ed to him accordingly, they, the applicants were entitled to their costs.

On hearing the arguments on both sides, the Court is of opinion that the Opponent is the lawful heir of his deceased son Cannaweddy, and that his right is preferable to that of the applicants, for administration of the estate in question, and the Court is further of opinion, that the applicants had no necessity or any justifiable cause to make the application for Letters of Administration, so soon after the death of the deceased, and therefore they should be disallowed all their costs, as well as made to pay all such extra costs of the Opponent as he might have been put to in opposing their application.

Father legal right to Administer Son's Property.

The Assessors agree in the opinion of the Court.

It is ordered that Letters of Administration of the Estate of the late Wenasy Cannaweddy, deceased, be granted to the

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Opponent on his giving good and sufficient security for the same. The Applicants are disallowed all their costs, and they are further ordered to pay the extra costs of the Opponent.

No. 1,916.

Nov. 16th, 1848.

District Court; Jaffna.

In the Matter of the Estate of Welaider Sanmogam, of Manepay, deceased.

Ramanaden Welayden ... ... *Applicant.*
Walliamme, daughter of Moorgasa ... ... *Opponent.*

Wood, Judge.

On hearing the argument of parties' Proctors, the Court is of opinion (without entering into the legality of the Donation deed filed by the Opponent in support of her opposition, the merits of which question ought to be tried by a separate action) that Letters of Administration should be granted to the father of the deceased, as the legal representative of the estate. The Court cannot under any circumstances recognize the Opponent to be the lawful widow of the deceased, it appearing that her marriage is not registered as required by the Ordinance No. 9 of 1822.

Father of Intestate.

Widow.

Registry.

The costs of both parties to be paid out of the said estate in consideration of the peculiar circumstances under which the Opponent came forward with the opposition, namely, her alleged claim to the whole of the property left behind by the deceased, under a donation deed from his own hand.

The Assessors agree in the opinion of the Court.

No. 3,138.

30th April, 1849.

In the Matter of the Estate of Cander Vessower, of Chundicooly, deceased.

Walliamme, widow of Vessower ... ... *Applicant.*
Cander Cadergamer ... ... *Opponent.*

Price, Judge.

Facts.

The Applicant was the widow, and the Opponent was the brother of the deceased. Applicant alleging that her husband

had left grand-children by his daughter Coleadey, which fact was denied by the Opponent. The Assessors are of opinion that the applicant has a preferable right to administer to the estate of the deceased Cander Vessover, she having a life-interest in the case, and being unmarried for the second time.

JUDGMENT.

As the Court considers there might have been more satisfactory evidence to prove that the children are Coleadey's, the Court will not decide upon this point, and is of opinion that Administration should be granted to the Applicant and and Opponent jointly—the Estate to pay the costs.

Joint Administration to Widow and Brother.

Ordered accordingly.

19th June, 1849.

No. 2,626.

In the Matter of the Estate of Arokyam, wife of Anthony, late of Chillale, deceased.

PRICE, Judge.

Anthony Nicholan and wife Pawolinal ... *Applicants.*

Vs.

Santiago Anthonypulle ... ... *Opponent*

Inasytamby Alwinoe and wife Jackino ... *Opponent in the second instance.*

Second Applicant is the Aunt of the deceased, First Opponent is the husband, and Opponents in the second Instance are the Mother and Step-father of the deceased. First Opponent maintaining that the Mother, Second Opponent, being married a second time, was not entitled to any portion of the hereditary Property of the deceased, which should return to her Father's heirs, she having died without issue.

Mother of Deceased Husband

It appears to the Court that the Opponent in the second instance has a much greater interest in the Estate of the deceased, than deceased's husband, the Opponent in the first instance, inasmuch as the whole Estate is appraised at £107 16s, of which sum the Opponent in the first instance is only entitled to half the acquisition, which is stated by his Proctor to Amount to £22 8s. 6d., this amount however, includes a sum of £11 5s. for Jewels, which by the Country

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Law are not considered acquisition, and should therefore go to the deceased's mother—deducting therefore this sum from £22 6s. 8d., the actual acquisition will only amount to £11 3s. 6d., half of which, viz., £5 11s. 9d., will be the Opponent, in the first instance's, share, the Court is therefore of opinion, that as the Interest of the Opponent in the second instance is much greater than the Opponent in the first instance, that Administration should go in her favor; costs of the Opposition being paid by the Opponent in the first instance.

Jewels not Acquisition.

Interest of Parties.

Administration

It is ordered accordingly,

No. 3,773.

20th September, 1849.

In the Matter of the Application for Letters of Guardianship over the person of Diago Christo, a Minor.

Second Opponent is the Paternal Uncle of the Minor

First Opponent calls himself the First Cousin of the Minor's father

Applicant's relationship.—Applicant's mother and the grandfather of the Minor, were daughter and son of the same parents.

PRICE, Judge.

The Court and Assessors are of opinion that Letters of Guardianship over the person of Diago Christo, a Minor, should be granted to the second opponent in this case, Adrian Sawery, Grand-uncle of the said Minor. Costs to be paid by the Applicant, with the exception of the Costs of First Opponent, which are to be borne by himself.

Grand-uncle Guardian.

No. 4,177.

4th April, 1851.

In the Matter of the Estate of Aweramy, wife of Venayer Cadergamer, deceased.

PRICE, Judge.

The Opponent not having paid the Batta to the Witnesses, as ordered yesterday, the Court and Assessors are of opinion that Administration should be granted to the Applicant, who was the husband of the deceased, and who

Administration. Widower.

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Life interest. has a life interest in the property, on his giving good and sufficient security for the faithful Administration of the Estate. Opponent to pay the Costs.

24th April, 1851.

No. 3,202.

In the Matter of the Estate of Cadergamer Chettiar Soopremanier, and wife Parpaddy, deceased.

Second Opponent is the Sister of the deceased Cadergamer Chettiar Supermainer, First Opponent being the Husband.

PRICE, judge.

Father and Father-in-law of Intestate.

The Court is of opinion that the Marriage between Applicants daughter Parpaddy and Cadergamer Chettiar Soopremanier is proved, and that Letters of Administration of the Estate of the said Parpaddy and Cadergamer Chettiar Soopremanier should be granted to the Applicant. Opponents paying the costs.

Assessors agree in opinion.

Administration of the Estate of the deceased to be granted to the Applicant. Opponent paying the costs.

27th March, 1851.

No. 4,654.

In the Matter of Goods and Chattels of the late Innasy, wife of Allesy, of Navantorre, deceased.

Administration. Widower. Security.

The Pedigrees of the parties are so confused, that it would be impossible for the Court, without the pedigries being distinctly shewn, to decide upon the point. The Court is therefore of opinion that Administration should be granted to the Applicant, who is the husband of the deceased, on giving good and sufficient security not only for the amount of appraisement, but for the value of the property pointed out by the Opponents (if any such property has been so pointed out and is under sequestration,) costs to stand over until the rights of the disputed parties claiming to be heirs of the deceased are decided by another action or actions. Opponents, if actions, are considered necessary to establish their rights, to bring them within one month after security has been

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given and Administration granted. The Opponents agree to the term of one month.

The Assessors agree in the opinion of the Court.

Ordered accordingly.

No. 2,528

4th August, 1851.

Court of Requests, Chavagacherry.

Moorger Welayder of Mandowil ... ... *Plaintiff.*

Vs.

Mayler Amblawanam ... ... *Defendant.*

JUMEAUX, Commissioner.

Plaintiff claims 15s. and interest from defendant, upon a bond granted by him to plaintiff's late son.

Father Administration Son's Estate.

From the statement of the plaintiff it would appear that he has not obtained Letters of Administration to the son's Estate, and the defendant having brought to the notice of the Court, that the said son has left two children whom the plaintiff is trying to defraud by selling away all his property to which they have a claim. The Court is of opinion that he should obtain Letters of Administration before he is allowed to recover the amount due on this bond.

The defendant therefore should be absolved from the instance with costs.

Property acquired by Bachelors.

Plaintiff replies that no Administration is necessary, as his son died a bachelor and without issue whilst under the paternal roof, and that the Thesawaleme points out the plaintiff, under such circumstances, as his late son's heir.

Judgment of the Supreme Court.

Administration not necessary for small sums.

Set aside, and the case is remanded for hearing on evidence. Unless the deceased son has left other property of more value, the Court would not require Administration to be taken out for this bond of 15s., and there is no proof that the deceased's son left issue.

If the defendant has made any statement to that effect (which is only recorded in the Judgment) the fact is distinctly denied by the plaintiff in his examination.

Colombo, 7th October, 1851.

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30th August, 1852.

No. 5,053.

Estate of Madewer Cooroonader of Navally deceased.

PRICE, Judge.

Proceedings read and explained to the Assessors.

Sister of deceased.

The Court and Assessors are of opinion that it is not proved that the Opponents are the children of the deceased Madewer Cooroonader, and that Administration should be granted to the Appellants. Opponents paying the costs.*

Ordered accordingly.

No. 5,076

25th October, 1852.

District Court, Jaffna.

In the Matter of the Estate of Mayler Cartigaser, late of Mattawil, deceased.

PRICE, Judge.

Paternal Uncle of intestate.

The Applicant is the paternal uncle and Opponent the mother of the deceased by her First husband—she was married a second time to the brother of her First husband, and alleges that she has a child by her second husband which is denied by the Applicant.

The Court is of opinion that administration should be granted to the Applicant is his claim as admitted to a share of the Estate—the claim of Opponent, on behalf of her child by her second marriage, is doubtful, granting administration to the Applicant can in no way injure the claim of children by the second marriage.

The Assessors agree in the opinion.

Administration of the Estate of Mayler Cadergamer late of Mattovil, deceased, to be granted to the Applicant in this Case, on his giving good and sufficient security. Costs consequent on the opposition to be borne by Opponent, the other costs to be paid by the Estate.

Judgement affirmed in Appeal.

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* Second Applicant was the deceased's sister, first being her husband. Marriage Registry not sufficiently proved.

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No. 6,345.

Parapnddepulle widow of Murger of Chembeam-
patto ... ...*Plaintiff.*

Vs.

Velayder Cander and others... ... ...*Defendants.*

PRICE, Judge.

Mr. Advocate, Mutukisna for Plaintiff,
Mr. Advocate Murray for Defendants
On the Motion of the 22nd November last.

Life interest.

Plantiffs Advocate moves to proceed on with the Case without obtaining administration, it being considered unnecessary, Plaintiff having, agreeably to the Thesawaleme, a life interest in half the property and absolute right to the other half.

Necessity for Administration.

Secondly—The Party in possession can maintain her action against all the world, except one shewing a superior title.

Thirdly—This being an action to recover lands, there is no necessity whatever for administration, it is true Plaintiff applied for administration of the Estate of her late husband, but being unable to give security, and having been better advised, she has not proceeded with the administration Case, but that application does not and cannot prevent the assertion of her individual right to this land.

Defendants' Advocate states, the Plaintiff cannot be allowed to proceed until he obtains Administration, for both the absolute right to and life interest in the land are the very points disputed and at issue in this Case. Defendants having seized this land as their own absolute property, and being now in possession of it.

Secondly—In this Case the Plaintiff does not merely claim a possessory right, but an absolute right of property, and therefore possessory title of Plaintiff, and its privileges adverted to by Plaintiff's Advocate, are not here available.

Thirdly—Plaintiff being unable to file security as stated in the application for Administration, even were such trne is no reason why she should not be required by the Court to take Administration, as if unable to give Security the

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Court would find it its duty to order some one else to administter and give the requisite security for the protection of the infant heir to the Estate, but Plantiff got no appraisement made, and it is difficult to understand how she was unable to give security until she knew the amount of the Estate.

Fourthly.—In the Administration suit there is an Opponent, but even were it not so, the Defendants are entitled before going on with the Case, to see that Plaintiff who sues them, is clothed with a proper title to maintain the action, so as that a Judgment in the Case if in favor of Defendants, may act as a bar or estoppel against all parties claiming a right through the deceased owner. Here the widow is not clothed with such a title, she appears merely in her own individual right, and therefore any judgment in this case if in favor of Defendants, would not be a bar to suit at the instance of other individuals claiming as heirs of the deceased owner, but administration, when granted to Plaintiff, would concentrate the rights of all the heirs in her person, and thus preclude the Defendants from being harrassed by other actions at their instance. Refers to Marshall, pages 2nd and 4th,

PRICE, Judge.

21st February, 1853.

The Court refers to the Estate Case 4,101, in which there is an Opponent, and were the Court to decide in this Case that Administration was not necessary, the Opposition would be set aside without the Opponent being heard. Plaintiff in her Application for Administration, values the Estate at £250; Opponent values at £450, there has been no appraisement filed; the Opponent does not deny plaintiff and her child to be the heirs of the deceased, but as there is so great a difference in each party's valuation of the Estate, the Court is of opinion, that for the safety of the child, that Administration of the Estate should be taken, and that this Case should lay over until the Administration Case is disposed of.

Case to stand over until Administration is obtained in Case No. 4,101.

Motion of 22nd November last, set aside with Costs.

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No. 7,341.

10th April, 1854.

In the Matter of the Estate of Pooder Velayder, of Pandisootan, deceased.

PRICE, Judge.

Nephew.

Applicant was the nephew. Opponent called himself the son, of which there was no proof.

The Court is of opinion that Administration should be granted to the Applicant on his giving good and sufficient security, the Costs to stand over for one month after Administration is granted and security given, to give Opponent an opportunity of proving that he is the Heir of the deceased.

Ordered accordingly.

No. 6,966.

11th April, 1854.

In the Matter of the Estate of Sinnawaddyar Muttawale, of Vannerponne, deceased.

Maternal Uncle. Paternal Cousin.

The Opponent is the maternal uncle of the deceased. The Applicant is the paternal cousin, being the son of the deceased's father's brother. The Court is of opinion that Administration should be granted to the uncle, the Opponent, upon his giving good and sufficient security. Costs to be paid by the Estate.

Affirmed in Appeal.

No. 7,749.

19th February, 1855.

In the Matter of the Estate of Vivindapulle, wife of Diagopulle, late of Carreoor, deceased.

A. Modliar Santiagopulle and wife Maddelanapulle ... ... *Applicants.*

Soosepulle Diagopulle... ... ... *Opponent.*

MURRAY, Judge.

Sister of deceased.

The Applicants are husband and wife, and aver that the second Applicant is sister and heir to all the dowry property of the Intestate, which is not denied by the Opponent.

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Opponent and Intestate were spouses, the Intestate left a considerable amount of Dowry property, but no issue, The appraisers estimate her property, to which Administration is now sought, at £157. 2s. 9d., nearly the whole of which is Dowry ; of this property the Opponent claims, or what he calls his share only, to the amount of £7 or £8.

Administration to the party having greater Interest.

The Court thinks, under these circumstances, that the opposition of the Opponent should be set aside with Costs, and that Letters of Administration of the deceased's Estate should issue to the applicants, who are admittedly entitled to nearly the whole of it, on their giving sufficient security for the proper Administration thereof, in usual form.

Ordered accordingly.

The Court sees no sufficient ground stated by Opponent for hanging up these proceedings longer, and squandering the Estate in useless expenses.

The Opponent has his claim (if any) for his small share against the Administrator and Estate, and if he paid as alleged by him, funeral or other expences, it is open to him to sue as a creditor for these.

It will be open to the Opponent hereafter to shew to the Court what, if any, articles have been wrongly omitted by the appraisers in their appraisement.

11th April, 1855.

No. 7,747.

In the Matter of the Estate of Mariapulle, wife of Adrianpulle, of Narantane, deceased.

Sedemberepulle Adrianpulle and wife Maria Aroriam ... ... *Applicants.*

Philipo Anthony and son Anthony philipo...*Opponents.*

PRICE, Judge.

Aunt of deceased.

Husband. Father. Brother.

Second applicant is the youngest sister of Varonia, the Mother of the deceased. First Applicant is second applicant's husband. First Opponent the father, and second Opponent is the brother, of the deceased.

The Court is of opinion that Administration should be granted as applied for by the Opponents, it is not admitted

that second Opponent is deranged, but his Proctor states he is of weak mind.

There appears to have been no necessity for the Applicants applying for administration, as in the event of second applicant's death, first opponent, his father, would be entitled to the property, deceased having died leaving no other nearer relations or heirs to her estate than opponents.

Administration is granted to opponents—applicants paying all costs.

Decreed affirmed in Appeal, 2slt June, 1856.

20th April, 1855.

No. 6,917.

District Court, Jaffna.

In the Matter of the Estate of Sangrepulle Nawesewayen, deceased.

Shagamootto, widow of Nawesewayen, of Colombotorre ... ... *Applicant.*
Sangerepulle Tamber ... ... *Opponent.*

PRICE, Judge.

Widow.

Husband's Brother.

The widow (the applicant) had no children, and the property consisted of acquired and hereditary property. The husband's brother was the opponent.

The Court considers the opposition unnecessary in this case, therefore orders the costs of the opposition to be paid by the Opponent.

Administration to be granted to the Applicant, widow of the deceased, on her giving good and sufficient security. Costs of the opposition to be paid by the Opponent.

No. 7,793.

In the Matter of the Goods and Chattels of Valley, widow of Vairewen, Vairewen Vinasy, Teywane, widow of Caderen, Caderen Canden and Casier Cadergamer, late of Chavagacherry ry deceased.

Aromogater Vayrawenader ... ... *Administrator.*
Caderens, daughter Teywane, and others ... *Opponents.*

Judgment of the Supreme Court.

On reading the proceedings of the District Court of Jaffna in this case, it is ordered that the administration be set aside

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Administration recalled and quashed, for blending different estates together.

and the whole proceedings quashed. The District Court was right in rejecting the application of the opponent for the *viva voce* examination of the administrator, until he had commenced the usual steps to revoke the grant of administration, which the Court is empowered to do, upon sufficient grounds being shewn. But the Supreme Court considers that the whole proceedings are irregular, and that the grant of administration should be revoked, as illegal and improperly obtained. *One grant* of administration has been granted to the estates of *five different* persons, because they had joined in a bond to the administrator, upon which each estate is only liable to pay its own proportion of the debt, whilst both in the Appraisement and in the Inventory filed by the administrator, the property of all five persons is mixed up together and treated as one estate different estates; cannot be thus clubbed together under one grant of administration.

Each party to pay their own costs personally, both in Appeal and in the District Court. 30th day of June, 1855.

5th July, 1855.

No. 7,341.

District Court, Jaffna.

In the Matter of the report of Rasenayega Modliar, Irregonader Maniagar, touching the the registry of Marriage.

PRICE, Judge.

In the absence of Opponent's husband, being a party to the suit, the Court cannot decide whether the Opponent is the lawful wife of Sammander Sidemberenader or not, said Sidemberenader says she is not.

The Court is of opinion that the Maniagar should be ordered to register the Marriage agreeably to the application of Amblewanen, son of Sammander Sidemberenader, each party paying their own Costs.

Ordered accordingly.

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30th July, 1855.

No. 8,004.

In the Matter of the Estate of Cannatte, wife of Sinnatamby, late of Neerwaly, deceased.

Sidemberenader Venasytamby ... ... *Applicant.*

Vs.

Mootoopulle widow of Sinnecutty... ... ...*Opponent.*

PRICE, Judge.

The Applicant was Nephew of the deceased.

The parties' Proctors are asked if they refer the Court to any former decisions on the point in question, the Court having no recollection of the point having been raised before.—They say they cannot.

Grand-daughter.

The Court decides, on reference to the 5th Clause, 2nd paragraph of the 1st. Section, that Letters of Administration be granted to the Opponent, who is admitted to be the daughter of the late Sidemberan, wife of Soopermanier, who was a daughter of said Sinnepulle deceased, who was a Sister of the intestate by the same parents. Costs to be paid by the estate.

Grand Aunt.

Administration to be given to the Opponent, on her giving good and sufficient security.

17th August, 1855.

No. 7,928.

In the Matter of the Goods, and Chattels of Venayeger Ayempulle, late of Vanarpone, deceased.

Canawady Pareatamby... ... ... *Opponent.*

Muttocomars Cartigaser and wife Nagamoott ... *Applicants.*

PRICE, Judge.

Applicant having admitted, on the 3rd July last, that his marriage with the Daughter of the deceased, was not registered the Court, orders Letters of Administration to be given to the Opponents, 2nd Opponent being admitted to be the Daughter of the deceased, on the Opponents giving good and sufficient security.—Applicant paying Costs.

Daughter of deceased.

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22nd Dec., 1855.

No. 7,928.

Supreme Court Judgment.

Opposition should be on Stamp.

It is ordered that the Appeal be rejected. An opposition having been made in this case, it hence becomes a Testamentary suit, and by Part Second of the schedule, to the Stamp Ordinance No. 19 of 1852, all the proceedings consequent upon the opposition must be upon stamp. Part Third of the schedule applies only to Testamentary proceedings in which no opposition nor litigation arises. The appellant, if so advised, may renew his opposition, but the Supreme Court having read the proceedings, does not consider he has any good ground of Appeal.

7th September, 1855.

No. 7,566.

In the Matter of the Estate of Nattalie, widow of Maden, and son Padro of Vanarpoune, deceased. Applicant is son of the first, and brother of the second named deceased.

Opponent is Applicant's brother.

PRICE, Judge.

Partial Division of Estate.

The Court will not inquire into a partial division of the Estate said to have been made between the parties, without either party being clothed with any authority from the Court.

The Court orders Letters of Administration to be granted to the Applicant, upon ~~his~~ giving good and sufficient security to cover the value of the Estate, allowing Opponent to bring forward any claims he may have against the Administrator, if so advised; parties to pay their own Costs.

No. 7,855.

Supreme Court Judgment.

In the Matter of the Estate of Migielpulle Diogopulle and son, Diogopulle Nicholapulle of Carrevor, deceased.

Jaceawal widow of Nicholapulle... *Opponent and Respondent.*

Laurencipulle Anthonipullle... ...*Applicant and Opponent.*

The proceedings in this Case having been read, It is ordered that the Bill of Costs be allowed, as taxed by the Registrar.

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The Supreme Court considers that the proceedings should be quashed in so far as Administration has been granted to the Estate of Migelpulle Diogopulle, and his wife Anamma, the Father-in-law, and Mother of the Applicant, and they are here by quashed. But, the grant of Administration to the Applicant, to the Estate of her husband, is affirmed; Administration can only be given to one Estate, under one grant of Letters of Administration, since it would lead to confusion to mix up together Estates to which different people are interested in different degrees. Each party to pay their own Costs in District Court, and in Appeal.*

One Estate under one grant of Administration.

Colombo, 12th October 1855.

17th October, 1855.

No. 7,712.

In the matter of the Estate of Tiager Wesenty, deceased

Price, Judge.

The Court is of opinion that both the marriages of Applicant and Opponent's mother with Tiager Wisenty are proved, and that Administration should be granted to his widow, the Applicant, on her giving good and sufficient security, leaving it to Opponent to bring his action against her for any property he may consider himself entitled to belonging to the Estate. Costs to be borne by the Estate.

Widow.

Ordered accordingly.

18th October, 1855.

No. 8,069.

In the Matter of the Goods and Chattels of Tangamuttu, wife of Moorgaser Waytelingam, late of Vanarponne, deceased.

Maylwaganam Tilliambalam ... ... *Plaintiff.*

Vs.

Moorgaser Waytelingam ... ... *Defendant.*

Price, Judge.

Mr. Advocate H. Mutukisna for Opponent, states that the grounds stated for administration are not sufficient, and

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* There was no appeal taken against the Judgment on the merits, but only against the Taxation of the Bill of Costs.

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Prospective Interest.

In granting Administration existing rights should be looked to.

that the Application should be rejected with costs, inasmuch as the Applicant has no present right to the Estate or any portion of it; it is denied that Applicant is the widower of the deceased's sister, even if he were he has no present rights, and the Court can only look to existing rights, and not to contingencies; the parties entitled to the property are in legitimate possession, and ought not to be disturbed by being compelled to take Administration, and thus involving the Estate in useless expenses. Refers to decided Case in appeal by the present Chief Justice, No. 1,416.

Mr. Bastianpulle for Applicant, maintains that he (Applicant) who appears in this instance as Guardian of his minor children, is next of kin of deceased, and is entitled to apply for Administration of her Estate. The Estate of the deceased is important in its value, and the only heir to the said Estate is an infant left by deceased, the Applicant's minor children are entitled to the property next in succession to deceased's infant, I have evidence to shew that Applicant is the widower of deceased's sister. The object of my Client in applying for Administration is not to establish any right either in his own favor or of that of his own children, but to protect the Estate from being squandered away during the minority of the infant.—Quotes Case 5,887, where, under circumstances precisely similar, this Court ordered the husband to take Administration, ordering costs of the sisters and her husband of making the application to be paid by the husband.

The Court is of opinion that the application for Administration should be rejected with costs, and it is rejected accordingly.

Supreme Court Judgment.

It is ordered that the Appeal be rejected, an opposition having been made in this Case, it hence becomes a Testamentary suit, and by Part II. of the schedule to the Stamp Ordinance, No. 19 of 1852, all the *Proceedings* consequent upon the opposition, must be upon stamp. Part III. of the

Proceedings should be on stamp.

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schedule applies only to testamentary proceedings in which no opposition nor litigation arises. The Appellant if so advised may renew his opposition, but the Supreme Court having read the proceedings does not consider he has any good ground of appeal.

Colombo 22nd December, 1855.

No. 7,529.

20th November, 1855.

In the Matter of the Estate of Cadergamer Waritamby, deceased, of Chavagacherry.

PRICE, Judge.

The Applicant in this Case claims Administration of the Estate of his alleged father Cadergamer Waritamby, who died so long back as 1832, as appears by the Affidavit of death, dated 18th August, 1854, filed with the application. The Opponents (the admitted daughters of the intestate) oppose the application upon the grounds that Applicant is not the son of said intestate, that they (Opponents) have been in the undisturbed possession of the estate ever since the death of the intestate, some of which property they have sold, some given, (in support of which statement deeds are put in) and some they still retain, so that there is no necessity for Administration. From the viva voce examination of the Applicant yesterday, it appears that he was old enough at his Father's death to have a perfect recollection of him, and admits himself to be 30 or 32 years of age, that his Mother died in 1834, or 35, since which time he was under the guardianship of his alleged Aunt Solapulle who died in 1850 or 1852.

Son.

Daughters.

The Estate having been in the undisturbed possession of the Opponents for so many years, the Court considers it unnecessary to interfere by giving Administration to either party, leaving it to the Applicant, if so advised, to bring an action against the Opponents for any portion of the Estate he may consider himself entitled to.

Administration unnecessary.

The application for Administration of the intestate's Estate is therefore rejected. Applicant paying all costs.

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Judgment of the Supreme Court.

Stale application for Administration.

That the Decree of the District Court be affirmed with Costs. The Supreme Court always discourages stale applications for Administration, and sees no ground for Administration issuing in this Case.

3rd December, 1855.

No. 8,210.

District Court, Jaffna.

In the Matter of the Estate of Muttacheamma wife of Anantha Soopayer of Vannarponne deceased.

Price, Judge.

Mr. Adv. P. Mutukisna for Applicant.

Applicant claims Administration of the Estate in question as father of the deceased and natural guardian of his youngest daughter, and a grand daughter (a daughter of Opponent's, by another daughter of the Applicant) whom the Applicant alleges are the only heirs of the deceased.

Applicant admits that the Estate of the deceased consists only of jewels and money, her Dowry.

Daughters Married.

Daughters Unmarried.

On reference to the Country Law, Sect. I, 2nd Paragraph of clause 5th: it provides as to the disposal of Dowry property where *all* the Daughters are married. In the present instance one daughter is still unmarried, and the Court considers, that it is but equitable that half of the Estate in question should go to the Applicant's unmarried daughter, and the other half to the child of Opponent's late wife, who was also a daughter of the Applicant.

2nd Marriage

Minor under Grandmother.

It appears by the opposition that Opponent is married for the second time, and that his child is under the care of her Grandmother, the wife of the Applicant, but Opponent alleges he supports the child, whether he does or not the Court is not aware, it is nowhere admitted that he does so, and if the child's share in the property is given up to the Applicant, there will be no occasion for his doing so.

Administration to Grandfather in preference to Father.

The Court is of opinion that the opposition should be set aside with Costs, and Administration be granted to the Applicant (on the appraisement being filed, and sworn to) as the natural guardian of the heirs, on his giving good and sufficient Security.

It is ordered accordingly.

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No. 4,101.

18th September, 1856.

In the Matter of the Goods and Chattels, of Cander Murger of Chandenpoketty, deceased.

PRICE, Judge.

Second Opponent is the Niece of the deceased, and the next heir after the Minor son of the Applicant.

Widow entitled to Administration.

It having already been admitted by the Opponents, that the Applicant is the widow of the deceased, and that she remains unmarried, having issue. The Court orders Administration to be given to her, on her giving good and sufficient Security. Opponents to pay Costs.

No. 8,915.

22nd September, 1856.

In the Matter of the Estate of Morger Tamer, of Valwettitorre, deceased.

Wayrewenader Moorger ... ...*Applicant.*

PRICE, Judge.

By the Court to the Applicant.

I am the Father of the deceased; the deceased was a married man, and his marriage was registered: deceased has left a widow and three children; the lands deceased left were purchased with my money in the name of the deceased, the widow and children appeared before the Court of Requests of Point Pedro, and said they did not want the lands,

Father no right to administer widow and children being alive.

Application rejected, Applicant can have no claim on his deceased's son's Estate as long as his widow and children are alive.

No. 8,921.

24th September, 1856.

In the Estate of Walliapper Candapper, late of Ploly, deceased.

Cander Caderamer ... ... *Applicant.*

PRICE, Judge,

By the Court to the Applicant.

Widow married a second time without registery

The widow of the deceased is alive, and has one child, the widow is married for the second time, but her marriage is not registered.

Application rejected,*

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*Applicant applies for Administration as Father-in-law of deceased, and as the person in charge of deceased's child.

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6th October, 1856.

No. 7,997.

In the Matter of proving the last Will and Testament of Waler Cadergamer, late of Wattirayencurichy.

Cadergamer Mapaner ... ... *Executor.*
Wallear Canneweddy ... ... *Opponent.*

PRICE, Judge.

The Opponent's Proctor moves for a postponement, to enable him to put in copy of a marriage register of Alwattey with deceased, as it appears essential, and entirely an oversight in the party not filing it, on such terms as the Court shall impose.

The Executor's Proctor opposes the motion, the answer was originally filed on the 29th October, 1855, the subsequent answer was merely a copy on stamp, there was no attempt whatever made, to deny the facts alleged in the answer.

Judgment.

It appears to the Court unnecessary to enter on the evidence in the case. The Opponent does not claim under the deceased, but under deceased's late alleged wife Alwattey, for half the property acquired during deceased's, and his alleged wife's marriage.

It is denied by the Executor in his answer, that the person under whom Opponent claims, Alwattey, was the wife of the deceased, this fact Opponent's Proctor is no prepared to day to prove.

Wife's heirs no right to object to Will when they have no interest.

The will only purports to convey the property of the deceased, in which the Objector claims no interest; the Court therefore, cannot admit evidence to prove the Will a Forgery, unless the allegation is made by a party who would have an interest in the Estate of the deceased, if the Will did not exist.

In setting aside the opposition, it will not prevent the Objector from bringing his action against the Executor, to recover any portion of Alwattey's property the Executor may take possession of, when the Objector's claim would be regularly before the Court, the marriage of the person under whom he claims with deceased, would be open to

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proof, and the deed upon which he claims half the immoveable property would also be before the Court.

The objection is set aside with Costs.

On the Will being proved, Probate will be granted to the Executor.

No. 9,413.

29th July, 1858.

In the Matter of the Application for Letters of Guardianship over the person and property of Walleamme, daughter of Canneweddiar, a Minor.

Cannatte, Widow of Sangary ... ... *Applicant.*
Cannatte, Widow of Cander, and others ... ... *Opponents.*

PRICE, Judge.

First Opponent is the aunt, (*i. e.* minor's paternal uncle's wife.) Second Opponent is the nephew, and the Third Opponent the grand aunt of the minor.

It is ordered that the minor do remain in charge of the grandmother, the Applicant.

Grandmother legal Guardian.

The Court considers the Opposition filed in this Case vexatious. The Applicant is the admitted grandmother of the minor, and Opponents (allowing the statement made in their Opposition to be true, but which is not admitted) shew no present interest in the Estate, their nterest according to their own shewing, is dependant upon the death of the minor.

Opposition set aside with Costs.

Letters of guardianship to be granted to the Applicant.

No. 9,828.

7th October, 1858.

Estate of Meenachipulle, wife of Sockkelingan, of Vannerponne, deceased.

V. Modliar Fillenader ... ... *Applicant.*
Candappesegeruer Sockkelingam... ... ... *Opponent.*

PRICE, Judge.

Applicant's Proctor urges that inasmuch as the Opponent has contracted a second marriage, and as most of the property apppraised consists of dowry property, which is in Opponent's possession, the Estate of the Intestate should be administered to. The Applicant, who was the lawful father of

the Intestate, and grandfather of the minor child, and who has the minor child in his charge, has a right to Administration in preference to the Opponent, for according to the Country law, the Opponent, the husband, having contracted a second marriage as stated before, is obliged to give all the dowry property of his late wife as well as half the acquisition to the Applicant, who is the grandfather of the minor child; the Country Law requires that this should have been done before the second marriage was contracted.

Husband. 2nd marriage. Dowry. Acquisition. Grandfather. Minor child.

Opponent's Proctor opposes the application, upon the following grounds:—

First.—That the husband of the Intestate and the father of the minor child has a preferable right to Administration than the Applicant (the grandfather), and by the English Law, which is the Law in force in this Colony in such cases, the question of interest or no interest is never looked into when the husband applies for Administration, and the question of interest is only raised amongst next of kin: quotes I Williams' Executors: page 336 to 343.

English Law. Interest. Administration.

The objection of the second marriage is never looked into in such cases.

Secondly.—That even if interest is to be looked into, the Opponent has a right in the acquired property, and no other person than the father will be expected to manage the Estate to the advantage of the child.

Thirdly.—Even by the Country law it is not compulsory on the father to give over the property to the grandfather if it were, the grandfather ought to have made the application to the Court under the provisions of the Country Law, as an heir would claim an Estate without having recourse to Administration.

Fourthly.—According to the statement of the Opponent before the appraisers, it appears that most of the property is in the possession of the Applicant.

Fifthly.—That the minor was then under the care of Opponent (her father) from 1854 up to this year, and has been taken away by force by the Applicant. It will be a great loss to the minor if Administration be granted to the

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Applicant, all of which can be proved, if evidence be entered into.

Judgment.

The Court refers to the appraisement, by which it appears that the Estate of the Intestate is valued at £136 17s. 1¼d. The whole of the acquired property has not been valued by the appraisers, but merely half of the intestate's share at £14 1s. 2¼d. The Opponent would be entitled to an equal amount of his share of the acquired property.

Opponent's Proctor states that he is not in a position to say whether his Client is entitled to more than £14 1s. 2¼d. or not; deducting Opponent's share of acquisition, the minor's interest in the Estate would amount to £122 16s. 5d. Had the Opponent on his second marriage complied with the provisions of the Country Law, Clause II. Section I. Administration of the Estate of the Intestate would have been unnecessary.

The Court is of opinion, under the circumstances, that Applicant is the proper person to have administration and charge of the minor The Opposition is therefore set aside with costs, and Administration is to be granted to the Applicant, the grandfather of the minor, upon his giving good and sufficient security.

Grandfather. guardian.

Supreme Court Judgment.

That the decree of the District Court of Jaffna, of the seventh day of October, 1858, be *set aside*, the Supreme Court being of opinion that the father is entitled to the Administration of the Estate: as to the Guardianship of the child and his share of the Estates the mother's relatives may take such steps as they shall be advised.—Costs of the appeal to be borne by the Estate. Colombo, 19th January, 1850. *

Father entitled to administration.

* There can be no doubt that the District Court was right, and the Supreme Court under a misapprehension of the Thesawaleme necessitated double expense. See case No. 10,303.

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2nd Novr., 1858.

No. 9,383.

Estate of Moottopulle, wife of Varitamby, late of Alway, deceased.

Caderamer Cartigaser, and three others ... *Applicants.*
Comarapper Varitamby ... ... *Opponent.*

PRICE, Judge.

Special Assessors were chosen in this case.

The deceased left two minor children, who died in their minority, shortly after the mother, or at what age does not appear.

Surviving Sister.
Dowry of deceased Sister.

The Assessors state, they have heard the arguments* on both sides, and have all three come to the following opinion that the deceased Muttopulle's sister (fourth Applicant) is entitled to the property, which is stated to be the dowry property of the deceased; this is according to the Thesawaleme and the custom of the place, the children being dead, the deceased's husband (the Opponent) has no interest in the deceased's Estate.

It is ordered that administration be granted to the Applicants, upon their givin ggood and sufficient security. Opponent to pay the Costs.

Supreme Court Judgment.

Affirmed, the Supreme Court seeing no reason to the contrary. Colombo, 7th June, 1859.

No. 10,538.

August 8th, 1859.

In the Estate of Sewagamen, wife of Sallanader, late of Copay, deceased.

MUTUKISNA, Judge.

Administration.

The system of administration originally intended for the security of property, and the protection of creditors widows, and orphans, has been, at least in the province, so much abused, that it is not only one of the most prolific sources of litigation, but it has literally been the means of entailing misery

* Arguments not recorded.

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upon many families and exhausting many Estates. It is time therefore, for the Courts to be wary in entertaining applications for Administration.

Here is a case of a man applying for administration who has no manner of right to the Estate : he calls himself husband of the second Cousin of the deceased, but then there is the widower who has a child, and who is entitled absolutely to the whole of the hereditary and half the acquired property, and who has a life interest in the dowry property, and the other half of the acquired property of his deceased wife, in terms of the Thesawaleme, and who is in quiet possession of the same : and then, there is the child itself, and then there are the brother of the deceased, and the children of the brothers ; in fact there are a dozen people between the Applicant and the Estate in question. What then, can be the object of this man in applying for administration ? It must be either a contrivance to get the property into his power, or to gratify some spite by compelling the widower to incur unnecessary expense in obtaining administration. Why should the widower be disturbed ? Why should she be forced to put money into a lawyer's pocket and invest in stamps.

Widower's right.

The Law of the Country gives her the right to remain in possession, and I think no one should be allowed to interfere with that right, until it is shewn as provided for by the Thesawaleme, that she is about to enter into a second marriage, or unless it be proved that he is fraudulently alienating property to the prejudice of his minor children : such cases do sometimes occur, but there is ample provision against fraud in the schedule system, and the well understood Law that a minor cannot be prejudiced by any such alienations as far as his share of the property is concerned, anyhow, an exceptional Case, where fraud is contemplated or about to be perpetrated, ought not to be made the foundation of a General Rule. As a Rule, I think a Widow or Widower, or even heirs, who are in quiet possession, should not be compelled, by encouraging applications of this nature, to take out Administration.

Fraud.

Schedule.

It is ordered that the application of the Applicant, he not being the next of kin, be dismissed with costs.

8th August, 1859.

No. 10,557.

Estate of Parpaddy, daughter of Valer, late of Tunalle, deceased.

Waler Cander ... ... *Applicant.*

MUTUKISNA, Judge.

Widow's Life Interest.

This is another of those vexatious applications for Administration. The deceased seems to have died in 1857, the Mother, who is, by the Thesawaleme, entitled to the property, as long as she remains unmarried a second time, in the quiet possession. The Applicant has evidently quarrelled with her, and applies to administer to the Estate of his Sister, who died young and unmarried; the children can now claim nothing, as long as their Parents are alive, and, indeed, if the Applicant has any right to any portion of his Sister's property, the speediest and the cheapest course is to bring an action against her Mother for his share. But then, he says, his Mother is deranged; I do not believe this, but if she is, he should apply to be appointed Curator over her person and property; at all events there is evidently no necessity for Administration, particularly as the Estate consists entirely of immoveable property, and, the Applicant thought so himself, for the last two years. Application dismissed.

30th September, 1859.

No. 10,682.

In the Matter of the Application for Letters of Guardianship over the person and property of Sedemberem, daughter of Vayrevy, a Minor.

Sitter Sinnatamby of Tirnelwaly ... ... *Applicant.*

PRICE, Judge.

The minor, her father, and Sitter Sinnatamby, present.

The Father of the minor states he is not married for the second time.

Sitter Sinnatamby states that the minor's father's second marriage is not registered, neither was his marriage registered with the minor's mother,

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The minor's father admits the statement, and states, his marriage with the minor's mother never was registered.

Sitter Sinnatamby applies to be appointed Guardian over the minor, and her property.

Bastard. Maternal Uncle. Guardian.

The Court is of opinion, the minor being a natural child, the proper person to be appointed Guardian over her, and her property, is the brother of her deceased mother, "Sitter Sinnatamby," who is appointed Guardian over her person and property.

17th October, 1859.

No. 10,303.

In the Matter of the Application for Letters of Guardianship over the person, and property, of Veyalapulle, daughter of Sockkelingam, a minor.

Vissaretna Mudliar, Tellanader ... ... *Applicant.*
Candappesegerer Sockkelingam ... ... *Opponent.*

PRICE, Judge.

Mr. Advocate Mutukisna for Applicant.

Mr. Bastianpulle, Proctor of the Supreme Court, for Opponent.

This is an application on the part of the Grandfather to be appointed Guardian over the person and property of the minor, Veyalapulle, daughter of Sockkelingam, the minor's late mother, who was the daughter of the Applicant, having died in 1854, and her father Candappar Sockkelingam having married for the second time.

The application is opposed by the minor's said father, upon the following grounds.

First.—"The Opponent being the father of the minor, "he is her Natural Guardian, and is by law entitled to a "preferable right of Guardianship over her person and "property, and this preferable right is acknowledged and "recognized in *various decisions of the late Provincial Court* "*of Jaffna.*"

Secondly,—"The Applicant has no right whatever to be "appointed a Guardian over the minor, in preference to "the Opponent, neither has he any right to take charge

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"of the property belonging to the minor, and manage it for
"her."

Thirdly.—"The object of the Applicant in applying for
"Administration is vexatious, and also to injure the minor,
"by involving the Estate in costs; he first of all applied
"for Letters of Administration of the Estate, but the Let-
"ters were ordered by the Hon'ble the Supreme Court to
"be granted to the Opponent, who is now Administrating
"the same for the benefit of the minor, on good and suffi-
"cient security.

Mr. Advocate Mutukisna for Applicant.

The only decided Provincial Court Case (No. 3,561) put in by Opponent's Proctor, in support of the father's right to the care of the minor, and the property, is not a parallel one to that in question, the Applicant (the Grandfather) in said case, in whose charge the child was, is charged with neglect, and it appears that the child was very young (about a month old) when it was given into his charge.

The fact of the child having been given into the charge of the Grandfather, supports the custom of the Country, and this Court must consider that before the late Provincial Judge (Mr. Forbes) would have interfered with a well known custom, he was satisfied that the child had been neglected by the Grandfather; the only evidence on record is a statement made by Applicant (the Grandfather.)

The Country Law on the subject, is taken from the Thesawaleme, section 1, clause II, and is this: "If the mother dies first, leaving a child or children, the father remains in full possession of the Estate *so long as he does not marry again*, and does with his child or children, and with his Estate, in the like manner as is above stated with respect to the mother. (Vide Clause 9.) If the father wishes to marry *a second time* the mother-in-law, or nearest relations, generally, (The Court believes it to be invariably the case as far as its experience goes, not being aware of a single exception) takes the child or children, (if they be still young) in order to bring them up, and in such case the father is obliged to give, at the same time with his child or children

the whole of the property brought in marriage by his deceased wife, and half the acquired property of his first marriage."

The minor in the present case, who is about eight or nine years of age, prefers being under the Guardianship of her Grandfather (applicant.)

The Court is of opinion that the whole object of the Opponent is to get charge of the property of the minor child, which is considerable.

With regard to the minor herself, it is stated by Opponent, that she was forcibly taken from his charge eighteen months since, but it does not appear that he has taken the slightest steps for her restoration.

The interest of the minor in her late mother's Estate, is very much larger than that of the Opponent, who is only entitled to a few Pounds, being half the acquired property.

Grandfather proper Guardian

Widower should give over wife's property.

Security.

To secure the minor's interest, the Court is of opinion, that the minor should remain in charge of the Applicant, and the Opponent should give over to the Applicant the dowry property of the minor's late mother, and half the acquisition, he, Applicant, granting Opponent a receipt for the same; and the Applicant on taking charge, giving security for the amount of property he receives. This will have a two-fold effect, viz.

1st. That of securing the interest of the minor, Opponent now having no further interest in his late wife's estate, he being married for the second time.

2ndly. Will enable Opponent, as administrator of his late wife's Estate, to close the Estate, which could not otherwise be done for some years, the minor being now only eight or nine years of age, and it is desirable that the Estate should be closed, Opponent having, since his second marriage, no further interest in it.

The whole costs should, in the Court's opinion, be borne by the Opponent personally, he having opposed and contested a well known custom of the Country.

Ordered accordingly.

30th December, 1859.

Judgment affirmed in Appeal, for the reason given by the District Judge: Opponent paying, personally, all costs.

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20th March, 1860.

No. 10,355.

In the Matter of proving the Last Will and Testament of Cannewediar Cadergamer, late of Point Pedro, deceased.

Seedawia widow of Cannewediar ... ... *Executrix.*
Sooper Sadayen ... ... *Opponent.*

PRICE, Judge.

Mr. Advocate Mutukisna for Executrix.

Mr. Chinnappe for Opponent.

By the Executrix's Advocate to Opponent.

The mother of the Testator and the maternal Grandmother of my father, were sisters. Testator's mother's name was Kaylatta, and Kaylatta had one sister Sewagamen, but no brothers. Kaylatta's son was the Testator. She had also a daughter Teywane. Teywane died without issue. Said Sewagamen was married; she had three children, Carlate, Canneweddiar and Vallatte. Carlate had three children one of whom was my father, "Sooper," the others were Caderamer and Sandresegerer: they had no children; they are dead: said Cadramer was living at Point Pedro. I do not know where he was born.

The Applicant's Advocate moves that the Will be proved, and the opposition be set aside, as Opponent cannot be allowed to prove the Will a forgery, or in any way interfere with the matter, till his own interest in the Estate, is clearly shewn, which upon his own admission to-day, he is not prepared to do, inasmuch as he is denied to be in any way related to the Testator, and he is not prepared to prove the registry of his father's marriage, which is said to exist.

Quotes case No. 7,997, District Court, Jaffna, exactly on a similar point.

Opponent's Proctor moves to examine the Applicant.

Applicant's Advocate objects to any examination at this stage.

Before admitting the motion of Applicant's Proctor, the Court wishes to hear his answer to the motion of Applicant's Advocate.

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Opponent's Proctor states that it is with reference to Applicant's Advocate's motion that he wishes to examine the Applicant.

The Court will not allow the Application, until an answer is made to the motion of Applicant's Advocate.

Opponent's Proctor moves that the motion be rejected on the grounds:

Firstly.—That any party can oppose a Will provided it is a forgery.

Secondly.—Our relationship to the alleged Testator not being denied, my client ought to be taken as a relation, and must be allowed to oppose the Will without being called upon to prove that he is an Heir.

Thirdly.—Marriage Registry is not at all necessary to prove the Pedigree—Pedigree may be proved by parole evidence.

Fourthly.—In this case the Will must be set aside at once, as it is illegal and not executed conformably to the 3rd Clause of the Ordinance No. 7 of 1840. The Signature of the alleged Testator being affixed at the top of the paper, and not at the end or foot thereof, as required by the Ordinance. Quotes 1st Volume Williams' Executors, from page 64 to 69.

2nd Volume Taylor's Evidence, pages 712 and 713.

1st Volume Williams' Executors, page 284.

Court of Requests Case, of Jaffna. No. 20,275.

Applicant's Advocate in reply;—

The question for the Court now to decide is, not the validity or invalidity of the Will, but the right of Opponent to appear and take part in the proceedings at all.

Second.—The relationship of Opponent is not admitted, neither is it stated in the allegation of Opponent, where he simply calls himself Co-heir, and the answer which has to deal with the statements in the allegations alone, pointedly denies that he was a Co-heir, or to be in any way entitled to the property.

Thirdly.—The authority quoted in 1. Vol. of Williams' "Kippeng *vs.* Ash," shews that there was a clear interest on the part of the Legatees to oppose the codicil, which revoked the

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divise to them of real estate; that very authority shews, implied by the correctness of the doctrine maintained in Jaffna, 7,997, that, without an interest in the Estate, no party should be allowed to appear to prove the Will a forgery.

Lastly.—The 3rd Cl. of No. 6 of 1847, does not apply to the present Case, as the marriage by Opponent's father is admitted by him to have been registered, and he has filed no copy, or cited the Maniagar to prove the registry, and no parole evidence can be admitted to prove that point.

By the Court to the Opponent.

The marriage of my father was registered. I know the Maniagar, by sight, who made the registry.

Opposition to Will must be by party interested.

In the absence of the marriage registry, the Court is of opinion that Opponent is not in a position to prove that he is a co-heir in the Estate of the testator. His opposition is therefore set aside with costs, and the applicant is called upon to prove the Will.*

Judgment affirmed in Appeal.

MISCELLANEOUS CASES.

21st December, 1802.

Meeranatchia, widow of Sagoe ... ... *Plaintiff.*

Vs.

Perimahamadoe and wife ... ... *Defendants.*

DUNKIN, Judge.

There are no laws of greater wisdom or in their effect more salutary than those which prescribe limitation to the bringing of suits. It is for the benefit of mankind, that all disputes concerning property should have certain limits, for otherwise, strife and contention, with all the malignant passions attending them, would be transmitted from generation to generation, thus creating deadly feuds in families never to be forgotten or forgiven. In this Country the wisdom of its Government has prescribed thirty years as the legal bar to all suits for the recovery of landed or immoveable

30 Years Prescription.

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* The Court subsequently (but before the Case went in Appeal) set aside and cancelled the last Will as illegal, on the 4th ground stated by the Opponent's Proctor.

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property, and it is not possible for any rational man to object to that period of limitation. It furnishes the most indolent, the poorest, and most oppressed persons, as well as those whose rights may have accrued even before their birth, with a full opportunity of seeking redress.

In the present Case an uninterrupted possession of more than forty years has been proved on the part of the Plantiff, whose mother continued in possession till her death, and transmitted that possession to her daughter the Plantiff in this cause. To impeach this right of possession, certain instruments have been produced on the other side. These instruments are of a recent date (so late as the year 1795) and appear to the Court to have originated in fraud. At all events they are only *res alias acta nuze pocket deeds*, no possession having ever been had under them, and therefore they cannot have any weight as against the possession proved. The title that arises from length of possession is not only clear and satisfactory, but it is of all others the most capable of proof. Every peasant in the neighbourhood blessed with health and longevity, can prove it from ocular demonstration, and if he falsifies the fact he may be confronted with the whole neighbourhood. Whereas deeds and instruments if no possession has gone along with them, are, in all countries, but more especially in this, truly suspicious. The Court is bound to presume every thing in favor of such length of possession, the Law having declared it a complete bar against all attempts to shake its force.

Mother's Life interest.

As to this intervening mortgagee, the Court has no difficulty in declaring his mortgage a nullity as to the land in question. The man who, with his eyes open, lends money upon mortgage to a person not only notoriously out of possession, but who has never been in possession of the mortgage premises, deserves but little consideration from any Court. If such mortgages could create Titles, they would be the most expeditious means of defeating all Titles whatever: notwithstanding this, if his debt be a just one, he is

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not without remedy. He may resort to any other property of the debtor for satisfaction of the demand.

The Court decrees in favor of the plaintiff, with costs of suit; and further orders, that, if necessary, the process of this Court do from time to time issue, for the purpose of quieting the plaintiff in her possession, in case that possession shall be disturbed.

23rd June, 1803.

No. —

Seydopulle Seydoaganada Moor ... ... *Plaintiff.*

Vs.

Rasaworoodia Mudliar ... ... *Defendant.*

DUNKIN, Judge.

Both parties present.

The Court.—It appears by the pleadings, that in 1798, the plaintiff purchased from the defendant the lands called "Oppokollomkano," "Opokollellarego" and "Parnmewayal," which consisted "of certain paddy fields," for the sum of four thousand and fifty (4,050) Rds., and that in the description of these lands in the title deed passed by the defendant, they are stated to contain 79 Las. It also appears that the plaintiff has sold the said lands ever since under his title, without questioning whether the said lands did actually contain the said complement of ground expressed in the said title deed or not, but upon a survey and admeasurement lately taken, the said lands were found to contain 72 Las only, and that fact is not disputed. In consequence of this discovery five years after the sale, the plaintiff brought his action, praying to be decreed to 7 Las., the deficiency, or the value thereof, to be rated according to the amount of his purchase money, or that the sale should be rescinded. The defendant in his answer says, that he purchased the lands in question under the same description as that contained in the deed of sale by which he had conveyed them to the plaintiff, and that he himself never knew till the late admeasurement, the real quantity of ground contained in the said paddy fields.

Deficiency of Land.

The understanding that Mr. Hopker, the sworn Surveyor, had taken a survey and admeasurement of the said lands, in order to enable the Registrar of lands to make out an

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English title deed thereof, for the plaintiff called upon Mr. Hopker to furnish the Court with his said survey and admeasurement, which he accordingly did, and upon inspecting the said survey, it was found to contain entirely a draft of the premises and several useful observations, but also a report so accurate and particular that it has enabled the Court to judge the whole case at one view.

By the report it appears, that the lands in question consist entirely of paddy fields whose limits are conspicuous, and that the said paddy fields have never suffered any *augmentation* or diminution whatever; at least that can be traced, and that the adjacent landholders *are not* in possession of more ground than they are entitled to hold. It likewise appears by the said report, that the description contained in the plaintiff's title deed, particularly with respect to the quantity, is exactly the same as that registered in the Dutch thombo, so long ago as in the year 1755, so that this error is not to be imputed to him. He sold as he bought one entire thing, namely, the paddy fields without any violation of good faith, and it *would be unjust* after such a lapse of time, to make him accountable for an error of so ancient date, and that sanctioned by a public record. The difference of price paid by the plaintiff, and the defendant, is immaterial in this cause. The Court therefore, under all these circumstances, is of opinion that the description contained in the title deed, under which the plaintiff derives, cannot, nor ought it to regulate the quantity, as the Court conceives it should be considered as forming any part of a warranty to bind the defendant, and of course dismisses the plaintiff's claim, but without costs.

Dutch Thombo.

No. 101.

23rd May, 1806

Tangam wife of Plippo ... ... *Plaintiff*,

Vs.

Conger Cander ... ... *Defendant.*

TRANCHELL, Judge.

The evidence being closed, and the cause considered in an equitable tending.

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Wife's right of action against her husband's Heirs.

Dowry.

It is decreed that the defendant as having taken possession of all the accumulated and inherited landed property of the late Conger Sinnetamby, late husband of the plaintiff, deceased, is indebted to the said plaintiff Tangam in the sum of Rds. 300, by virtue of the Ola writing exhibit A., and costs of suit.

28th May, 1818.

No. 133.

Ramer Maylvaganam ... ... *Plaintiff.*

Vs.

Sitter Sidemberan and others ... ... *Defendants.*

ST. LEDGER, Judge.

The Bill of sale filed by the plaintiff, is on all hands allowed to be valid, but the fifth defendant states that he has a prior claim to the land, in virtue of an agreement.

Prior agreement subsequent.

Transfer Deed.

Upon a full consideration of the evidence, together with that taken on the 18th Instant, it appears that the agreement filed by the fifth defendant was actually made out as stated, and being of a prior date necessarily set aside the transfer deed filed by the plaintiff, therefore

It is decreed that the transfer deed filed by the plaintiff, under date the 19th November, 1817, be set aside, and that the fifth defendant be permitted to purchase the land called...... ...... according to the terms of the agreement between him and the three first defendants, under date 15th September, 1817.

The suit to be dismissed, the costs to be paid by the four first defendants

---

20th December, 1822.

No. 1,768.

Welayder Punnier, Maniager of Valvettytore ... *Plaintiff.*

Vs.

Weregetty Swamenaden and others ... ... *Defendants.*

FARRELL, Judge.

Heirs of otty sellers.

Plaintiff sued defendants on an otty Bond, as Heirs of the grantors. The latter set up an agreement with their step-

mother to pay all debts of their father, upon their giving up all their father's property to her.

S.ep-mothe.

Held, the agreement of the 21st November, 1816, filed by first and second defendants, and said to have been granted to them by fourth plaintiff, is annulled, being contrary to the Law of the country.

It is decreed that first and second defendants, being the Son of Welayder Veragetty, deceased, are indebted to plainiff in Rds. 112, being half of the amount due on a Bond dated 12th December, 1814, by the said person and his brother Welayder Cander to plaintiff, and that the other half of the amount of the said Bond being 112 Rds. 6 fannams, is to be recovered from the Estate of Welayder Cander.

Plaintiff is to pay third defendant's costs, and first and second defendants and the Estate of Welayder Cander is to pay plaintiff's costs.

No. 3,054.

12th March, 1824.

Papamma, wife of Ramasamy Naiken, and her son ...*Plaintiffs.*

Vs.

Ramasamy Naiken, husband of first, and father of second plaintiff and Mana Naiken ... ... *Defendants.*

FARRELL, Judge.

The Court is of opinion that length of possession gives second defendant a right to the Lands in question. That the transfer dated 20th August, 1818, by first defendant in favor of second defendant, is void, as not having been agreed to by by plaintiff, and that the parties shall each pay their own costs.*

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* The Deed of Transfer was cancelled very unnecessarily, on the ground that the first plaintiff, the wife of the first defendant, did not agree to it, it ought to have been cancelled as altogether a fradulent affair, got up between plaintiff and first defendant, to defraud the second defendant.

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Year 1825.

No. 3,533.

Ayemperomal Amblewanam and others ... *Plaintiffs.*

Vs.

Ayemperomal Motucomaran ... ... *Defendant.*

Forbes, Judge.

Heirs bound to pay their share of expenses for improvements.

Held, that plaintiff and defendant were entitled to equal shares. but plaintiff was bound to pay half the expenses of repairing an old house and putting up two verandahs.

Year 1825.

No. 3,512.

Modelynar Sidembrenaden ... ... *Plaintiff.*

Vs.

Canderen Sedowen and others ... ... *Defendants.*

Forbes, Judge.

A bystander no right to assist Suitors in Court.

Punished Cadergamer Canden, Vallale of Caretivoe, with twently lashes, "for communicating with the first Defendant," contrary to the *strictest* injunctions of this Court, while cases are investigating, the said person being a by-stander, and stating he is not concerned in this suit, although it appears evident to me, his intention was to aid Defendants, and thereby injure Plaintiff's cause.

Year 1826.

No. 4,166.

Caderasy, widow of Candapper ... ... *Plaintiff.*

Vs.

Cadergamer Sadonader, and others ... ... *Defendants.*

Wright, Judge.

Payment to Son whilst Mother is living.

Held, the payment to sons of debts owing to their deceased father, without the authority of their mother, was invalid and that she could recover the same from her husband's debtors.

5th June, 1828.

No. 5,134.

[Ant]hony Marks ... ...*Plaintiff.*

Vs.

Oeiegonayege Modliar, Ambalawanen Parpartiagar of Allepully, and others ... ... *Defendants.*

Brownrigg, Judge.

It appears to the Court that the suit has been occasioned by the fraud of the 1st Defendant, in pointing out false

limits to the Surveyor, when he went to survey the land in 1826.

Perpatiagar to pay costs for pointing out false limits.

It is decreed that Plaintiff's claim be dismissed with costs, but in consequence of 1st Defendant's fraudulent conduct, the costs of this suit, including those of the second survey, are to be borne by him.

No. 3,668.

Year 1826.

Walliar, widow of Alwan, and others ... ... *Plaintiffs.*

Vs

Mapanar Sandeynar ... ... *Defendant.*

WRIGHT, Judge.

The Court cannot understand the pleadings in this case. It is dismissed. Vouchers to be returned with leave to commence a fresh action.*

No. 5,982.

25th Oct., 1830.

Waritambiar Aromogalar ... ... *Plaintiff.*

Vs.

Welayder Mader ... ... *Defendant.*

PRICE, Judge.

The Court is of opinion that this claim cannot be maintained against the Defendant, as he is not a party to the Bond, neither is the Plaintiff able to produce any undertaking in writing, shewing that Defendant is answerable for the debt of his son.

Father not liable to pay Son's debt.

Plaintiff's claim dismissed with costs.†

No. 7,102.

30th Oct., 1831.

Abraham Rodrigo ... ... *Plaintiff.*

Vs.

Philip Rodrigo, Administrator of his late wife ... *Defendant.*

PRICE, Judge.

R. Muttayah Modliar, sworn, states there is nothing laid down in the Country Law to require the presence of other

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* This was copied to shew how difficult it is to understand the *points at issue.*

† Defendant's son was a bachelor under his father's roof, when he granted the Bond, and died unmarried, but had acquired no property of his own; facts, however, stated on one side, and denied on the other, are not proved, as there was no evidence.

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Brothers Receipt. Mother's Property.

brothers for giving a receipt by a brother as to receipt of his share of his mother's property from his father.

4th Nov., 1832.

No. 6,868.

Sewegamy daughter of Poody ... ... *Plaintiff.*

Vs.

Tiroopondy Palany ... ... *Defendant.*

PRICE, Judge.

The Court is of opinion that Defendant can not maintain his claim upon the Deed filed in this case.

Custody of Child.

It is therefore decreed that the child in question be delivered up to the Plaintiff, and the Deed dated 21st April, 1830, be cancelled. Plaintiff to recover costs by process of execution.*

2nd April, 1834.

No. 3,024.

Ponner Walen, and wife Walleal ... ... *Plaintiffs.*

Vs.

Cadergamer Murgen ... ... *Defendant.*

TOUSSAINT, Judge.

A sister cannot sue alone, her brother being alive.

The Assessors having heard the case, evidence, and the Courts opinion, namely, "that the 2nd Plaintiff having a brother, had no right in the first place to bring this case alone, while it is not proved that she got it in dower or by division, or that she has any exclusive right to it, next, that the endorsement is incredible, and by the possession proof, it is greatly to be suspected that the Otty deed which they said was lost, is now put in, for recovery, adding an endorsement for the 6 Rds. more, and which appears to have been done for invalidating the receipt which they expected Defendant would file," Assessors say, we concur with the opinion of the Court, that the receipt Defendant filed cannot be rejected, as an incredible one.

It is decreed that Plaintiffs' claim be dismissed, and that Plaintiffs do pay the costs of suit.

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* The child was given over by a Notarial Deed by its Mother. Plaintiff, who was the sister of the child, brought the action.

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No. 163.

16th June, 1834.

Venageger Cander ... ... *Plaintiff.*

Vs.

Venageger Mooruger ... ... *Defendant.*

Toussaint, Judge.

Parties present.—Defendant says, I called Plaintiff a Madapalle, as I misunderstood from others, and he is not a man of my village, since on enquiry I understood that he is a Vellale, I have no objection he will be now called in the case, I prosecuted as a Vellale.

Madapally.

Vellale.

The Court is of opinion that plaintiff was obliged to bring this prosecution to clear his caste, and as the defendant now admits that plaintiff is Vellale and it does not appear to the Court that defendant intentionally called plaintiff a Madapalla, that an order to pay costs of suit must be a sufficient satisfaction to the Plaintiff.

Costs of suits.

The Assessors agree—Decreed that Defendant do pay plaintiffs costs of this suit.

No. 442.

25th Oct., 1834.

Sidembretty daughter of Cander ... ... *Plaintiff.*

Vs.

Sooper Wayrewen and others... ... ... *Defendants.*

Price, Judge.

The Assessors state that it is a well-known custom in the District that on occasions of this kind, the Maniagar and Odear should both attend, and that due publication should be made to enable the adjoining landholders to attend during the time limits are set, in order that they might make any objection, if any. On hearing this statement, the plaintiff's Proctor declines proceeding further in the case.

Odear and Maniagar.

Division of Land.

Adjoining Landholder.

Case dismissed with costs, plaintiff is recommended to recover the costs from the last witness, the Odear.

Affirmed in Appeal, 20th February, 1835.

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4th May, 1835.

No. 2,315.

Mady daughter of Swam and daughter Coorial... *Plaintiffs.*

Vs.

Maden Ayen and others... ... ...*Defendants.*

LAVALLIERE, Judge.

Breach of Promise.

This is a case for breach of promise of marriage, laying damages at £15., and a further sum of £4. 17. 6d., value of property given to the second plaintiff by the first plaintiff, her mother, on the occasion when her daughter was betrothed to the first defendant, according to the heathen custom, in October, 1833.

Dowry Agreement.

The District Judge is of opinion that it has been fully substantiated that the first defendant had promised to marry the second plaintiff, that the dowry agreement was executed and delivered to him, and that after the performance of the usual heathen Ceremony on such occasions, he had conducted the second plaintiff to his house, or rather to that of his mother, the second defendant's, where it appears he also resides, and lived with the second plaintiff as man and wife until she became in the family-way. The Ceremony alluded to being according to the prevailing custom of the country, and until the registry of the marriage, considered sufficiently binding to justify parties to live together as man and wife, as done almost in every case amongst the heathens, without any disgrace being attached to it; the first defendant was consequently not justified in putting second plaintiff away and contracting another marriage with the fourth defendant, without having had sufficient grounds for so doing, as the second plaintiff is to all appearance equally respectable as himself, and there has been nothing whatever brought forward in evidence which has in the most distant manner affected either her character or reputation. The District Judge is therefore of opinion, that she is fully entitled to the damages claimed against the first defendant. The delivery of the dowry property has, however, not been proved, the plaintiffs are at liberty, however, to claim restoration of

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the Lands given in dowry, by a subsequent action against the defendant, should he withhold them.

In conclusion, the District Judge cannot however, avoid remarking on the conduct of the third defendant, the Maniagar, whose duty it was, on the complaint being made to him by the first plaintiff, to have instantly enquired into the circumstance of the case, and not to have registered the marriage between the first and fourth defendants until it had been brought to the notice of the Court, and the dispute adjusted; in not having done which, he has been guilty of very gross and apparently of wilful neglect of duty, and for which he is to be highly blamed.

Maniagar, His duty.

The Assessors unanimously concur in the opinion expressed by the District Judge.

It is therefore decreed, that the first defendant do pay plaintiff's £15. damages, and costs of suit.

No. 1,613.

District Court, Walligamo.

Judgment of the Supreme Court.

The Supreme Court would be unwilling to leave a party in a state of destitution at the suit of her children; but if the latter insist upon their right, that right must be enforced, however harsh the proceeding may appear. If however, the customary law of the district would give her any right to the occupancy of the land claimed, during her life, on the ground of her relationship, her poverty, and of her having been allowed to continue for so many years to reside upon it, the Court would gladly sanction a decree which would secure her from being turned out of the land.*

Rights of children.

Destitution of Parent.

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* From Morgan's digest of the Decisions of the Supreme Court, the original Case not being forthcoming.

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14th September 1835.

No. 1,579.

Enasial, widow of Lowis ... ... *Plaintiff.*

Vs.

Santiago Diago, and his brother Santiago Sawery ... ... *Defendants.*

PRICE, Judge.

On reference to the case No. 3,581, it appears that the amount recovered against the Estate of the Plaintiff's late husband, on account of his debt due to Mr. DeRooy, amounts to, principal, interest, and costs, £3 13s. 1½d.; and it appears by the evidence to-day, that Rds. 12 5 was the sum paid by plaintiff on account of the deceased's funeral expenses; of these two sums, agreeable to the Country Law, half should be paid by the Defendant.

Widow and Heirs of deceased Husband.

The Assessors agree in the opinion of the Court.

It is therefore decreed that defendant is indebted to plaintiff in the sum of £2 5s. 10½d., being half the amount of the debt satisfied to Mr. De Rooy, being £3 13s. 1½d., and half the amount of the funeral expences, viz. 18s. 7½d., with costs.*

23rd October, 1837.

No. 2,785.

Soopremanier Canaweddipulle, and wife ... *Plaintiffs.*

Vs.

Pooder Moorger, and others ... *Defendants.*

BURLEIGH, Judge.

As there was no Dowry at marriage, I consider that a part of the claim should be allowed, because the defendants cannot claim any part of the second plaintiff's property on account of the funeral service or ceremony; with respect to the jewels, there is much contradiction in the evidence of the two witnesses called to prove the delivery, that I cannot believe their evidence. I therefore think that this part of the claim should not be allowed—I believe, myself, that it is unjust.—With respect to the paddy, the first defendant has admitted

* The defendants were plaintiff's husband's heirs, he having died without issue.

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that he took it, and that the bullocks were sold by his late son, there can be no doubt that second plaintiff is entitled to recover both; with respect to the straw, the custom of the Country is, that those who furnish the ploughing bullocks are entitled to it; there is no evidence to shew that the second plaintiff's bullocks ploughed the land, indeed it would appear that they were sold about August of last year. Therefore, I consider that this part of the claim should not be allowed. From the evidence of the 4th witness of Plaintiffs, whose evidence I am inclined to credit, it appears that the third Defendant agreed to give the Palmirah nuts and the Dowry Deed. It appears fair therefore, that Plaintiff should get a decree for these. With regard to the Chela cloth, which is said to have been granted by first Defendant's Son to second Plaintiff, I do not think she ought to claim.

Straw.
Ploughing Bullocks.

Assessors agree.

It is decreed that first Defendant do pay to Plaintiff Rds. 33, value of the Paddy, deducting the cultivation share, Rds. 8, for the Bullocks value of the Dowry Deed stamp (unless 1st Defendant returns it) 12 Rds. 2 Rds. and 8 fannams for the Palmirah nuts. First Defendant to pay costs according to the class decreed.

21st April, 1838.

No. 3,668.

Sadopulle, daughter of Tamer ... ... *Plaintiff.*

Vs.

Tamer Cander and Wife Teywane ... ... *Defendants.*

Price, Judge.

Defendants have failed to prove that they cultivated the land mentioned in the Libel with the consent of Plaintiff. The Court is therefore of opinion, that a Decree should go in favor of Plaintiff for 15 Parrahs of Paddy, deducting 1-10 on account of tythe.

Plaintiff's Proctor states he will be satisfied with a Decree for 12 Parrahs.

Defendants' Proctor moves that his clients may get his seed Paddy. The Court and Assessors are of opinion, De-

Seed Paddy.

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fendants should not get their seed Paddy, as it appears they cultivated the lands without the consent of Plaintiff.

Consent of Owners.

It is decreed that Defendants are indebted to Plaintiff in 12 Parrahs of Paddy, at 8 fanams per Parrah, with costs.

No. 2,221.

31st Oct., 1838.

Cander Sidembrenader ... ... *Plaintiff.*

Vs.

Sedawy Cadery and others ... ... *Defendants.*

SPELDEWINDE, Judge.

The Judge and the Assessors are of unanimous opinion from the statement of the Plaintiff's Proctor above made, and in the absence of the Voucher on the Plaintiff's side to prove their assertions, the Court can impossibly proceed on to hear proof and examine the witnesses in this case, as the whole matter in dispute is not worth a groat.

Therefore, it is decreed that the Plaintiff's claim on the Defendant for the recovery of 3 Lachams of certain lands lying at Navahaly called ——— as encroached upon by the Defendants unto their adjoining lands, without distinction, be dismissed, and that he do pay the costs of suit incurred by the Intervenients and Defendants in this case.

12th Feby., 1839.
From the Appeal Court held at Jaffna.

It is considered and adjudged that the decree of the District Court of Chavagacherry, of 31st October 1839, be affirmed, and the Headman having been very unnecessarily and vexatiously parties to this suit. It is further decreed that in addition to the usual costs they be each allowed one Rix Dollar per diem, for every day that they have been required to appear in Court.

Headman.

Batta

No. 4,583.

26th Aug., 1839.

Wallywatty Cadergamer and his Wife Parpady ... *Pltffs.*

Vs.

Comaraweler Canapaddy and others ... *Defendants.*

PRICE, Judge.

The Court and Assessors are of opinion that it is unnecessary to enter on the evidence for the defence. By the evidence of one of the Plaintiffs' witnesses, it appears that the

land in question was given by the second Defendant's two Brothers, in dower to the second Plaintiff's Daughter Sinne, and that she has possessed the land for 30 years. The Court is therefore of opinion, that the Plaintiffs' claim on the land in question should be dismissed with costs, and that the land should be sold in satisfaction of the debt due by *him* to the second Defendant. Plaintiff to pay the costs. The Assessors agree in the opinion of the Court.

Mother no right to Daughter's Dowry.

It is therefore decreed, that the land in question called —be sold in satisfaction of the debt due by him Canden, to the second Defendant, upon Writ of Execution No. 3,132, in favor of the second Defendant, and that the Plaintiffs do pay the costs.

No. 4,429.

19th Oct. 1840.

Sidembrenader Tamber ... ... *Plaintiff*.

Vs.

Sidembrenader Sinnatamby and another ... *Defendants*.

Burleigh, Judge.

The Court is of opinion that a decree should pass for the Plaintiff; it appears that he has cultivated this land for several years, and that he manured the land last season, he is therefore entitled to take the crop, for this is the principal labour and expense. I presume that his mother must have permitted him to cultivate the land. I believe that the first Defendant has taken possession of the land, merely because it will be his property on the death of the mother.

Son taking possession of land.

The Assessors agree in the opinion of the Court, but say there is some doubt, as two witnesses say that Plaintiff delivered this land to first Defendant, after receiving another land.

This may be the Case, but I doubt it, because Defendant would have opposed Plaintiff cultivating the land if such had occurred Plaintiff having gone to all trouble and expense in cultivating this crop, is certainly entitled to it.

It is decreed that Defendants do pay to Plantiff £2. 5s, and costs.

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9th November, 1840.

No. 3,861.

Omeyal, wife of Wenasytamby, on behalf of herself, and her minor daughter Teywane.

Vs.

1. Tamar Mothaletamby Vellale.
2. Welayder Mothaletamby, his wife.
3. Natchy.
4. Welayder Venasitamby.

BURLEIGH, Judge.

I believe that the Defendants have combined together to defraud the Plaintiff and her child of the property of the fourth Defendant, but where one of the Plaintiffs' witnesses, and a respectable man, comes forward and states, that she, nearly ten years past, knew that the Defendants, had combined together to defraud her, and did not then proceed on with the prosecution, I consider that her claim should now be dismissed. The Assessors agree in opinion with the Court, and believe that Plaintiff has been defrauded.

Combination to defraud.

Silence for many years.

It is decreed that the claim of the Plaintiff be dismissed with Costs.

Judgment of the Supreme Court.

That the Defendants be absolved from the first instance, with Costs.

1st March, 1841.

9th Sept., 1845.

No. 275.

Court of Requests, Jaffna.

Set aside.

The country law either follows or concurs with the Dutch Law, in so far as, when interest is in arrear, and such arrear exceeds the principal, no more interest is allowed than the amount of the principal; that is to say, the principal must be paid, and a sum equal thereto as interest, but no more. (It may be difficult to say upon what grounds such a rule was established; it is unknown to the English law.) But when interest is not in arrear, no such principle as has been recognized by the Commissioner, obtains in the Dutch law, nor in the country law, at least, has the case ever been attempted to be urged. Neither is there any equity,

Interest not to exceed principal

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so far as the Judges can perceive, before whom this case comes (in Appeal.) On the contrary, it is equity, that every man should receive the whole amount of the money he has lent, and a reasonable compensation for its use. Upon the principal adopted by the Commissioner, one who has lent say £100, at ten per cent. for ten years, and who has regularly been paid £10 a year as interest, would not be entitled to demand his £100 at the end of the tenth year, because he had been paid the sum in the shape of interest. He has, thus, lent £100 for 10 years, and is paid back by instalments of £10 a year, getting no compensation whatever for his money. Is this equity? The same reasoning holds, if interest should be paid for thirty years; in which time, the lender would have received three times the amount of his principal, as in the case in dispute. The lender is the party wronged, if he does not get £10, every year, and his principal when he calls up the bond.

The defendant being absolved from the instance on this point, it is ordered that the Judgment of the Court of Requests of Jaffna, be set aside, and the case be decided on the general merits thereof.—Per Oliphant.

17th September 1841.

No. 4,631.

Mawlyagenam Cannaweddy, and others ... *Plaintiffs.*

Vs.

Cander Sidembrenader and others ... *Defendants.*

Burleigh, Judge.

Deficiency of land.

Adjoining landholders.

The Court and Assessors consider that a decree should pass for plaintiff. It is an established custom here that when a deficiency of this kind is found, the party whose land has it should make it good for it, long possession does not affect this, when the extent each party is entitled to, is not disputed.

It is decreed that the third and fifth plaintiffs are entitled to one and a half Lacham of the land Corregampany, exclusive of what they already possess. Defendants to pay costs, as it appears that the deficiency is in their land.*

* This is very questionable Law. What became of the Prescriptive Ordinance.

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7th August, 1842.

No. 4,910.

Amblewaner Sangrepulle, and others ... *Plaintiffs.*

Vs.

Welen Mooten and six others ... *Defendants.*

BURLEIGH, Judge.

Tank. Cattle. Washermen.

It appears from the evidence that the Tank in question has been for many years solely appropriated to the use of the inhabitants and their cattle, and that it was never, until lately, used by Washermen, it appears to the Court that this matter should be decided on the existing custom, which is quite against the statement made by the defendants in their answer—a decree should therefore pass for the plaintiffs.

The Assessors say that this Tank should be exclusively used by the inhabitants and their Cattle, and not by Washermen.

It is decreed that the defendants should not wash their clothes in the Tank in question, and that they do pay their costs of suit.

24th November, 1842.

No. 5,196.

Ponner Sangrepulle and others ... ... *Plaintiffs.*

Vs.

Cadresy widow of Cander, and others ... *Defendants.*

BURLEIGH, Judge.

Grand Daughter's property.

The Court and Assessors consider that a decree should pass for plaintiff, from the answer given in by the defendant on the 4th Instant, it is evident that she wishes to defend the action. It says, that the lands belong to her grand-daughter it was proved in case No. 4,573 that this child's father Cander Aromogam, was not lawfully married to the mother, it is therefore clear that Plaintiff's claim is just.

It is declared that the plaintiff be put in possession of one third of the lands mentioned in the Libel. Defendant to pay all costs.

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Nos. 154—4,730.

20th December, 1842.

District Court, Chavagacherry.

Coneretan Mudliar Cadramer ... *Plaintiff.*

Vs.

Moorger Wettiwaloe and others ... *Defendants.*

Wood, Judge.

The first witness, the Odear states, that the land in dispute is situated at Wareny North, although all the lands surrounding it are in Wareney Edeicoorichy (South); now this is not a very uncommon occurrence, however difficult it may be to account for it, several instances have occurred, in which I have found that lands in one village were registered in the Thombo of the adjoining village, such as land situated at Tanenklapoe, registered in the Thombo of Chavagacherry, land at Marrawenplow, registered in the Thombo of Mattowil, but this happens only with lands near to the border of a village where there is no defined limit.

Land in one Village registered in the Thombo of another Village.

No. 5,543.

20th April, 1844.

Perambelam Ramanaden... .... *Plaintiff.*

Vs.

Sanmogam Tambenader, Odear... ... ... *Defendant.*

Burleigh, Judge.

The Court and Assessors are of opinion that the sale in question was not conducted without fraud, and that it would be improper to confirm the sale in favour of the Plaintiff: they consider the fact of the earnest money having been paid to the Defendant clearly proved, and that a decree should pass for Plaintiff, for that sum and the full costs of suit.

Earnest money.

It is decreed that the Plaintiff do recover from the Defendant £2 5*s.*, with interest thereon at nine per cent. from the third day of April 1843, and full costs of suit.

Supreme Court Judgment.

5th August, 1844.

This action is not brought for recovery of the deposit money, two pounds and five shillings, and therefore that

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sum cannot be given by the judgment, which must therefore be altered into, "That the Defendant be absolved from the instance with costs."

27th May, 1844.

No. 14,419.

District Court, Jaffna.

Sandremadiar Sinnecooty... ... ... *Plaintiff.*

Vs.

Teywane widow of Wairemottoe... ... ...*Defendant.*

PRICE, Judge.

Right of husband to Alienate wife's property.

I am of opinion that Plaintiff has in his possession available landed property to the value of £15, a portion of which might have been sold, mortgaged, or ottied for the purpose of raising money to defray the costs of this suit there can be no doubt that, the Plaintiff being the natura guardian of his children has the full power of disposing of any portion of his late wife's property for the purpose of protecting other portions of it, where there is actu a necessity for so doing.

The Assessors agree in the opinion of the Court.

Plaintiff's Proctor is informed that his client's case will be dissmissed, unless he pay the costs of such proceedings as shall have been already instituted, within fourteen days.

20th August. 1844.

No. 4,108.

Wayrey Walen... ... ...*Plaintiff.*

Vs.

Teywy wife of Walen, and others ... ...*Defendants.*

TOUSSAINT, Judge.

Deceiving husband.

The Libel charges that the second Defendant deceived and removed first Defendant to his house, and claims a damage. As the deceit and removal is not proved, the judge is of opinion that no damage can be allowed. It is proved by a set of relations, amongst the witnesses, that the first Defendant lived with the second Defendant, first at the house where the odear, the third witness, lived, and next at the second Defendant's parent's house. If it is true it is a great shame

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for the third defendant that he has allowed them to live in adultery on the premises where he and his family lived that she lived nowhere else, but with her husband, the Plaintiff, and while only in variance with him that she lived at the house of her parents, is proved by her own father allowing she had lived no where else; had this case been brought in proper time, she would have been able to account, and explain for the cause of it, but, unfortunately, it was brought so late that she died before she was able to give in an answer to the claim. It is said in the Libel that she left Plaintiff in June 1842, this case was not instituted before April 1844. It is therefore, not for the Court now to decide on the second part of the prayer in the Libel, to exclude her from being an heiress to the Plaintiff's Estate. The Assessors say, we are of opinion that the first Defendant's child cannot be made a heiress to Plaintiff's property, and the damage claimed is not to be allowed.

It is decreed that Plaintiff's claim be dismissed, and pay second Defendant's costs of this suit.

No. 6,989.

28th Aug., 1850.

Tarasey Canthen ... ... *Plaintiff*.

Vs.

Wyrewen Canthen and others ... ... *Defendants.*

MOOYAART, Judge.

Domestic servants.

Refusal to attend ceremony.

Damages.

The Plaintiff complains of the Defendants, that the said Defendants who are his domestic servants, very unlawfully refused to attend a ceremony on the 26th ultimo, when the said Tawasey Canthen (Plaintiff) made preparations to wear earrings, in consequence of which his friends and relations went away without eating or making their presents to him, according to the custom of the country, whereby the said Plaintiff sustained a damage of £1 4*s*., according to the report of the Police Vidahn of Poneereen Ottepanne North, dated 27th June, 1850, and the said Plaintiff there-

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THE SEVENTY-SIX ORDERS,

(COMMONLY CALLED SEVENTY-TWO),

AS PUBLISHED BY THE DUTCH AUTHORITIES

FOR THE OBSERVANCE,

OF THE

TAMIL AND OTHER INHABITANTS OF THE NORTHERN PROVINCE OF CEYLON,

TOGETHER WITH OTHER OFFICIAL NOTIFICATIONS.

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fore prays that they may be adjudged to pay the said damage and costs.*

The case for the Plaintiff has been clearly proved. The defence appears to be false, as the witnesses have contradicted the Defendant's statements, and one of the witnesses has prevaricated. I consider that half the amount of damage claimed would be a fair compensation to Plaintiff.

The first and second Defendants are severally adjudged to pay Plaintiff the sum of six shillings each, being twelve shillings, with costs to be equally divided amongst the Defendants.

Judgment of the Supreme Court.

That the Decree of the Court of Requests of the 28th day of August, 1850, should be set aside, and the same is set aside accordingly, and the Plaintiff's case is dismissed with costs.

It does not appear that the Defendants were obliged to attend the ceremony under any special contract; however, the presents being voluntary, are not recoverable at law, and the Defendants therefore are not liable to render any compensation for the same, in this action: Marsh—Dig. 658.

24th September, 1850.

6th Nov., 1850.

No. 3,874.

Sidembrepulle Caylayer and others ... ... *Plaintiffs.*

Vs.

Pooden Canagasabe and another ... ... *Defendants.*

Price, Judge.

Second Plaintiff present. The Assessors say she will be about 17 or 18 years of age. She appears to the Court to be fully 25 years of age. It would appear that the father of the second Plaintiff was aware of the death of first Defendant's late wife, and that she died leaving the property in question, upwards of 20 years since.

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* First defendant was the Dhobie, and second defendant the Barber. The defence was, that they neither accepted the invitation nor were bound to go.

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Plaintiffs' Proctor states, second Plaintiff's father was insane, and that he had no interest himself in the property so as to induce him to come forward; second Plaintiff was not under his guardianship, but under the guardianship of strangers (this however is a mere statement of Plaintiffs' Proctor.)

Parent's insanity

Minor's interests suffer by Parent's neglect.

Defendants absolved from the instance, Plaintiffs paying all costs. Affirmed in Appeal.

No. 9,695.

2nd Feby., 1859.

Ederweerasingam Ramesamy ... ... *Plaintiff.*

Vs.

Mathaspullé Nicholas and Armogam Soopremanier, Odear of Sooleoram ... ... *Defendants,*

PRICE, Judge.

Second Defendant, the Odear, was adjudged to pay the principal amount, interest, and costs, being an amount which he admitted to have been put into his hand by the first Defendant, for the payment of a debt due to the Plaintiff, but failed to prove that he paid the said amount to the Plaintiff.

Odear.

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NOTICE.

The following orders &c., are translations from the Tamil Versions published at different times by the Dutch authorities. Being in manuscript, the Copies are not to be fully depended on. Care however, has been taken by collating several Copies found in different parts of the Province, to secure as correct a text as possible. It is likely that further collation might lead to greater accuracy.

Several terms found in the Orders, &c., have not been satisfactorily explained by parties to whom reference has been made, and the translation needs in this and in some other respects, revision.

If opportunity offer at some future time, I shall be glad to go over the translation again, and doubt not that it may be improved.

ANGLICANUS.

Jaffna, September 10th, 1851.

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THE SEVENTY-TWO ORDERS &c.

Seeing that in the Province of Jaffna, subject to the Government of His Excellency the General, that many of the Native, and Foreign Inhabitants, subjects of the Government, are disposed to litigation one against another, creating many difficulties and disputes, are prompted not by any regard to justice, but from revenge in order to injure others, and obtain their property through covetousness, and that men of influence are acquainted with artful practices calculated to oppress the poor, and the powerless, thus subjecting them always to their own will; those whose duty it is to arbitrate in the affairs of the people according to their ancient customs have met with great difficulty, and annoyance in settling litigated points, originating generally in buying and selling moveable and immoveable property, cattle and other effects, in Otteying, in lending money, in the registration of marriages, dowries, donations, the adoption of children, and in framing wills. In order to check such fraudulent practices in the framing of Wills, marriage Contracts, Bonds &c., we have from time to time learnt that they have not conformed to those strict injunctions; and that under these circumstances, if we do not adopt resolute measures for preventing such practices, they will no doubt, continue to prevail; we do hereupon judge it right to frame, according to their own customs, the following Orders, and to publish them, that our purposes may be made known; so that as far as it is in our power, we may put an end to disputes and errors among our subjects.

BE IT KNOWN.

1st Order.

In order as far as possible, to establish, and perpetuate the worship of the true God, and according to the Reformed Church, it is enacted as follows: viz., that all the Chattumbus, and their Assistants, and the Ayuthandis of the Parishes, do devoutly and orderly attend to their duties, connected with the Churches and Schools, take care that no unauthorized lessons, Catechisms, forms of worship, readings and books be introduced, and that they conform to what has been delivered to them, and also to what may be given to them hereafter by the chiefs of the Church Council, or the pastors, with the consent of the Governor. Moreover that they take care that the children of the people do regularly attend the Schools, and give them good instruction, and that for this purpose they shall read before all the people, at the appointed time, on the Sunday morning, the instructions, and religious Offices that have been provided for this purpose. Be it known that those who act contrary to this Ordinance, and are found to have neglected their duty in these matters, shall be deprived of their Office.

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2nd Order.

Be it known, that whosoever by word or deed, is found to scoff at or disparage the worship of God, shall be reported to the Governor by the Chattumbu, or any other party acquainted therewith, that he may be delivered up to the Court of Justice, and receive such punishment as may be adequate to the charge proved according to the Statute.

3rd Order.

Be it known, that we strictly prohibit all the inhabitants of the Province whether settled or strangers, from publickly conducting the services, and ceremonies of the Papacy, and even from attending such, and whosoever in contravention of this order, shall attempt their performance, shall be amerced in the sum of 18, and those who are found on the spot in 4. 6. The sum shall be divided into three parts, one to be given to the informant, one to the Dessave or the Offidore, as the case might occur in their respective limits, and one part to the Orphan Institute. Moreover those who invited others to be present in the assemblies where these things happened, if found out in the very act, shall without the least mercy, be put in fetters, and banished for three years to Colombo.

4th Order.

If anyone either with the hand, a cane or stick, or any other thing, not a weapon, shall beat another in such a way as not to bring blood, he shall be fined 4, 6., and if blood flow 9. If the thing happened within the limits of the Offidore, be it known, that the sum shall be paid to that officer; or as here stated, the Dessave shall decide the case. If the party be unable to pay the fine, he must yield up his person.

5th Order.

If any shall kill another in an encounter, because of some quarrel, dispute, and so forth, by a pointed weapon, or any other that may inflict a wound, he shall according to the degree of the fault found in him in the Court of Justice, receive sentence conformably with the statute book of Batavia, and other laws, and be executed accordingly.

6th Order.

If a male or female slave belonging to any one, be drawn away by another, he shall be flogged to death with a scourge of cords, and if any person detain the slaves of another party for their own service beyond three days, be it known that they shall be flogged with a scourge, and put to labour in fetters for the space of one year. And if Europeans, Military men or Sepoys be involved in such conplaints, they shall be amerced in the sum of 18. That sum shall be equally divided between the Offidore and the Leper Hospital. Moreover if any one shall find, and deliver up to the owner, slaves that have absconded, he shall receive from the owner 3., for each slave. We therefore, strictly enjoin all the servants of Government and Limeykarars, that in case they send their slaves to any place whether in the Province or beyond it, to give a certificate with the signature of the Commandeur or Dessave, or some European Official in one of the ports, otherwise they may be considered as those who have absconded.

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7th Order.

No one is permitted to bring the Copper coin of other countries into these territories. Moreover excepting the Pagodas of Nagapatam, and Pulicat, no other shall be circulated in this Province. Those who contravene this order shall not only forfeit their Copper coins, and Pagodas, but for the first offence be fined 18: for the second offence 37. 6; and for the third offence 75. The sum shall be equally divided between the informants, the Offidore and the Leper Hospital.

8th Order.

It is hereby enacted that among the settled inhabitants and emigrants of all classes, whether Christians, Mohammedans or Hindus, none shall by cutting, diminish the exect value and weight of any legally stamped coin, whether gold, silver or copper, or diminish them by the application of fluids or in any other way. Should this rule be violated, the perpetrators of such deeds shall be punished in life, and property according to the letter of the decrees made and published by our rulers with reference to such matters at different periods. Moreover care shall be taken by all that such false coin be not found with them or forwarded by them to the Government Treasury, as the Treasurers will cut in pieces all such coins. Moreover when gold and silver coins are received and paid, no one shall count them on the floor or ground but on a board or mat. Be it known that whoever violates this order shall pay a fine of 7. 6. to the offidore.

9th Order.

The inhabitants without the least scruple, contrary to the statutes we have formerly published, make false stamps and use them for stamping cloth. We also find that great loss has happened to the revenue officers. Therefore we hereby specially enjoin on all persons, that they bring every description of cloth to the revenue officer, to be stamped with the Government stamp:—no kind of cloth is allowed to be stamped with false stamps. Those who violate this order shall be tied to the gallows of the court of Justice and flogged and branded, and put to labour in fetters for 3 years. If it be seen that any one wears cloth having a false stamp, they shall be obliged to state where they purchased it, and inform who the seller is; if not, be it known that without renumeration they shall be put to labour for 3 months. Those who wear cloth unstamped when discovered, will not only be obliged to make known the seller, but also be flogged, put in fetters and labour for the space of a year.

And the washerman who washes one or more such cloths having no stamp, will be subject to the same penalty, unless he makes the matter known to the offidore.

10th Order.

In places where the various kinds of grain are brought and sold, no one shall measure in any measure, but legal standards which the Government has properly stamped and provided, and full only to the brim. These persons who act contrary to this, shall forfeit 3. to the

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offidore. If the thing occur in the country, the fine will be paid to the Dessave.

11TH ORDER.

We hereby direct the inhabitants and all the foreign residents of the Province, that when Padavns and Dhonies which come to the ports of this Province from the Continent and other places, they shall not approach them in cadmirans or boats till examined by the Offidore's peons, or the Europeans that are at the Government offices at the ports, or the renter. Those who act in contravention of this order, shall be fined 37. 6. one-third of which shall be paid to the informant, one to the offidore, and one to the Orphan Institute.

12TH ORDER.

None of the inhabitants or foreign residents unless in cases of pressing necessity, shall anchor and land cargo at Pt. Pedro, Tondamanaar' Valvettyturre and other ports. 1st the Padavus or Dhonies in which paddy or other grain is imported, hoping to be excused, but anchor at Kayts, and bring their grain to the ordinary grain-shed near the fort, and there sell it. Those who violate this order shall for the first offence pay a fine of 30, and for the second offence 52. 6, and for the third offence 75 : half of which shall be given to the Orphan Institute, and the other half to the Leper Hospital.

13TH ORDER.

Be it known to the Odears of the six inhabited islands of Pungudutivoe, Neduntivoe, Nyanativoe, Analytivoe, Caradivoe, and Tanneertivoe, that if foreign Padavus, Dhonies or Cadmirans should come from other places, or the accountant's office without a passport from the Governor of Colombo, or permission from the Commandeur, the said Vessels and the persons on board shall be brought to Kayts, and delivered either to the headmen there, or to the sergeant of the fort. Be it known that those who do not comply with this, shall be put to labour in fetters one year, and forfeit their offices. The Vessels that have come from other places without passport together with the cargoes, shall be seized, and sold for the benefit of the Government Offidore, and the Orphan Institute.

14TH ORDER.

Be it known that no one in the adjacent islands, either in the seaports and shore, or in any places connected with the shore, shall dig or dive for chanks and sell them to strangers. Those who act contrary to this shall be beaten with a cane by the Caffers, and labour in fetters for the space of 3 years. Moreover if any shall buy chanks from strangers for private exportation, they shall be forfeited to the Government and the Offidore.

15TH ORDER.

If any shall attempt to export the skins of the Tiruky fish from this province, without the permission of the Commandeur, they shall not only forfeit them for the benefit of the Government, but also pay a fine of 15. per hundred skins. This sum shall be divided and given to the informants, the Offidore and the Orphan Institute.

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16th Order.

Be it known, that no one in this province is allowed to mix earth or sand with rice or grain for sale. Those who do so shall in all cases when discovered, pay 15. to the Offidore.

17th Order.

Be it known, that no one, whoever he be, shall loan money to the Government dyers resident here, and that the claims of those who lend money shall not be entertained, and that the dyers who have borrowed money are indebted to the lenders in the amount. Moreover we strictly prohibit the dyers from dying cloth for anyone, without the knowledge and consent of the Commandeur. Those who violate this order shall for the first offence pay 4. 6. and for the second, double that sum, and for the third offence 13. 6. This sum shall be divided into three portions, one being given to the informant, one to the Orphan Institute, and one to the Leper Hospital. And be it known, that if persons are discovered dying cloth secretly in houses, whether dyers or otherwise, they shall be subjected to labour as often as they are found out. All the cloths are to be dyed in the proper dye house, according to the permission of the Commandeur, with the knowledge of the Superintendents.

18th Order.

No one whether of the diggers of dye roots, or of the inhabitants, shall dig such roots and sell them to others, nor send nor give them to others, nor appropriate them for themselves. Be it known, that those persons who have violated this, shall be severely flogged, and put to labour in fetters for three years.

19th Order.

Be it known that if the dye-root diggers be discovered to have pledged their persons to others in writing, they shall be committed to labour in fetters for twelve months. Those who have received the persons of the root diggers, whether one or more as pledge, by giving money for engaging them in their service, shall not only forfeit the money, but also be punished in fetters for one year. Those Puttungkatties and Kudumbas who have countenanced such practices, shall be subject to the same punishment, and also lose their office.

20th Order.

Be it known that we hereby most strictly prohibit all Adigars and Puttungkatties from allowing under any pretence whatever, the diggers of dye-root to quit their service, and if any Adigar do allow such to quit their service without the knowledge of the honourable the Commandeur, he shall be dismissed from his service. If any of the officers of an inferior grade do this, he shall receive a hundred strokes with a cane, and be dismissed from his office.

21st Order.

As it has become known that the dye-root diggers residing in the Island of Manaar, denominated Cadear, whose duty it is to furnish dye-roots to the Government, do cunningly make marriages with Cadears

of another class who are not diggers of roots with the object of freeing their children and other decendants from such employment, we strictly enjoin that the children of such marriages be trained up in the service of dye-root diggers, and the Chattambus are directed to register such children as belonging to the dye-root digging class, and report them to the headman at Manaar. Those who in violation of this order register otherwise, will lose their office and be fined 9., for each offence. These fines shall be put along with the Church fines.

22ND ORDER.

If anyone shall sell either a Palla or Nalava slave of this Province, he shall sell at a rate not exceeding 15., and those who have bought them shall neither take nor send such beyond the limits of this Province. Those who violate this order, shall forfeit either the price obtained for the slave or the slave himself. Moreover, Christians shall not sell their slaves whatever caste they may belong to, either to Mahommedans or Hindus. Those who violate this order shall forfeit either the slave or the price obtained in his sale. And those who have bought the slaves shall forfeit the sum of money which they may have agreed to pay. This sum being divided into three portions, one part will be given to the informant, one to the Offidore and the other to the Orphan Institute.

23RD ORDER.

We strictly prohibit all persons, whether indigenous or foreigners, from dismissing from their dwellings even one of their slaves, whether sick or in health, because of some defect, forcing them to beg and obtain a livelihood in some improper way. If such slaves are found, the Dessave shall send them to the owners, who shall be compelled to support them, and pay a fine of 4. 6., one half of which shall be given to the Orphan Institute, and the other half to the Hospital.

24TH ORDER.

If persons of any class, either for their own advantage, or for the injury of others, are discovered executing false deeds to better their own affairs, be it known, that without any mercy, they shall be tied to the gallows, flogged, and branded on the back with a brand, and be committed to labour in fetters for three years. If those who have acted as false witnesses are discovered, they will receive the same punishment. If persons are discovered to have made unjust complaints of others, they shall be punished with a cane in proportion to the extent of their crime.

25TH ORDER.

No one shall prevent another's possession of houses, grounds, gram plots, slaves and cattle, without a distinct authority from the Commandeur or the Dessave. Those who act contrary to this order without such authority, shall be compelled to make good any loss arising out of such violation of rights, and restore the amount of produce agreeably to the evidence adduced. Such prevention has taken place in cultivating lands, in sowing and reaping, and in the case of gathering Palmyra fruits, with the permission of the Commandeur and Dessave obtained on oath. This species of prevention obtained on oath, shall not in

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future be allowed. Those who think that they have lawful grounds for action with reference to Palmyra topes and fields, and other land, may go for redress, either to the Dessave or to the Council, in due time, that no loss arise in regard to lands. Those who act contrary to this order shall without any mercy, be put in fetters for the space of one year.

26TH ORDER.

We prohibit the inhabitants, and especially the Chattambus from registering certificates of freedom and deeds of sale in the name of any slave; and those who violate this order shall pay a fine of 18s. for the benefit of the Orphan Institute. Papers of this kind and slave certificates, are not to be registered by any but the Secretary of the Province. From this day forth slaves shall not be registered, otherwise than in the name of their owner. Moreover, no slave either male or female, shall be bought or sold in shares.

27TH ORDER.

It is hereby enjoined on all the inhabitants of the Province, that those who wish to sell or otty any lands, houses, slaves, gardens or any other important effects, are required to procure publication thereof, three weeks in the Church nearest such lands &c., previous to the act, that those who think they have an undoubted claim may be duly informed of the matter and institute proceedings accordingly. Without such publication they shall neither sell nor otty. Moreover the Chattambus and their Ayuthandis without such publication carefully made for three weeks, shall not execute deeds of sale, otty or other bonds. No deeds of sale or otty shall be delivered until the party that sells or otties, in the presence of four witnesses who are well acquainted with the matter, declares, "I have received the money specified in this deed," and these four witnesses must sign their names in the book. Deeds executed contrary to this order shall be rejected as void and useless. Those who act contrary to this law shall forfeit their office and be fined 18., which shall be given to the Dessave, Orphan Institute, and the Leper Hospital.

28TH ORDER.

As we have seen that the inhabitants of this Province do bestow and relinquish their immoveable and moveable property by testamentary deeds, and by deeds of gift prematurely executed, we enjoin on all and every one of the inhabitants as follows,—That from this day forth they shall previously report the matter to the Commandeur, and obtain his permission. Permisson will be granted to the Chattambu and Odear of the Church of the said place, to execute such deeds. And they are required to be careful, agreeably to the nature of their office, that nothing contrary to the customs of the country be done. It shall be decided by the Commandeur and the chiefs of the Council, whether such deeds have been executed properly or not.

29TH ORDER.

The following is enjoined on the inhabitants of the Districts of the Province. The dowry and the moveable and immoveable property

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that in marriage shall be given to the children and blood relations by the parents, and friends of both parties, shall be carefully made known to the Chattambu of the church of their division, in the presence of their relations and others whom they may invite, according to the customs of the country; and they must register in the book of the Church that the bride gave her consent to the dowry which was registered and executed in her presence. Agreements brought forward contrary to this, executed or written in any other way, shall be void. Moreover we strictly enjoin upon the Chattambus, that this species of agreement shall be properly recorded in the regular book which must be delivered to the Dessave yearly. Those who violate this order shall pay a fine of 15s, which being divided into three, one part shall be given to the Dessave, and two parts to the Church.

Moreover, as it happens that false deeds have often been produced, which are said to have been executed when errors in accounts and law-suits are settled, it is enacted as follows—If any of those who have written false deeds be found out, and if it so happens that the Chattambu and his Assistant, or other party, on the authority of such deeds would deprive openly any one of his lands, or any of his claims, or if the thing is about to happen, those that have executed such false deeds shall be delivered up to the Court of Justice, and have the right hand severed.

30th Order.

If any of the inhabitants of the Province of Jaffna, although they be men of distinction and office, are known to have passed either by land or sea, and not by the regular points to the Wanny or other places, without a passport bearing the signature of the Commandeur, they will be put to hard labour in fetters for three years.

31st Order.

The Ordears are not permitted in the following practices. As obtaining milk and butter by force from those who do not keep cows, sheep or buffaloes, olunthu paddy and peas from those who do not possess cultivated lands, nor any kind of oil from those who do not possess cocoanut, margosa and illipei trees. Those who violate this order will be fined 7. 6. This sum shall be paid to the Church, and what has been extorted from parties should be restored. And be it known, that if this conduct be repeated, a punishment of 100 strokes with a cane, and dismissal from office, shall be incurred.

32nd Order.

The Odears' Assistants are to bring persons to labour in their turn, for the Government, and deliver them to the Superintendents of the work. If they meet with difficulties they cannot surmount, they may perform the work through the Vidal-turyan producing a certificate. The Palungkattes are to discharge the duty in the same manner. Those who are found guilty of a breach of duty in this matter will for the first offence be fine 1. 6., for the second offence 3., and for the third offence 4. 6. Should the thing happen more frequently, they will be fined 9.

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for each offence. The fine shall be divided into three parts, one part given to the person who receives the fines, one to the Orphan Institute, and one to the Government, which shall be employed in the expenses of the Fort.

33RD ORDER.

If any of the Odears purposely exempt any of the inhabitants from labour and are found out, they will be dismissed from their office. If they are found guilty of this practice in a large degree, they will be amerced in the sum of 15., as well as in the loss of office. One half of this sum shall be given to the Orphan Institute, and one half to the Church funds, and be it known that they shall also be committed to labour in fetters for one year. If the Odears within six weeks after the publication of this order shall give information of these acts of exemption, they shall not be subject to its penalties. Moreover, that if the Odears do not give information respecting the exemptions they have given within the time above stated, they shall be fined 15. and put to labour in fetters for one year. The fine shall be distributed as before directed. Moreover, those who give information of five persons who have been exempted, shall receive 15., and those who inform of ten persons shall receive 30. They shall not only receive this as a gift out of the fine money, but if men of good parts they shall be appointed as Odears. Besides, should those who are Chattumbus, in violation of trust, exempt some in the General Schedule which they have themselves delivered in, besides losing their office they shall forfeit for the Orphan Institute 15., and for the Church fund 15., and be put in fetters one year. Moreover, if any one whoever he be, do not report their continental slaves, they shall not only forfeit such slaves to Government, but be amerced in the aforesaid fine, one half of which shall be given to the Orphan Institute and the other to the fund for the repairs of the Churches and the School-houses—and he shall labour in fetters for one year. Again, if any of the Native inhabitants of the province of Jaffna be absent for more than a year and six weeks, whether out of the Province or some other countries, not having made provision for the payment of capitation tax, land tax, and other demands, and some arrangement for the services of Government during their absence, they shall forfeit 37. 6. for the benefit of the Government. Those who have concealed themselves, from any cause whatever, shall not escape the penalty. If the inhabitants of this Province leave one village for another, they shall receive permission from the Commandeur or Dessave, and at the time when the Tombu is renewed, they are required to report themselves to the Superintendents for the entry of their names in the village in which they may reside. For the purpose of this registration they shall pay 4½ to the keeper of the Tombu, as a fee. They who violate this rule shall forfeit 3. for the benefit of the Church funds.

34TH ORDER.

Be it hereby known to the headman of the five districts belonging to this Province, and all the inhabitants, that they must carefully provide that the public roads that lead from one Church to another, shall be 16

cubits wide, and the cross-roads from one village to another, 8 cubits wide. If after three months from the publication of this, the owners of land are found to encroach and close up the roads, they will for the first offence be fined 4½, and for the second offence 9, and if they offend again they shall be fined for each offence 1. 6. The fine to go to the Dessave. Moreover the Odears are required to see that the roads after they have been once repaired, are preserved in their respective widths, and to see that they are kept unobstructed. And in every instance when this order is violated, the Odear shall pay a fine of 9 to the Dessave.

35TH ORDER.

Be it known that the Chattumbus and Odears of the five districts shall always bear in mind, that in their Schedule those who are registered for the service of Government, are to be registered always according to their respective Castes, although they may have married with the other Castes. If this be not attended to, the penalty of one year's service, without remuneration, shall be exacted.

36TH ORDER.

We hereby especially prohibit Athigars, Resivas Odears, and Pandaras, and others, without exception, from exacting service from the people except for the Government, from exacting under any artful pretences whatever fines, and from receiving money by force, from the people on account of tobacco, cocoanuts, palmyra timber and other articles of sale, and from taking money committed to them by Government for materials. Moreover, it is further enjoined upon Athigars, Resivas and others, that in the interior they be careful to prevent errors in regard to weights and measures, and that they do not fell wood for other purposes without paying the price to the owners, and obtaining their consent. And that they shall not force the men of the lower classes, or their wives or children, contrary to their will, to bear the burdens for traders and others, but leave them among themselves, in buying and *selling*, to make their own agreements. And be it known, that if it be found that this is violated by any, they shall forfeit their office, and be put to Government labour for the space of one year.

37TH ORDER.

It is required in the Odears, to give to the inhabitants valid receipts for the duties they may receive for capitation tax, and tax on lands, gardens and trees, so also the Resivas are required to give receipts to the Odears for the money they receive from them for the land tax, capitation tax, &c. Those who do not conform to this order, shall lose their office and the Odears be fined in the sum of 18., and the Resivas 37. 6. one half of which shall be given to the Orphan Institute, and the other half to the Leper Hospital, and they shall also be responsible to Government for any losses that may arise from things urgent.

38TH ORDER.

Be it known that the Odears shall take due precaution by orders, and watchmen, to prevent all kinds of pilfering, wickedness, and acci-

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dents and other evils which happen in the villages and hamlets. If these matters be neglected their office shall be forfeited.

39th Order.

It is hereby strictly enjoined on the Resivas and Odears of these Districts, that they shall cause the inhabitants of these regions to pay in yearly their land, capitation and other taxes, in four instalments, viz., in November, February, May and the first day of August. The last portion must be paid into the Public Treasury before the 15th of August. Be it known that if any negligence take place in this matter, whether with the Resivas or Odears, they shall forfeit their office.

40th Order.

It is hereby enjoined on the Odears and their Assistants, and all other inhabitants, that they shall not detain prisoners who have forcibly broken through, and escaped from the pukkah apartments of the gaol, or any other evil workers who are in the interior, nor give them any abiding place, nor themselves afford them any thing in the way of eatables and drinkables, nor cause others to punish them. They shall, on the contrary, enquire after such persons, and deliver them up: If contrary to this order, any one is known privately to aid such by concealing and sheltering them, if one of the inhabitants, he shall receive 100 strokes with a cane, and be committed to labour in fetters for the space of three months; if the Odear be the Offender, he shall pay a fine of 30. This fine shall be equally divided and given to the informants, offidore, and the Orphan Institute.

41st Order.

We hereby enjoin on the inhabitants, whether belonging to the Province, or foreigners, that without delay, they obey the orders which may be sent to them having the signature of the Commandeur or Dessave, whether by Peons, or in any other way; and particularly on the Resivas and Odears and their Assistants, and the Superintendents of other places and castes, that they not only take care of those whose duties it is to serve in turn, but themselves when called, without failure do come immediately, and that they shall carefully take charge without failure of the affairs, which may be directed by the Commandeur in regard to the service of the elephant yard and other services, which may be obligatory on the people, and in business which may be carried on amongst the inhabitants. Those who oppose this order, if Officers, shall forfeit their Office, and if of the inhabitants shall be put to labour in fetters for six months. If any of the Pallas, Nalavas, or other castes employed in the Elephant yards, or when bearing the Headmen journeying in the interior, shall ungratefully abscond, they shall without forbearance or mercy for the first offence forfeit one ear, and for the second offence the other ear, and be put in fetters for one year, and if the offence be again perpetuated he shall be severely flogged on each occasion, and be put to public labor in fetters for three years. Moreover, if any of the inhabitants of the Province shall be cited by publication in the Churches, after beat of tom-tom, in the

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name of the Commandeur and Dessave, on account of any fault or any other matter, those who within six weeks do not appear, shall be subject to the punishment beforestated. If these parties have ancestral property, one half of it shall be confiscated to the Government.

42nd Order.

It is hereby enacted with reference to the Cadear, fishers, and other cocoanut fibre rope-makers, that they may sell rope for the use of the inhabitants, but no strangers are allowed to purchase and remove any of the remainder, but those whose duty it is to supply Government with rope shall collect it. And should any one before the amount required for Government service is delivered to them, buy rope in large quaintities or export it, they shall forfeit the rope and pay a fine of 18. Those who buy Palmyra timber for exportation without a written order from the Commandeur, shall be subject to the aforesaid penalty. The Palmyra timber and the rope shall be forfeited to Government, and of the fine, one half shall be given to the Orphan Institute, and the other to the Leper Hospital.

43rd Order.

If a Canacapulle or a Pandarapulle, in the charge of those who are engaged in the labour required by the Government, be found out on evidence as having given a certificate, being bribed, to the laborer in order to exempt him from labour, he shall pay a fine of 30. Of that fine one half shall be given to the Orphan Institute and the other half to the funds of the Fort. Moreover, if this kind of practice be charged on a European Superintendent, he shall be put on horseback, furnished with 4. 6., for three days batta, and sent to Marinyore, and pay a fine of 18. to the Offidore. Moreover, if the laborers shall abandon the labor required of them, as before stated, they shall receive 200 strokes with a cane, and be put in fetters for one year. If those who have in the manner stated relinquished their work, shall come to the Commandeur and report themselves they shall be exempted from the penalty before mentioned, and receive a premium of 7. 6.

44th Order.

No one after the hour of seven in the evening, shall at all in the town or its suburbs fire a gun. Those who act contrary to this order shall forfeit the gun and pay a fine of 9. Of this fine one half shall be given to the Offidore, and the other half to the Orphan Institute. Moreover, no one in this District or in the adjacent islands shall by guns or other weapons shoot or seize, without a licence from the Commandeur, deer, hares, birds, &c. Those who violate this order shall be fined 9., which shall be given to the Leper Hospital.

45th Order.

Vellalers, Parathasis, Madapullies, Mallealers, Agampadys, Tannykarars, and Shanars, shall be required to perform one day's labor per mensem in the Fort. If they fail they shall pay a fine of 2¼, per diem.

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46th Order.

We prohibit every one from buying or receiving as pledges from the soldiers of this Province, hats, or uniforms. or arms. Those who do so shall pay a fine of 37. 6. This fine shall be divided between the informant and the Orphan Institute. Morever, neither the renters, nor those who vend arrack in taverns, shall loan arrack or any other thing to the soldiers and marines, or any of the other inferior servants of the Government, in trust beyond 2¼, and if they do violate this, be it known that they shall have no redress in a Court of Justice.

47th Order.

If any one shall trespass in the high roads, and in other roads on any of the inhabitants, or any of those who have come hither to reside, or if they shall enter their houses and do them any injury, such shall be seized and delivered to the Offidore and the case shall be tried before the Council of Justice, according to the Batavian code of laws.

48th Order.

If any of the inhabitants be discovered with proof, as having attached by means of another to a wall of a house or tree, any ola or paper containing matter to bring any one under reproach, he shall be delivered to the servants of the Offidore, and be flogged severely, and put to labor in fetters for three years. Moreover it is enjoined on every one subject to the Government of this Province, that on such defamatory ola being written and discovered that they shall report it to the Commandeur without any delay. And he shall send the Officers of the Court of Justice to such places where olas are nailed or hung up, and give orders to have them torn, and burnt. Those that have violated this rule, shall pay a fine of 9. to the Offidore.

49th Order.

All the Europeans, Livreykarar, and the residents of the Town, when they sell their immoveable property, they shall be required to have the deeds written by the Secretary of the Court of Justice. And be it known that when such is transferred from one to another, a fee of one fortieth shall be paid to the Government, and if otherwise transferred, the deed will not be valid.

50th Order.

No peons or those who have been sent into the interior for the purpose of buying any articles, shall by force in places where purchases are made, receive anything in opposition to the wishes of the people, but are required to buy on payment, as may be agreed with those who sell, according to the price agreed on And be it known that where this order is violated, in every case discovered, for each, one hundred strokes with a cane, shall be inflicted.

51st Order.

No one of the Provincial Officers, or of the inhabitants, shall in the interior, or when coming to the Fort, be borne in a Dhola, nor for this purpose engage bearers in the Country. But those who have obtained permission from the Governor or Commandeur, may do so. Those who

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act contrary to this order, shall be put to labour for Government six months. And be it known that those who have supplied bearers for this purpose shall be subject to the same penalty.

52nd Order.

If married persons, whether male or female, shall abandon their own husband or wife, and commit improper acts with others, whether married or single, they shall be punished according to the Batavian code of laws.

53rd Order.

We have heard and known that many women by reason of marriage contracts already made, have themselves without enquiry, consummated a union and become pregnant, and that thereby many complaints and disputes have arisen; and as in consquence, by mere assertions, without adequate proofs, enter into law-suits; the Chiefs of the Church Council are subject to endless trouble, and as much time is thus wasted, we hereby for the purpose of suppressing such disgraceful practises, enjoin that, from this day forth, if a woman who is engaged in marriage do unite herself with the party and become pregnant, and comes with a complaint either to the Dessave or the Church Council, or others, no action will thereupon be taken, nor will the party who is concerned be compelled to marry her, nor is he obliged to make any provision for her maintenance. And be it known such women will be considered common women and adulteresses.

54th Order.

Washermen whose occupation it is always to engage in washing, are not to detain for eight or ten days, nor change, nor sell the clothes of any one of the inhabitants, nor the clothes of any of the Government servants. If they shall violate this order, they shall receive one hundred strokes with a cane, and make good any loss occasioned to the owners of the clothes.

55th Order.

We strictly prohibit Odears, Washermen and other inhabitants, from performing any ceremonies, such as the preparation of temporary ceilings and canopies, except for those who have produced signed certificates, notes and other instruments with reference to the marriages and other festivities of any one. If any act contrary to this order, if Odears they shall be fined 30, if the Washerman who put up the cloth 30; and if those who conducted the ceremony without permission 30. This fine shall be equally divided between the Orphan Institute and the Leper Hospital.

56th Order.

Amongst the inhabitants of these Districts, as we have learnt, there is a practice on the occasion of the marriage of their children, and when they first enter a new house, of receiving money on having given beetle. This practice in former times was a good usage amongst relatives and friends, but now it turns out to be an evil practice operating injuriously as the means of abstracting money among avaricious persons, and therefore the powerful uniting with the native chiefs cause the poor

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ignorant people to lose money, more or less by cunning devices. These being awed by the great are afraid to refuse giving. Thus it assumes the appearance of a tax and obligation, whereas such power of taxation belongs to none but the Governors of the country. Therefore to remove this evil we hereby strictly prohibit the Resiwas and Odears and other officers from encouraging any of those within their respective limits to continue this practise. Yet that they may oppose we again enjoin upon them with all authority, that the money which has been thus obtained in opposition to authority be returned. Be it known that the Officers who by various artful means aid in such things, and practise them, shall forfeit their Office, and also be each fined 9. This fine shall be divided and given to the Informant, the Dessave, and the Orphan Institute.

57TH ORDER.

No one without the authority of the rulers shall fell a fruit bearing Margosa tree, that such good trees as these that bear fruit may not be destroyed. If in violation of this they fell such trees, they shall be required to pay 7. 6. for each tree, as a land tax.

58TH ORDER.

In these places those who bake oppers not regarding ordinances that have been already published bake and sell oppers greatly under weight, and of inferior quality. and reduce the legal weights, whereby it happens that the people suffer great disadvantages and are injured in health. In order to prevent such things, we have seen it good in consequence of this, to define authorized standards for the country, viz., white oppers of four cash shall be ½lb, four cash oppers of half brown flour ¾lb., and four cash brown oppers mixed brown, 1lb. If any are discovered making oppers under weight, or in any way inferior, or with mixed rice flour, they shall not only lose the oppers, but for the first instance 18, and second instance 36, and third instance 75, shall be exacted as a fine. This fine shall be divided and given to the Informant, the Offidore, and the Orphan Institute. Those who bake oppers without permission will be subject to severe penalty. Moreover the owner or owners shall be responsible for the acts of slaves, there being no other redress.

59TH ORDER.

Because frequent complaints are made to us, that the inhabitants of the Province, without the least consideration, appropriate one anothers crops while in the fields, to prevent such injurious trespasses as is deemed best, it is hereby enacted, if after the publication of this order any are found to have committed such acts of trespass, they will not only be required to make good the loss in the crops, for the first offence, but also be publicly flogged, and put in fetters for the space of one year. If on evidence they are discovered to have repeated such act, they shall be again severely flogged, branded, and put to labour in fetters for two years. If the thing happen a third time, they shall be severely punished as we may see fit. Moreover, if under the instigation of others, or through malice, any shall drive cattle to feed in others' fields, and crops are found to be damaged, the loss shall be made good, and the cattle or the price thereof shall be given as a fine to the Hospital.

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60TH ORDER.

If cattle let loose in the roads shall feed in the corn fields of others, or if they have trodden down the corn, the owners shall not only make good the damage but shall pay as a fine for a buffaloe or a cow 9, and for five sheep or other small animals 9, half of the fine shall be given to the Dessave, and the other half to the Odears whose duty it is to prepare folds near the Churches for pounding the cattle which do damage.

61ST ORDER.

If cattle belonging to any one stray and enter the folds of others, none shall retain them in his possession, but be obliged, when there is no Athigar, to deliver up such stray cattle to the Odear of that region. The Athigar or the Odear shall cause publication to be made by beat of tom-tom that such cattle are kept in the fold, and that the owners may lead them away. But the Odears are not to deliver such cattle unless it has been shewn by evidence of the branded marks &c. and that they are the proper owners of such cattle. The owners of them are required to pay to the Athigar or Odear who have preserved their cattle 6 each for the buffaloes, and 4½ each for cows, and 1½ each for sheep. Of this sum one half shall go to the party who drove such stray cattle to the Athigar or Odear.

62ND ORDER.

It is enjoined on the Livreykarar and all the residents of the town that they shall clean the Streets opposite their respective dwellings, by removing the rubbish, filth, weeds &c. Those who neglect this shall pay for each instance 1. 6. to the Orphan Institute. If the slaves, the servants or foster children and others belonging to any one do not throw such rubbish into the sea or river, but throw it into the roads, they shall for the first instance be put to labour six weeks, and for the second instance three months, and for the third instance one year.

63RD ORDER.

If pigs belonging to any one are found in the streets of the town without being rung, the military or the Caffres may kill and take them for their own use. And be it known that the owner shall not demand the value of such animals.

64TH ORDER.

It is hereby enjoined upon all the worthy Chattumbers and Odears of the Parishes of this province, that if any of the male inhabitants in their respective parishes or villages die, or have emigrated secretly within the 12 months (*i. e.* from September to the end of August) they shall by the end of August, and within the 10th day of September, particularly report the village, and the name, and his father's name, caste, and the time of death or disappearance, with their signature, delivered to the Tombu-keeper in this way yearly. And in the cases of the sick where the relatives are to pay the money, so that we may remove the complaints which have been made to us within a few days, we

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require the Odears and Chattumbers before they execute sick certificates, present in writing intimation as to who is proper to be exempted. And if the Odears and Chattumbers are not careful to execute our orders, they shall be required to pay the money for the sick. We see it right from this day forward, not to diminish even the least portion of the amount entered in the schedules, which we have given to the odears and in which the village &c. are mentioned, and the Raseras are required to pay into the public treasury in three months from the time the schedules shall be delivered to them, all the sick money according to enactment. Therefore it is enjoined on the Raseras, Odears, Chattumbers, Arachear, Peons, Ayuthandi, Government Pandaras and others, who occupy minor posts of whatever denomination of the people of the interior, that if any of those whoever they be who are exempted from public labour by His Excellency the Governor or the Commendeur on account of illness or other disabilities after the Tombu of registration has been received, are required to produce their papers and orders before the Tombu-keeper. If they fail in this, they shall without any other expedient be required to pay the sick money from the time they neglected producing the certificate. In future lest any indulge an idea of exemption on mere verbal statement that he has shewn certificate and order to the Tombu-keeper, the Tombu-keeper shall signify in the notes what month and what day he saw them. Moreover, because it has been matter of frequent complaint, that the sick money is not paid by the aged and indolent as being unable, we hereby notify to all, that if the odears shall seize and bring such before the Commandeur when failure occurs in the public labour required of them in their turn, should they be unable to pay the sick money, they shall for the first offence be put to labour in fetters for six months, and be it known that vouchers shall be given to exempt the Odears from sick money in such cases.

65TH ORDER.

No one of the emigrants nor inhabitants shall proceed to meet those who come with commodities to this Province from Wanny, Kandy and other places, for the purpose of buying their articles to sell them again here at a higher rate. Be it known that whoever is found acting contrary to this order, shall be put to labour in fetters for the space of one year.

66TH ORDER.

It will be seen in the 73rd part of the book of orders, that because in this Province cattle stealing was frequent, they hung such cattle stealers without mercy. In this order we have rescinded, that law, and made it lighter. When any are found to have stolen either buffaloes or cows, he will for the first offence be beaten, branded, and put to labour 5 years in fetters. If he be guilty a second time he shall be hung without mercy by a rope till he be dead. Those who have stolen five sheep or other small animals, shall receive the punishment assigned to him who has stolen buffaloes and cows. Those who are found to have stolen three or four small animals shall according to the offence proved receive severe corporal punishment.

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67th Order.

In order that the water-courses through which the fields and other grounds of the inhabitants are watered from the sides of the tanks and reservoirs may not be choked and filled up, the Odears of the different divisions shall urge all the people who are the owners of the fields next to the water-courses, to cut the channels to the ordinary breadth and depth as before. The Odears who do not conform to this order shall each be fined 9., and the disobedient owners of the fields which are nearest to the said channels shall be find 4½ each. Half of this shall be given to the Dessave and halt to the Orphan Institute.

68th Order.

In like manner we especially prohibit all foreigners and the inhabitants from walking in the streets and lanes without artificial light, whether in moonlight or darknights after nine o'clock. Those who are found violating this order if residents of the town, shall for each offence forfeit 1. 6.. to the Offidore, and if of the interior 9. to the Dessave.

69th Order.

If any one whoever he be is discovered not to have behaved as is directed in the following compendious orders, shall be punished without mercy as stated in the respective parts.

If any person or slave, whether male or female, shall have given toddy or arrack, having conveyed it to the fort or near the walls of the fort to the soldiers and marines, that they may take it in over the walls, each shall lose for the first offence one ear, be put to labour in fetters for one year, and if he repeat the act, he shall lose the other ear, and be put in fetters for two years. We make known to all that are within this fort, that if they shall send for arrack for their own use, they shall direct their slaves or servants when they bring it in, to give information to the guard on duty. Moreover, if any of those that reside in the fort sell arrack or toddy to the Soldiers and Marines, or distill any kind of ardent spirits within the fort, and if they be discovered, they shall not only lose their office and batta, but be fined £7 10s.

This fine shall be divided and given to the Informant, the Offidore and the Orphan Institute. No Nallavun or Nalluthy is allowed to bring and sell toddy, either in the town or in the suburbs. If they act contrary to this order, they shall forfeit the toddy, and receive one hundred strokes with a cane.

70th Order.

Without the written permission of the Commandeur, no one shall take his cattle to the pastures or to feed in the island. Nor shall they take them to other improper places, especially to places where dye root grows. Should they violate this order, they shall forfeit their cattle to the Government.

71st Order.

Throughout this Province the tanks and other places where water is confined, shall without obstacle from this day be considered as common. The Governor of the country has approved of the Decision of the

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Commandeur as conveyed in writing. Therefore, if any hereafter shall of themselves presume to lessen the size of the tanks, and make fields for sowing corn, they shall be fined 75. This fine shall be given to the Leper Hospital.

72ND ORDER.

We hereby notify to the inhabitants of this province, that if it shall seem in their judgment that the decrees of the Minor Council are unjust, and think that they ought to institute a new action, they shall make known their intention to enter a new action within ten days of the decree, and within one month they shall institute their action; and they shall pay as a pledge to the Secretary of the Council of Justice 18 9. Moreover, if for any reason connected with the decision of the Council of Justice, they are inclined to have the case heard at Colombo, they shall signify their intention within ten days, and institute their suit.

73RD ORDER.

At any time when the Raseras, Odears, Canacapully and the Superintendents of the different villages of the five Districts of this Province, shall be required by the Commandeur to furnish schedules of the lands, grounds, gardens, houses, palmyra, margosa, eleepy and the fruit bearing trees in the different regions, and who the owners are, they shall faithfully supply them. If any should unfaithfully and of purpose write incorrect schedules, they shall lose their office and be fined 37*s* 6*d*. One half of which shall be given to the Orphan Institute and the other to the Leper Hospital. Moreover we hereby publish for the information of all the people of the Province, that any person whoever shall know that others have unfaithfully obtained possession of any houses, lands, trees, slaves, cattle, &c. shall within six weeks from the time this order is published come and make it known either to the Commandeur or the Dessave or any Superintendent of the country. Those who do not give information shall pay a fine of 37*s* 6*d*, one half of which shall be paid to the Orphan Institute, and the other to the Leper Hospital.

74TH ORDER.

We publish as follows, for the purpose of calling attention to the case of such as may be found dead in any place. If the thing happens in the town or within half an hours' distance, it shall be immediately made known to the Commandeur, who shall examine the body in the presence of two headmen of the Court of Justice and the first Maistry, the Offidore, and by the Secretary of the Court of Justice write and direct that a reply be prepared. If the place be away from the Fort *i. e.* farther off beyond the distance of half an hour and within one hour. The Melengy and the second Maistry shall be sent by the Court. They shall in the presence of three or four respectable near residents carefully examine into the matter of the corpse, and the deposition of the Odear or Chattambu, or Ayuthandi concerning it, and record in writing and come and report the affair to the Commandeur. If he find that it is not a suspicious case, he shall give permission for the burial

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of the body. If there be any grounds of suspicion in the matter, the case must be re-examined. Moreover, if any be found dead having hung himself, his body shall be suspended by the feet in some desert place in a tree, or in the half-gallows prepared for this purpose. The directions so far relate to the vicinity of the Fort.

If beyond these limits, in Valygamum, Vadamoratch, Tenmoratchy, or in the Islands of Kayts, Caradivoe, &c., the inhabitants of those villages and hamlets shall have the dead body examined by some respectable residents, furnish in writing a report of the matter, and immediately bring it for the information of the Offilore who resides opposite the Fort. Moreover, if any shall be found to have hung themselves, and if it be ascertained publicly that there is no fault attaching to any one in the matter, after the thing has been reported they are to do as before directed. If any of the inhabitants of Patchellapalle, Poonareen, Pungudutivoe, Neduntivoe, Nijanativoe, and Analativoe, shall discover a dead body, after they have written a report of the matter they may bury the body, and immediately make the affair known to the Commandeur. But if it appear that the person has been murdered, they shall not bury such dead body, but come and make the matter known and ascertain well and write down a report immediately. If any violate these directions, they shall be committed to labour for three months.

75th Order.

As the people have frequently occasioned endless difficulties, without regarding decisions come to, by renewing their suits against one another with the intention to put an end to all cases of litigation of old standing, it is hereby notified to all the inhabitants of this Province and to all emigrants, that from this day forth after the publication of this order, we hereby annul all and every description of disputes and complaints that may be brought with reference to hereditary property, dowries, otties, boundaries &c., and all the description of matters and cases that are of more than ten years standing, and hitherto unsettled cases and disputes and complaints of long standing &c. Moreover, as to those who think that in some case they ought to seek redress, and write with reference thereto a petition according to custom and produce it before the Council of Justice, we direct that such petition shall not be received.

76th Order.

It is hereby directed that all those who are employed as Parish Chattumbers to whom are delivered the books containing these orders, that they do specially year by year in the month of January, in the presence of the people of their respective parishes, without failure, read and make them known. They are required to make publication six days previously mentioning the day and hour when this shall be read. And that they may make known to all of whatever caste or class who may come and enquire on the subject of the respective Orders, they are required to have these by them. Be it known that if this be neglected, they shall lose their office.

Thus are finished and renewed, enlarged and written in the year 1704, on the 25th of April, at Jaffna, city of the Master of the Guitar, in the

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Government garden, at Nellore, and in the margin sealed with red wax with the Government stamp, bearing the signature of Cornelius Joan Simons, and signed by the Secretary John Andercone, and delivered at the command of the Most Excellent Governor Cornelius Joan Simons.

The notification of Cornelius Simons Governor and Director of Ceylon and its dependencies, as follows: It seemed to us good in consequence of the complaints that in former years have been brought on account of the evils that are done in this Province, under the Commandeur of Jaffna, and on account of other things, to renew all the statutes and orders that have been sent and published for the suppression of these evils in a very brief manner, and as difficulty arises to add and to amplify. And we command that these be made known as a law for the subjects of Government in Dutch and Tamil in all Churches and School Houses. Moreover, we publicly enact and command, that without exception all the Government officers and all the inhabitants shall conform to all the orders as summarily presented in these clauses.

Those who violate these orders will be punished as provided in the respective clauses by fines and corporal inflictions.

REGULATION RESPECTING THE TRANSMISSION OF SUMMONSES, PERSONS DYING IN THE PUBLIC ROADS, AND THOSE WHO ARE FOUND HUNG.

In the year 1709 on the 29th of May, the Governor hereby enacts for the information of the Raseras, Odears, Taliars, Patungkattis, Parish Chattumber and all the inhabitants of the districts of Vallygamum, Vadamoratchy, Patcheliapalle, and the islands, when the people of this province because of disputes, quarrels, fights &c. bring complaints before his Excellency the Governor or Dessave that they may have their respective cases decided and summonses are sent to cite the defendants in order to settle the case, the parties whose names are given in the summons do not appear, but pass the matter over without assigning reasons, and consequently the plaintiffs that obtained the summons are in the habit of complaining a second and third time. Moreover those who have obtained summons, not shewing them to the party being frivolous and false charges in order to inculpate them, saying that they have shewn the order to the accused mentioned in the summons, and that they have not appeared on the summons. Some parties obtaining orders in false cases, and shew them without making their appearance to state the complaints before them who appear as cited. Therefore, having made specific regulations regarding such matters we command that all attend to them. If any shall bring complaints against others and obtain summonses, and shewing them to the accused mentioned in the summons without detriment to the complainant, shall come and appear on the third day and present his reasons and have the matter settled. No one shall without just cause obtain and deliver summonses, nor shall those who have obtained summonses as complainants pass over the

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matter without appearing. If in the aforesaid way any one shall come and obtain a summon, he shall with valid evidence and accompanied by the Odear, Taliar, Patungkatty of the respective Villages as witnesses produce the summons to the accused, and those officers shall signify in a written ola signed, in what month and on what day, by whom and to whom this order was presented, and shall send such ola by the person who obtained the summons.

In the case of a dead person who has been engaged in disputes the Odear, Chattumber and Ayuthande who is nearest the place being present, shall enquire and fully write what is made known, and come and report to the Commandeur. After he has clearly ascertained that there is no suspicions attached to the death, he may permit the corpse to be interred, and if there be suspicion the case must be further examined.

If any shall hang himself, his body shall be suspended by the feet in a desert place, or on a tree or at the half-gallows provided for this purpose. This relates to the fort and its vicinity. If this happen farther off as in Vallygamum, Vadamoratchy, Tenmoratchy or in the islands, Caradivoe, or Kayts, the inhabitants of those Villages and hamlets shall have the dead body examined by some of the respectable residents, and write what appears with reference thereto, and immediately bring the report for the information of the Offidore opposite the fort. Moreover, if any one shall hang himself, and if it appear that no one is in fault thereupon, after the matter has been reported, they shall act as before directed.

If an order be sent to the Raseras and other officers in Patchellapally, Poonaryn, Pungudutivoe, Neduntivoe, Nyanativoe, Analativoe concerning any matter belonging to any one of the inhabitants, the parties shall write another ola, stating that they have received the order, and put their signatures, and send it by the party who delivered the order. Those who fail to act according to this order shall be subject to pains and penalties.

HINDU CEREMONIES PROHIBITED.

His Excellency Henry Biekwekker the Governor and Director of the remote regions of Ceylon, and the dependencies of Madura and Chalcary, and member of the Council of Batavia, the Indian Netherlands, met in Council, with the chiefs, enacts as follows:—

Without any regard to the blessed statutes, which we from time to time have published to prohibit and destroy the public worship which is performed among this people, shameful evils, and blaspheming the true God are practised. Besides not only temples, but idols and certain religious rites are publicly prepared for the false gods and to the honor of the devil. Not only in the night at an unwonted time is this practised with closed doors and windows, but in the light of day at the time we worship the true God of our own Church, and at the time we preach the truth they are practised. Because they have departed from the true lessons which we have daily given, that for the purpose of speedily removing the darkness of the inhabitants of this country,

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and to prohibit such things, we have seen it good to call their attention to such thoughts as may lead to their blessed salvation, and to destroy the worship, ceremonies, and the rites belonging to their gods and devils, and accordingly we hereby institute and command as follows: If either the inhabitants of this country within the limit of the Government or those who are detained for some days or permanently, or Christians, shall practise any worship of gods or ceremonies of devils, such ceremonies of whatever kind in whatever place, and do honor to any idol by such ceremonies, or any Hindu ceremonies shall be discovered, they shall without mercy and regard to persons be put in fetters. If any of those who are registered as true Christians having received true teaching shall be present, where any of their relatives, friends, acquaintances or neighbours, such rites of the gods and worship of devils and have thus done wrong associating with them, and if they shall practise such things, by way of ornament and arrangement, as serve to enhance the splendor of temples, and honor false gods and devils in their houses or out in any place through others, they shall receive as the matter may be ascertained, and have happened, severe corporal punishment. The priests and all those who perform the religious ceremonies of the temples as soon as they hear this our order read shall no longer remain but leave the limits of the Government, and never again appear in these parts. Those who disregard this and are discovered shall be publicly whipped, put in fetters and committed to labour for the space of one year. If this happen a second time they shall be subject to severe corporal punishment. We have seen this to be necessary for the public service of the true God, and to abrogate the hateful worship of the devil Wherefore in cases of blaspheming God as aforesaid, whether in the Fort or out of it, away from it, or in the Interior, we command the Officers of Government to lay aside other services and enqnire into this and put the offenders into prison until they can receive due punishment. Thus in the year 1711 on the 6th of June, in Colombo in the Capital was instituted, commanded, written and completed. This was copied according to the Tamil translation from Colombo and signed by Henry Riekwekker, and sealed in the margin with red wax, and according to the command of the Governor Henry Riekwekker and the heads of his Council signed by the Secretary Isaac Augustine Rumbre.

ORDER RELATING TO BATTA.

It is hereby enacted by way of regulation for the guidance of Odears, that when the Commandeur of Jaffna or other principal or inferior Officers shall go to the Interior on Government Service, that the Odears nearest to the Commandeur may supply their batta or provision. It is hereby shewn what shall be given to each per diem without price, and to whom it shall be given, and also what shall be the price when articles are supplied to other parties.

The batta to be supplied to the Commandeur of Jaffna for one day and night.

Six fowls, three measures of ghee, wherever obtainable nine lbs. fish, six measures milk, twenty eggs, twenty limes, two measures of fine rice

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one and a half measure of cocoanut oil. Six slaves to be supplied with six measures of rice and three cocoanuts, and one Corporal and six Soldiers and Company shall have seven measures of rice and seven lbs. fish, three chickens, and one measure ghee, which shall be equally distributed among them. For two Interpreters and two Arachears shall be given six measures rice at the rate of one and a half measure per head. To two canganies, eighteen peons, three trumpeters, and six torch bearers, and eighteen siveyors shall each be supplied with one measure of rice, two horses, eight measures of paddy, and two bundles of grass. These articles are for day and night.

To the Dessave shall be given four fowls, two measures of ghee, and where obtainable six lbs. fish, four measures of milk, twelve eggs, twelve limes, one and a half measure of fine white rice, one measure cocoanut oil, for four slaves four measures of rice, and two cocoanuts, for the guard accompanying him two measures of rice, one fowl, or one lb. fish, two-seven measure of ghee and one cocoanut shall be supplied. For one Interpreter and one Arachear three measures of rice, for one cangany, twelve peons, and four tom-tom beaters and two torch bearers and 12 Siveyors per head one measure of rice shall be supplied.

For the Tombu-holder 3 fowls, ½ measure of ghee, and where obtainable 3 lbs. of fish, 3 measures of milk, 10 Eggs, 10 limes, 1 measure of fine white rice, and one measure of Cocoanut Oil. Slaves 3 measures rice, 1½ cocoanuts. Canacapulle accompanying, per head 1½ measures rice, and for 2 peons per head 1 measure of rice.

These articles the Odear shall procure from the people without price. Although he thus procures them from the people without price he is to obtain them by equal contribution from all, none being excluded. Beyond what is expended they shall not ask for more from the people nor take by force. Those who do shall be flogged with lashes, put in fetters and committed to labour for 3 years; since to the principal and inferior headmen when they go into the country on the public service is made a double allowance for table expenses, should they require they may pay as hereafter stated the price for the articles they procure.

The Ministers including the heads of police, together with Escola, Lieutenant Alpharsu, shall be supplied as provided above, for the Tombu-holder.

When the minor officers, as the sworn land Surveyor, Athigars, residents, offidore and others of this rank, when they shall go on the service to which they are appointed, they shall have per head one fowl and one chicken, ¾ measure of ghee, and where obtainable 1½ lbs. fish and one measure of rice, ¾ measure cocoanut oil, and for each slave one measure of rice and half a cocoanut. To the assistant writer, 2nd land Surveyor, the Vattico and Sergeant of the Court of Justice, one fowl, half a measure of ghee, and where obtainable one pound of fish, one measure of rice and ¾ measure of cocoanut oil.

As to the manner in which they shall pay the Odears for these things, a measure of fine white rice 1⅛ Dutch stiver. For one large fat fowl 3

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stivers, one measure of unhusked rice one one-sixteen Dutch stiver, one measure of ghee three stivers one pound of fish three-fifth stiver, one measure milk half stiver, one cocoanut half stiver, ten hen eggs one stiver, one measure of cocoanut oil two stivers. One company of troops with their leaders, forty-eight, four or five, more or less, shall be supplied at the Government rate, *i. e.* forty measures of rice, forty-eight fowls, or forty-eight lbs. fish, seven measures ghee, two measures cocoanut oil, forty-eight cocoanuts, one-eight lb. pepper, proportion of salt and vinegar at different times, as the people may be, more or less at the same rate.

When the Odears cannot obtain poultry and supply sheep, they shall charge at the rate of one sheep as six fowls, and one goat as three fowls.

As has been reported, the headmen when they go into the interior frequently take more coolies than they require, we have seen it right to check that practice, and to fix a rate that the headmen may not take more than required, as found in the following rate. Dessave besides the Siveyor 32 Nalluvas. Tombu-holder 36 Nalluvas.

The Minister and Police Officers, the military men, Lieutenant. Escola and Alpharysu, each Nalaras 30. Other minor officers such as the sworn land surveyor, Athigar, Residents, Offidore, and the other similar officers on the appointed trips, each 20 Nalaras; assistant writer, Ayuthandi and second Surveyor, Sergeant of the Court of Justice and others of this rank, 10 Nalaras. But the Siveyor and other coolies who shall bear palanquins &c., who may go on the services of Government into the interior shall not receive batta. To serve without hire has been their usage from ancient times as the name implies. They shall however change and bear from place to place in the respective parties. But for the coolies who shall bear the palanquin and baggage of the headmen on journeys to such places as the Wanny, Manaar, Calpentyn, Colombo and Trincomalie, on Government service, shall receive batta from the Government according to usage, they shall halt on the outside of the Forts, and receive daily each one measure of rice, one one-hundred twentieth lb. of pepper and two-fifth stiver money.

The Odear may know who those are that are engaged in the Government service, as it may be ascertained by a signed order from the Commandeur.

Colombo, January 1st, 1760.

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NOTIFICATIONS.

Since we have heard with great pain that among the officers and people of this region weighty sins and civil deeds abound, we see it necessary to notify to all persons that none may escape on the plea of ignorance as to the penalties prescribed in the codes of law.

1st.

The blasphemy of the Almighty is firmly prohibited. Such blasphemers will be put on rice and water and closely imprisoned one month, or severely visited with corporal punishment, as the case may demand.

2nd.

All devil devotees, diviners, palmisters, and all other such deceivers, shall be transported or receive corporal punishment, as the case may be, yes, if they should abridge the life of any of their fellows by their iniquities, they shall be subject to the penalty of death.

3rd.

All servants who shall by word or deed rebel against their masters, and act fraudulently, without any favour shall forfeit body and property. Those who are accessary to them shall be flogged and branded. If any aware of a combination of persons or a conspiracy formed to commit an act of violence, shall divulge the matters, although a party concerned, he shall receive a reward, and if desired, secresy shall be guaranteed. But if he who is aware of such evil counsels do not divulge them, although not of the party of evil workers, he shall according to the amount of guilt be subject to penalties affecting life and limb.

4th.

If any shall unite himself with a public enemy and carry on a friendly correspondence, he shall according to the case be flogged, branded and banished, and even may be subject to death.

5th.

If any shall desert to the enemy, he shall be liable to the punishment of death and confiscation of goods.

6th.

If any shall dare shew in writing any thing as a complaint aspersing the great or his superiors to whom he owes obedience, he shall be subject to corporal punishment and confiscation of goods. Nevertheless he is at liberty instead of pursuing this course to make his complaints against his superiors to the Commandeur, to the headmen, or the dessave, without restraint. If he finds that he is not regarded by these, he may take his case to the Supreme Governor of the Island.

7th.

All who are guilty of perjury shall be without favor flogged and branded.

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8th.

Adulterers and adulteresses as the case may be shall be liable to severe punishment both in person and property.

9th.

All those who harbour adulteresses or give way themselves to abominable acts with women, shall according to the case be banished, and besides be liable to greater punishment.

10th.

Those who are discovered in the act of looking at another (a phrase implying immodest conduct) whether male or female, shall be imprisoned and receive corporal punishment publicly, as an example to others.

11th.

If any man shall attempt to violate by force a young virgin, a widow, or married women, he shall be flogged, branded, and as the case may be is liable to the punishment of death.

12th.

If a slave has attempted to do a disgraceful act towards a woman born in the same house. he shall be put in fetters and committed to labour for life. But if he is discovered in an improper act with his master's wife or daughter, he shall be liable to the penalty of death.

13th.

If any are discovered to have had improper intercourse with his relatives, contrary to the rules of consanguinity, he shall forfeit his property and be liable to penalties affecting life and limb. This relates not only to such as are natural relatives, but also to such as are so by marriage. Therefore one who has had shameful dealings with his brother's wife, shall be very severely punished, because he has also disregarded the rule of consanguinity.

14th.

If any be guilty of an unnatural crime with a man or beast, he shall without mercy be put to death.

15th.

All thieves shall not only restore that which they have stolen, but be publicly tied up and flogged and branded, or as the case may be, receive other severe corporal punishment. Those who enter houses, temples, shops, and steal, or when a fire occurs, or when a ship is wrecked, or in any such extreme cases, shall be liable to the severe penalty of death.

16th.

If a Hindoo, a Mahommedan or any one who is not a Christian shall have carnal dealings with a Christian woman, he shall be put to death. And likewise if Christians shall have carnal dealings with the Heathens, Mahommedans, or any who are not Christians, they shall be liable as the case may be to severe punishment.

17th.

Those who break into a house and steal shall be flogged, branded, and

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imprisoned out of the country, and be subject as the case may be to the punishment of death.

18TH.

Those who steal buffaloes, cows, and who dare drive away cattle from the pastures and folds, shall be punished as before stated.

19TH.

Those who receive stolen goods, and those who give permission for their deposit, shall be flogged and banished from the country, and be punished.

20TH.

All those who carry off slaves either by sea or land, either for the purpose of sale or otherwise, shall be flogged, branded, and for ever banished from the country, and besides as the case may be are liable to the punishment of death.

21ST.

If any shall attempt to steal free men, and carry them away as slaves, he and his associates shall without distinction be put to death.

22ND.

If any shall be known to expose an infant so that it might die he shall be punished with death.

23RD.

If any one shall damage trees, hedges, fields, &c., or do other such damage as may be done abroad, he shall make good the damage whatever it may be, and shall be liable to punishment in person and property, as the case may be.

24TH.

Whoever shall set fire to the house of another shall not only be put to death, but his goods shall be confiscated.

25TH.

All those daring persons who attempt in public places, streets, or highways, to seize or to rob. or to revile any one, shall without mercy be punished in person and property, and even liable to death, according to the nature of the evil.

26TH.

If any one shall be discovered to have made gold or silver coin such as in circulation, or to have mixed, or cut and reduced the value of such, or in any way to have diminished the weight, he shall be subject to the penalty of death.

27TH.

All who are found guilty of such things as they know to contravene the monopolies of Government, shall not only lose their property but are liable to severe corporal punishment, and even the severe penalty of death.

28TH.

More particularly that such contravention may not occur in such articles as cinnamon, cloves, nutmegs and mace, it is enjoined that every

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one take care. If any be found except the honorable Government to engage in this traffic, whether himself or by others, however the error may happen, he shall without mercy be hung till he be dead with a rope under the gallows, and his goods confiscated.

29TH.

Those who attempt to deal in the oils of the aforesaid prescribed commodities also shall be liable to the same punishment.

30TH.

All contraband merchandise, in opinion, mustard, morunga, arecknut, pepper, coffee, and such articles, is prohibited. All those who are proved to have committed fraud in those matters, according to the notified order, shall be severely punished both in person and property. Such dhonies as are discovered to have these articles, that they may not trade with Government, shall be confiscated.

31ST.

If it happen that any shall rise and challenge another, or present himself being so challenged, he shall in person and property be severely punished. Should any one in such affairs be fatally wounded, the guilty party shall be hung with a rope under the gallows till he be dead.

32ND.

All those who conspire against the life and limb of their fellows, shall according to the case, be punished severely in person, in property, in honor, and life.

33RD

The invariable punishment of Murder, is death. For all those who are guilty of Murder, the punishment will be according to the occasion, either by sword or rope, by empaling, or by fire.

34TH.

Finally, all those who conceal a Murderer, or allow him to secrete himself, shall be flogged and transported, and severely punished.

35TH.

On the other hand, it is hereby promised, that he who can deliver up to the headmen any who have violated any of the laws here specified, and produce evidence thereof, shall not only be indemnified with regard to all consequences, but according to the importance of the case he has made known, also receive a satisfactory premium.

Although it is in our power, as the case may demand, to augment or diminish the punishments above specified, we kindly advise all not to sin but to fear the Almighty and his sword.

This was delivered on the 1st of July, 1773, according to the order of His Excellency Simon William Falck, who is the Governor and Director of the Island of Ceylon and its dependencies, and who is Member Extraordinary of the Indian Council, and the Headmen of his Council.

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William Jacob Vandercraft, Director of India and Governor of Ceylon and its dependencies, together with the Chiefs of the Council hereby enact with reference to all who either read this or hear it read: As we have been informed in several places belonging to this Government that the Headman including the officers of Justice, in favouring criminals, and as regards the amount of guilt lessening the power of Justice, or without reference to what is improper to be done, reject the thing to be done, we having considered the evil tendency of evil courses, do hereby prohibit according to the placarding which has been done in the Council of this island Ceylon on the 27th of February last, thereby to prevent punishments to whomsoever in any other way, excepting in the manner which has been pointed out in the matter of the placards which have appeared from time to time. It is enjoined as follows, that in cases where they feel they must come to a decision for severe punishment they should be careful, waiting for our decisions of the subject, having given us on such occasions information. If they shall oppose our judgment in this matter, and happen to be discovered, they shall receive such punishment as may be demanded without respect of persons according to their rank. It appears to us good thus to act for the benefit of the state. Therefore that all may know thus, and that no one may say we were ignorant of the matter, and that all may bear their own loss, this our placard shall be published and nailed in this place, and in the forts dependent on this, in the language used in the Country and also in Dutch.

This was delivered in the fort of Colombo in the Island of Ceylon, on the 24th of October, 1785.

By order of His Excellency William Jacob Vandercraft, the Governor of India, and Governor and Director of Ceylon, and its dependencies, with the Chiefs of his Council, for the observance of all those who may either read or hear this read.

As it has appeared to us from time to time that in all places subject to this Government, the headmen of the Country do receive gifts and bribes with the consent of the people and beyond the means of their poverty, and that because those that give, try to make good the loss by receiving from those, dependent on them, there is ruin and loss to the inhabitants, it has been our intention to prevent all such ruinous briberies. Therefore, on the 26th April, it was determined in the Council of the Island of Ceylon, from a desire to establish all such things for the benefit of our good subjects, and to guard against such ruin and evil, for the purpose of prohibiting the practice of receiving gifts, in money &c., for any offices or the like by the headmen of the interior, and the appointed Government functionaries, and the practice of giving such things to them, and to inflict severe punishment according to the nature of the case when the receivers and givers are found out. But in order to annul such matters, we shall not only inflict a severe and impartial punishment upon the Council of Justice, Judges, and other headmen who may oppose, violate and disregard this, that all may carefully conduct themselves guarding themselves against this, and that none may escape on the ground of ignorance, we hereby notify this, in this place and in

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other places, dependent hereon, through the Dutch and other languages in use.

This is delivered in the Fort of Colombo, in the Island of Ceylon, on the 24th October, 1785.

EDUCATION OF YOUTH PROHIBITED AMONG THE ROMANISTS.

NOTIFICATION.—As we have learnt that whilst except for the conduct of worship they have no other permission, yet the Romanists fearlessly and daringly establish public schools, appoint teachers so as to disparage the Protestant religion and disseminate the teaching of the false religion of Rome, as was ascertained in the Church Council on the 8th of April, 1785, we have determined in the Police Council of this place, on the 4th June, to prohibit by placard the putting up of Romish Schools in all places, whether in the Metropolis or in the interior; and it has come to us in writing that this was agreeable to the Honourable Government on the 19th of July last, we hereby prohibit Romanists from establishing such Schools. If any are discovered on evidence as having opened such Schools in violation of this order, he shall if a European pay a fine of 37s 6d to the Orphan Institute, and if a Native he shall be committed to labour in fetters, as the case may require. It is strictly enjoined on the Dessave and Fiscal to be very watchful on the conduct of the Romanists, lest they establish Schools either here or in the interior, or any place whatsoever.

AN ORDER RELATING TO THE REGISTRATION OF THE PROPERTY, MOVEABLE AND IMMOVEABLE, OF ORPHANS, DATED SEPTEMBER, 1790.

It is hereby notified by Bartholomeus Jacob Recket, who is the Lord and Commandeur for the Government and other dependencies, together with the heads of Council, for the information and acceptance of Reseras, Odears, Parish Chattumbers, Taliar, Patungkattis and other headmen of the interior, and the inhabitants of the four districts of the Wanny and the inhabited Islands. Because errors and disputes are occasioned from the near claimants of property and near relatives, or others in respect to the property moveable and immoveable left to young children by deceased parents, on the information of the Dessave the officers of Government have come to a determination, and its being found good by the honourable the Government officers of Ceylon, a Council has been appointed to investigate and collect the cases relating to property claimed by right of inheritance, and to inquire after the property, moveable and immoveable, of such orphans. On the 11th May after certain orders had been made for the Chief of the Council and its headmen, and as it has been found good in the letter,

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dated September 20th, 1790, by the honourable Government of Ceylon, as above stated, we now hereby make known to all what is to be done to put this matter into execution. How the Council for orphans having charge of these matters of right is founded, and in what way obedience is to be rendered to it. Here in Jaffna a principal Orphan Institute, and in each parish a sub-Orphan Institute is established. Of the principal Orphan Institute, the Dessave shall be the President, and the heads of Council for lands shall be united with him as a Council. The Registering Offidore of the Dessaves office, shall be the Secretary. So in the interior the Reseras of each parish shall be presidents, and the Odears the headmen of the Council, and the Chattambu shall be Secretary. All shall yield obedience to the Reseras their president regarding him, as assistant Orphan guardian to the principal Orphan Institute, to which they are accountable. Each Odear of the respective villages, shall act as a Commandeur to his village belonging to the Orphan Institute, and on hearing of the case of an inhabitant at the point of death whose children are not of age, he shall repair thither with four competent witnesses, and receive information from the sick party respecting the property moveable and immoveable which he leaves for his children, and concerning which he may wish to communicate information, and register it carefully in a Schedule. And although one at the point of death has not made any communication on the subject, he shall write in the same way, and also in case when father or mother dies suddenly, with the surviving party on the occasion, or if not there, in the presence of the near claimants, or if they be not there in the presence of the neighbours and the witnesses he has convened, he shall register all the moveable and immoveable property. Besides, he shall register according to the custom of the Country, what the dowry property of the wife is, whether moveable or immoveable. This may not be sold after the death of the wife, it belongs to the children. If there be no children, this property belongs to her heirs. It is the duty of the Odear who is the Commandeur of that division, to take charge of the property that has been registered, according to the will of the deceased, till it is decided in the Council, to whose care it must be securely entrusted. The Council of the sub-Orphan Institute, must hold its meeting on the first Monday of every month in the parish Church, although they have no business to transact. If in the interval any one dies, the Reseras, the president, shall convene the Council, or if he be absent, the chief Odear must call together the Council, and then come to the necessary resolution. To this Council each Odear as before directed, must give his Schedule, which being signed by himself, and also by the survivors, or the near heirs, or neighbours, and witnesses. He must also state what he has done with the moveable and immoveable property, left by the deceased. If nothing has transpired that month, he must report that the Council may note it down, and after taking a copy for themselves, the original must be transmitted to the Principal Orphan Institute for registration. If the father and mother have not wished to say any thing relating to the children they leave, the Council must determine with whom it may be well to have the children, and the lands belonging to them, or it must be determined as may appear best to them by the principal Orphan Council how the inheritance

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shall be divided, and how the children are to be supported by its produce. The principal Orphan Council also shall meet every month on the first Thursday, as the sub-Orphan Councils will have three days to prepare their reports after their meeting of the first Monday of every month, for transmission to Jaffna. If the Reseras who is the Resident of the sub-Council for Orphans be indisposed, the chief Odear of the Council must appear to report whether there be any case or not. Then it shall be decided in the principal Council of Orphans, as seems best to them, after they have registered the Schedule of property which has been brought, and the decision come to by the sub-Council for Orphans. If they see it necessary to sell some moveable and immoveable property, the Secretary of the principal Council shall proceed to the place, and sell it in the presence of two members of the principal Council for Orphans, and in the presence of the Odear who as Commandeur has registered the property. After their moveable and immoveable property has been entered in a Schedule, and arranged by the minor Council of Orphans as mentioned above, it will be decided to whose care the property shall be confided, or if it appear best to sell, the principal Council shall send a writ of execution to the interior, and cite all that have to receive money lent, and they shall in six weeks appear before the Secretary of the chief Council for Orphans with their bonds, and make known their respective claims. If they do not come within six weeks, they shall not have any legal redress, nor henceforth prefer any claim on the moveable and immoveable property. Having examined the bonds of these who appear according to the custom of their Country, the debts must be paid out of the money obtained by the sale of the moveable and immoveable property. The remainder shall be entered in the books of the Orphan Council, for the benefit of the Orphan children. If either of the parents survive, or there be near relations who will take charge of the money of the moveable and immoveable property, or of the property itself, and will give sufficient security in the way of pledges, or two sufficient personal securities, they shall be responsible to the principal Council for Orphans. In order that the principal Council for Orphans may have the means of supporting the children whilst minors, as they have agreed to, from the proceeds of the estate, the capital shall be given out on sufficient security of gold and silver articles, or personal security, or valid bonds. They shall annually pay at the rate of 6 per cent. on the capital belonging to the Orphans, from the produce. When the Orphan children marry, or are grown up, the male being 21 years, and the female 16, they shall inherit the property, and along with the property shall be given a copy of the original Schedule, and a statement of the account. When any being grown up are able to take charge of the property, they shall appear at the Orphan office.

REGISTRATION OF MARRIAGES.

The parish Chattambus are not to consent to the registration of any, whether widowers, widows, bachelors or spinsters, nor should he take them before a minister to have the marriage ceremony performed. They are not to perform without producing to the minister a written certificate obtained from the Secretary of the chief Council of Orphans, to show

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that they have permission from the Council of Orphans for the purpose. All marriages performed without such certificate, shall be subject to forfeit 15.

REGULATIONS RELATING TO A TYNDAL ON A VOYAGE.

If any of the inhabitants of the four districts of the Wanny, and the inhabited islands, die on a voyage, the Tyndal who is the master of the Dhony in the place to which he has sailed, shall have registered what the things are the deceased has left behind him, in the presence of witnesses, and immediately on his return shall make it known to the Odear, the Commandeur of the sub-Council for Orphans, to which the deceased belonged, who shall afterwards do what they deem right for the children of the deceased.

It shall be the duty of the Odears, Patungkattis, and the headmen of Villages, when any of the inhabitants go on a voyage, to report particularly who the party is, and to see in whose Dhoney he sailed, and on the death of such being reported, they shall immediately dispose of the furniture of his house, as is directed in the case of property to be inherited by survivors. And on enquiry into his personal estate, if the Odear discovers that there is no property, he must report that to the principal Council for Orphans. Afterwards the matter must be disposed of, as directed in the order made for this purpose.

ODEARS REQUIRED TO GIVE SECURITY FOR £15.

Each Odear, or he who takes charge of property in the interior as a Commandeur, shall give a security of £15 to the principal Council for Orphans, that there may not arise any deficiency in regard to the property, under the charge of the Sub-Council for Orphans by their delay and negligence.

The principal Council for Orphans and the Sub-Councils have been appointed as stated above, so that they may take care of the inhabitants and their property. In order to this, it has been enacted in the Police Council on the 11th of May, that all and every one whether father or mother, or near relatives, or guardians who have any charge of the property belonging to young children, shall from this time within six weeks deliver an account thereof to the Odears, the commandeurs of the Sub-Council for Orphans on oath, and they shall state whose property is, for which they are accountable, in order that the Sub-Councils for Orphans may afterwards do, as directed in the orders made for this purpose as before stated, and report thereon to the principal Council for Orphans. Those who violate this order and act fraudulently, and do not deliver up an account of property as the regulation provides shall be severely punished according to the nature of the case.

Since to do as heretofore directed will promote the best welfare of the country, and its inhabitants, and purely disinterested, we hereby strictly enjoin on every one, and caution them, to act in their own

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cases as directed. They who are found to violate this order, shall be punished without mercy according to the nature of the case.

This was copied according to the translation of the order, dated September 17th, 1790, at Jaffna, and signed by Mark Modeliar, the Secretary's Interpreter.

REGULATIONS PERTAINING TO THE RESERAS, ODEARS, PARISH CHATTAMBUS, THE HEADMEN OF CHUNDICULLY.

1st Order.

Since in the interior in the sub-Council for Orphans belonging to each parish, the Reseras, the Presidents and the Odears, the Vice presidents, the Parish Chattambus are those that register the affairs of the council, these must all deliver accounts of the Council convened, to the principal Council of the Orphan Institute, and submit to them.

2nd Order.

In the affairs of the sub-Council, the Odears of the respective villages must act as Commandeurs of the sub-Councils of their respective places.

3rd Order.

The members of the sub-Council shall before they enter on their office, not only make oath as may be required agreeably to the principal Council, but the Odears also who act as Commandeurs, when they act in any matter in regard to the Orphan, and register the moveable and immoveable property belonging to such, shall each give such a security as may be satisfactory to the Central Council, to the amount of £15., that through their want of care or fraud, there may not arise any loss in any one's property.

4th Order.

If any of the inhabitants being father or mother having children happens to die suddenly, or is at the point of death, the Odear the Commandeur of the sub-Council of the village, shall with four sufficient witnesses go to the house of the party who is sick, and shall hear what he or she may wish to say, in regard to the arrangement of their children, and the disposal of the property belonging to them, and ascertain the matter accurately.

5th Order.

When any one is at the point of death, the Odear or the Commandeur of the sub-Council for Orphans, shall go to the place, to register the moveable and immoveable property, whether the sick party has or has not expressed his views in regard to the matter. He shall not only register all the moveable and immoveable property of such, and when that party is the father, it shall be done in the presence of the mother, and if the mother in the presence of the father, and in case both die suddenly, in the presence of the near relations of the said children, and if there be no near relations, in the presence of the neighbours.

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And because it happens that the moveable and immoveable property which was given in dowry to the mother of the children, cannot according to the custom of the country be sold, and consequently according to the will of the deceased, shall go to the children, and in case there are no children, to the near relations. They shall keep in their possession in the way in which it was registered, in the presence of the witnesses such moveable and immoveable property, and shall take care of it, until some order is made after due consultation to deliver it up.

6TH ORDER.

The President of the sub-Council belonging to each parish, or the Odear, the vice President, shall convene the meeting of the council every first Monday of the month, whether there be business or not. When any one dies the President, Reseras, or the vice-president, the first Odear, shall immediately convene the council and state the case, and they shall deliberate thereon.

7TH ORDER.

The Odears belonging to the Sub-Council for Orphans, are not only required to have the Schedules of the moveable and immoveable property, that has been registered in the presence of the father of the children, or their mother, or their near relations, or their neighbours, and in the presence of witnesses, with the signatures according to the fifth Order above noted, but each Odear shall report to the Council that in the cases of such deceased in what way they have disposed of matters, and the council shall note down such things. If no such things have happened that month, they shall report that also, that it may be recorded. Besides if it should happen, that the father or mother of such children at the time of death, died without mentioning what should be done with reference to the guardianship of the children, and in what way the property should be disposed of, these shall consider the subject in the council convened, with reference to the report to be made to the principal council, inquiring in whose charge they may leave their little children, and the property belonging to them, that there may be no loss sustained. And if there be no trustworthy person, they shall sell such property, and in order that there may be no loss to the children, the money shall be deposited in the Orphan Institute, and sustain the children by the interest, and do as they decide.

8TH ORDER.

If any of the inhabitants of the Wanny, or the Islands, and other villages, shall die in a journey, either by land or sea, the Tyndal of the Dhony in which he had embarked, shall immediately make a register of the property belonging to the deceased party as found with him, and shall deliver it to the Odear of the village of the deceased, and he shall not only be careful that no loss happen to the children, but the Odears shall inform the Tyndal that when parties wish to go in a Dhony, they are to be careful that these rules be observed.

9TH ORDER.

If a president of the sub-Council comes to know that any of the inhabitants have died as before stated, he shall immediately proceed to the

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house of the deceased, and shall cause a registration to be made of all the effects moveable and immoveable, and shall act as directed in order No. 7.

10TH ORDER.

If it happens that when a registration is made by the headman of the sub-Council, of the moveable and immoveable property belonging to any one, any of the effects are missing or concealed, he shall report such matter to the chief Council, and act as before directed.

11TH ORDER.

The headmen of the sub-Council for Orphans shall not only take in hand the registering of the property, and keep schedules for each case, but shall deliver to the principal Council of Orphans, each schedule, having carefully completed it.

This was copied and signed by Frederick, the Secretary at Jaffna, on the 31st October, 1790, according to the command of the chiefs of the honourable the principal Orphan Council. The signature was added in the Dutch character, in the respective places after the 11th Order.

Reswadore ...A parish officer who collects revenue from lands, trees, &c.
Athigar ... One having charge of markets, &c.
Chattambu ...Parish School-master, Notary and Registrar of marriages.
Ayuthandi ...Chattambus Assistant, keep registers, &c.
Tahai ... ...Tax-gatherers and headmen among the Potters, Shanars &c.
Patungkatti ...Tax-gatherers and headmen among the Mukier, Careyar, Tunilar, &c.
Vidaturean ...Headmen of Nalavas, collecting persons for Government labor.

REGULATION OF GOVERNMENT.

PRESENT, HIS EXCELLENCY THE GOVERNOR IN COUNCIL.

A. D. 1806.

Regulation 18*th*.

A Regulation for the security of Property, and the Establishment of a due Police in the District of Jaffnapatnam and its Dependencies.

The system anciently pursued with respect to the different description of property which exists in the province of Jaffna, was the result of much local experience, and of a very attentive consideration of those Customs and Religious Institutions, which had prevailed in that Province not only from the time of the Portuguese conquest, but also from the earliest period of the Malabar Government.—It assimilated itself to the ancient habits of the Country, to the feelings and prejudices of the People, and it was for these Reasons on the whole; Wise in principle, and salutary in its effects.

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It appears however that of late years, measures have been adopted inapplicable to the situation of the Country, shaking in a considerable degree the tenure on which various species of Property rested, and destructive of the Police and the Tranquillity of the People.

The most valuable Property in that District consists partly in Land and partly in a Right of Servitude possessed by Persons of the Higher Castes over those of inferior; vizt. of the Covia, Nallua, and Pallua castes, approximating nearly to a state of lenient Slavery.

The Proprietors' titles to both these species of property have been rendered obscure and uncertain; their rights to Land by the Introduction of a new plan of Registration, and by the means which have been taken to enforce it; the right to Servitude of Persons of the lower castes, by the decisions of Provincial Courts: and the abolution of those Regulations which under the former system secured to each proprietor the particular services that from immemorial Custom he was authorized to expect from those of the inferior Castes bound in service to him, and that he was equally bound to support.

These circumstances have not only tended to diminish the value of Land, but have materially checked the Cultivation of the Country, and gradually destroyed the whole of its Police.

The Property in Land is shaken by its being exposed to constant and vexatious Litigation, the Property in service by the Person bound in that service referring to the Decisions of Provincial Courts.—The Servant from these Decisions refuses to obey his Master; The Master consequently refuses to support his Servant; The ancient system of subordination is done away; numbers of the lower Castes without the means of subsistence are daily turned upon the Public, and uniformly commit those Enormities, which for the last few years have disgraced the Province of Jaffna, and which demand the immediate and salutary Interference of His Majesty's Government.

With a view therefore to re-establish the security of property whether in Land or in Service, and to prevent those Enormities that have recently occurred, The Governor in Council is pleased to enact.

1st. The Thombo Registers of the respective Churches of the Province of Jaffna shall be delivered back to the respective Schoolmasters of the said Churches.

2nd. As there is reason to apprehend that many of the Thombo Registers are in themselves inaccurate, and in some Instances for want of proper care and attention mutilated, they are to be immediately revised, without any expence to the Inhabitants.—And for this purpose the Schoolmasters in the different Churches are to open new Registers, in which the whole of the present titles to the Ground within the Church to which he belongs, is to be inserted within a year from the date hereof.

3rd. From circumstances that have heretofore occurred it is necessary clearly to ascertain, and that the people should clearly understand that the object of this Registration is legally to ascertain the Title, such as it may be; but that in no instance it can be understood to decide upon the Legality of that title.

4th. From the Expiration of the year when the revision of the pre-

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sent Thombo Registers will be complete, the revised Register is to be solely referred to by the Courts of Law in the district of Jaffna in regard to the immediate and present title by which Lands are held, but in the instances of litigation. the ancient Thombo Register may be resorted to, to ascertain the legal Validity of such Title.

5th. The Register of the lower Classes of Persons bound in service, vizt. Covia, Nallua, and Palluas, which was directed to be forthwith made under Regulation 13th of the year 1806, shall be immediately completed.

6th. The Thase Walema, or Customs of the Malabar Inhabitants of the Province of Jaffna, as collected by order of Governor Simons in 1706, shall be considered to be in full force.

7th. All questions between Malabar Inhabitants of the said Province, or wherein a Malabar Inhabitant is Defendant, shall be decided according to the said Customs.

8th. All Questions that relates to those Rights and Privileges which subsist in the said Province between the higher Castes, particularly the Villales on the one hand and the lower Castes, particularly the Covias, Nalluas, and Palluas, in the other, shall be decided according to the said Customs and the ancient usages of the Province.

9th. All Persons of the lower Castes shall shew to all Persons of the higher Castes, such marks of Respect as they are by ancient Customs entitled to receive.

10th. All Persons who possess Property in the Covia, Nallua, and Pallua Castes, shall deliver to the Agent of Revenue a List of all such Covia, Nallua, and Palluas, belonging to them, who are people of bad character.

11th. All Masters shall give such moderate security as the Agent of Revenue may deem adequate for the good behaviour of every Covia, Nallua, and Pallua, as appears by the Register to belong to them, with the exception of those who come under the description of Clause No. 10.

12th. The Agent of Revenue shall proceed with such persons as are described in Clause No. 10 according to the Enactments of the 5th Clause of Regulation 12th. A. D. 1806.

13th. All Persons of whatever description in the province of Jaffna, who may be committed to hard Labour under the said Clause of the said Regulations, shall be employed at the Expence of Government in the improvement of the Church to which they respectively belong, or some of the churches adjacent.

14th. For the purpose of enabling the Agent of Revenue to carry the foregoing Clause into effect, the Headmen and principal Inhabitants of each Church shall point out to the said Agent all such works of public utility as can be undertaken in their respective Churches.

COLOMBO, 9th December, 1806.

By Order of the Council.
(Signed) JOHN DEANE,
Sec. to the Council.

By His Excellency's Command
(Signed) JOHN RODNEY,
Chief Sec. to Govt.

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No. 1.—1842.

To make certain Regulations respecting the granting of Schedules, on occasion of the execution of Deeds affecting land in the Northern Province.

Preamble.

Whereas a custom exists in some parts of the Northern Province for the Headmen, upon application to them, to give certain certificates and extracts from the Thomboos, commonly called Schedules, on occasion of the intended execution of any Deed affecting land, for which they receive certain fees; and whereas there is much vexatious delay on the part of the Headmen in performing what, by this custom, is required of them, and many attempts are made to exact exorbitant fees, and it is necessary to make provision for the prevention of these delays and undue exactions.

Fee payable to Headman on granting of Schedule

It is therefore hereby enacted by the Governor of Ceylon, with the advice and consent of the Legislative Council thereof, that every Headman shall be entitled to receive for every such Schedule, which he shall grant to any party applying for the same, a fee of two per cent. on the value of the land for which it is granted. Provided always that such fee shall never be less than one shilling and sixpence nor more than five pounds, and that it shall not be considered due, until after the Schedule has been deliver ed, and until after every such act in relation thereto, which by custom the Headman is bound to perform, has been performed.

Headman refusing to grant Schedule, to give reasons in writing for such refusal.

2. And it is further enacted that it shall be lawful for a Headman to refuse to grant a Schedule to any party applying for the same, whom he should have reasonable grounds for believnig not to be entitled thereto. Provided always that he shall forthwith give to such party a statement in writing of the ground of such refusal.

Penalties on Headman for negligence or misconduct.

3. And it is further enacted, that any Headman who shall neglect or delay to attend to any proper application that shall be made to him for a Schedule, or who shall unnecessarily protract the granting of it, or the performance of any act in relation thereto, which by custom he is bound to perform; and any Headman who shall unnecessarily delay the giving of the statement required by the second clause to be given, under the circumstances therein stated to the Applicant for a Schedule; and any Headman who shall demand or receive a greater fee for granting a Schedule, than is by this Ordinance allowed; shall be liable to a fine according to the discretion of the Court, not exceeding Five Pounds, to be recovered from him by distress, and in default of payment, to imprisonment not exceeding one month.

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Ordinance when to come into operation.

2. And it is further enacted that this Ordinance shall come into operation, from and after the first day of January, One thousand Eight hundred and forty-three.

Passed in Council, the first day of August, One thousand Eight hundred and forty-two.

KENNETH MACKENZIE.

Acting Clerk to the Council.

Published by order of His Excellency the Governor.

P. ANSTRUTHER,
Colonial Secretary.

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THASAWALAMY.

OR, THE

LAWS AND CUSTOMS OF THE TAMILS

OF

JAFFNA.

In publishing this small, but it is trusted, useful and correct, Pamphlet, on the Laws of Jaffna, it is but due to my co-adjutors to state, that its principal value is owing to the care and attention they bestowed in every clause of the work, as submitted to them on repeated consultation.

DOWRY AND INHERITANCE.

1 Property is called "Moedesiom" or Hereditary, when brought by the Husband; "Chidenam" or Dowry, when brought by the Wife; and such as is acquired during Marriage, is called "Teurdeatatom" or Acquisition.

2 Inherited Property is called Oremaay, and devolves, if inherited by a Husband, in the same manner as his Hereditary property; if by a Wife, like her Dowry, and it is liable to any claims those properties are.

3 Dowry granted to Daughters in marriage may be taken at will, from Hereditary, Dowry, or Acquired properties, as the Parents think proper, and near relations may enlarge a Dowry by adding some of their own property to it, taking care to describe such gift in plain terms in the Dowry Ola, and adding their signatures thereto.

4 Daughters must content themselves with the property specified in the Dowry Ola, having no further claim on the Estate after their Parents death, except where there are no Sons or their descendants, when they will succeed to the whole Estate in equal shares.

5 A new married couple not taking possession of any property given them in Dowry for the term of 10 Years, forfeit their claim thereto, and such property reverts back to the common Estate, unless they have an act from their Parents explaining the delay.

6 Parents may give a Daughter a piece of Mortgaged land in Dowry, specifying that such Mortgage is to be redeemed by the married couple; but if they are unable to do so, and the Mortgagee does not wish to retain the Mortgage, the Parents themselves must redeem it, and keep possession until the Daughter to whom it was given in dowry, shall pay the amount to them, which she has full power to do at any period.

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7 If a young couple should lose any part of their Dowry property by a law suit, the Parents must make good the loss; or, if they are dead, the Son or Sons must do it, either in kind or money.

8 Parents if they prosper considerably, have right to increase a Daughter's Dowry, by way of Donation.

9 Sons cannot claim any thing as long as their Parents are alive; indeed all they gain during their Bachelorship belongs to the common Estate, except ornaments of Gold and Silver, and Gifts. They are likewise bound at their Parents death, to pay all the Debts, however little may devolve to them.

10 A married Woman dying without issue, her property devolves to her Sisters, their Children, or Grand-children, in equal shares, or in succession to Brothers, their children, or Grand-children, in equal shares; failing all these, to the Parent or Parents. None of these surviving, all the property she received from the Father's side will revert to his nearest Relations, and all she received from her Mother's side will revert to the Mother's nearest relations. The Acquired property will be divided equally between her Father's and Mother's nearest relations.

11 In the above case, it sometimes happens, that the Mother, if a Widow, and poor, by general consent, holds the property during her life, but it ought to be registered, to prevent disputes.

12. Sons dying without issue, their property devolves to Brothers, their Children or Grand-children, in equal shares; or in succession, to Sisters, their Children or grand children in equal shares: failing all these, to Parent or Parents. None of these surviving, the property be received from his Father's side, with half the Acquired property, will revert to the Father's nearest relations, and all he received from his Mother's side, and the other half of the Acquisition will revert to her nearest relations.

13. A Man must immediately give up his Wife's Dowry and half the Acquired property, to her Heirs, should she die childless; and in like manner, a Woman must give up her Husband's Hereditary, and half the Acquired property, to his Heirs, should he die without issue.

14. Parents becoming incapable from age to manage their property, may place it in charge of their Sons, and may again resume possession at will, though they have in that case no right to dispose of any part thereof without the sanction of the Judge.

15. The Father dying first, the property remains with the Mother provided she takes charge of the Children, until the Daughters marry, when she must give them Dowries, but the Sons can claim nothing till the Mother's death.

16. The Mother marrying a second time, is obliged to give Daughters (if any) by both Husbands, Dowries from her own Dowry Property, and the Sons of the first marriage can immediately on the second marriage, claim their Father's Hereditary and half the Acquired property of the first marriage, after deducting what may have been given to Daughters in Dowry. And if they are too young to manage the property themselves, the mother must give it over with the Sons in Guardianship, to the Father's nearest male Heirs.

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17. The Mother mentioned in the last Clause, dying, the Sons of both marriages succeed to her remaining property in equal shares to each Son, and if an unmarried Daughter is left, she is entitled to a share also, besides which the Sons of the first marriage now take that half of the property acquired during the first marriage which had remained in her possession during the second marriage.

18. The Sons of the second marriage, are entitled (in the above cases) if their Father is dead also, to their Father's Hereditary property, as well as to all property acquired during the second marriage, after the debts of that marriage are paid.

19. If any part of the property left in charge of the Wife during her second marriage is lessened, her second Husband or his Sons, must make good the deficiency.

20. A Mother dying first, leaving Children, the Father may keep the property as long as he does not marry again, doing with the Children and Estate in like manner as before stated, in Clause 15, with respect to Mother.

21. A Father marrying a second time, the Children, if young, ought to be given in Guardianship to their Mother's nearest female relations, and if so, the Father must deliver over with them, all their Mother's Dowry, and half the property acquired during the first marriage, and when the Daughters are married, the father must assign them Dowries from that share of the Mother's property so given up, and also from his own Hereditary property. If after all the Daughters are dowried any of this property remains in the Guardian's hands, the Sons of the first marriage may take and divide it at once, or hold it jointly till they marry; but if nothing remains, the Sons can claim nothing till their Father's death.

22. A Father dying, having Sons by both marriages, and the second Wife being dead also, his property is divided into two shares one for the issue of each marriage; the Sons of the first marriage having first taken the remaining half of the property acquired during the first marriage, left in the Father's hands; and the Sons of the second marriage having divided the property acquired during that marriage, as well as what remains of their Mother's property left after dowrying the Daughters.

23. If any of the property left in care of the Father on his second marriage, is wasted, the Sons of that marriage must make up the deficiency.

24. Father and Mother dying whilst the Children are young, the relations choose a Guardian, who allots the Daughter's Dowries when they marry. If any of the Daughters remain unmarried till the Brothers want to marry, the property left in the Guardian's hands must be divided, though the Sisters ought to have a large share.

25. Unmarried Daughters dying, their property devolves to the married ones, unless the property has not been divided with the Brothers as in last Clause, in which case the married Sisters have no claim.

26. Natural children cannot inherit any thing.

27. If a married couple die leaving Daughters only, some of whom

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are married, their property, after paying the debts, is to be divided equally between the Daughter or Daughters unmarried.

28. If a Woman dies leaving a Son by the first marriage and a Son and Daughter by a second marriage, then, if the Son of the second marriage dies childless, his property devolves as follows: To his full Sister all the property derived from their Father's side, and half the property acquired during the second marriage; and the half Brother by the first marriage will take all the remainder.

29. If a Man dies leaving a Son and Daughter by his first Wife, and one Daughter by his second, both of which Daughters have been married with Dowries, in this case his property is to be equally divided between the Son of the first, and Daughter of the second marriage (who here inherits because she has no full Brothers.)

30. Two married persons, who were the sole children of their respective parents, dying childless, and their parents being also dead, their property devolves thus: all the Husband received from his Father, will revert to his Father's nearest relations; and all he received from his Mother, will revert to her nearest relations. The Wife's property in like manner will revert to her Father's and Mother's nearest relations. The Acquired property is to be divided into four shares, one for each of the above mentioned parties, with the single exception that Gold and Silver made for the Husband, devolves to his Father's and Mother's relations, and that made for the Wife, will devolve to her Father's and Mother's relations.

31. One of a married couple dying childless, the Survivor must give up his or her property to the Heirs, as well as half the Acquired property, but should the Heirs leave the property in the Survivor's care, they must do so in writing, or take it back on a second marriage, failing doing either of which, they lose all claim, if the Survivor has any children by the second marriage.

32. All grain collected, is considered Acquired property, but crops not reaped, belong to, and devolve with the ground.

33. A Man's Hereditary or Wife's Dowry property being diminished during marriage, it must be made good from the Acquired property, if that suffices, or otherwise there is no claim.

34. A piece of Ground being improved during marriage, the Heirs of the Wife have no claim for those improvements of any kind, should it belong to the Husband's Hereditary property; nor have the Husband's Heirs any claim, should it be the Wife's Dowry property.

35. A Stranger coming into the District, and bringing no property in marriage to a Native Woman thereof, his Heirs have no claim if he dies childless, but should the Wife die first childless, he is entitled to retain half the property he has acquired by his own exertions.

36. A Man who brought no property in marriage, can, if his Wife dies childless, only claim half the property he has acquired by his own industry, but nothing that has been acquired from the Wife's Dowry; but if he dies first, his Heirs can claim nothing. Also a Woman who brought no property in marriage, dying childless, her Heirs can claim nothing, nor has she any claim if the Husband dies first. If neither

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party brought property in marriage, the property acquired during marriage, will be divided on the death of either, equally between the Survivor, and the Heirs of the deceased.

ADOPTION.

37. Persons wishing to adopt a Child, must first ask leave from their Brothers, Sisters, or nearest Heirs; having gained which, they must, in the presence of those Heirs and other witnesses, including Barbers, and Washermen, drink Saffron Water in which the before mentioned Heirs, and also the Parents of the Child to be adopted, have dipped their fingers.

38. The Brothers, Sisters, or Heirs, not agreeing, Saffron Water cannot be drank; yet a child may be adopted, to whom may be bequeathed one-tenth of the Husband's Hereditary, and Wife's Dowry property, and more than one-tenth of their Acquired property if they have few debts. This adoption must be with the Judge's knowledge.

39. In both the above Cases, it is highly proper that Deeds should be executed by all the consenting parties.

40. The Child adopted as mentioned in Clause 37, inherits all the property of both Husband and Wife, but if it dies childless, the property reverts back to the nearest Heirs of the persons adopting.

41. If people have children of their own after adopting a child, all inherit together, but the adopted Child loses all claim on its own Parent's property.

42. An adopting Father drinking Saffron Water alone, the Child will succeed to the property of its own Mother; if the adopting Mother drank alone, the child likewise succeeds to the property of its own Father.

43. An adopted Boy and Girl may marry together if not related in Blood, and if one of them dies childless the Survivor inherits all,

44. An adopted Boy may marry the Daughter of persons adopting him, provided they are not nearer related in Blood than Brother's or Sister's Children, and they will inherit from one another as in the last Clause.

45. If only part of the near Relations consent, and dip their fingers in Saffron Water, whilst others refuse, a child may still be adopted, though it will only inherit the share of those Heirs who so consent; unless the non-consenting Heirs for ten years forget to take possession, when they forfeit their claim.

46. Supposing there are three Brothers, only one of whom has children, one of these children may be adopted by either of the other Brothers, even against the consent of the third Brother, and the property of the Brother so adopting on his death, is equally divided beween the adopted Child and the non-consenting Brother. In this case the non-consenting Brother can give away any of his property in his lifetime to any of the children of the first Brother.

47. A man adopting a Boy, it goes over into his caste.

48. A Man adopting a Girl she goes into his caste, but when she marries the children will belong to their Father's caste.

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49. A Woman adopting a Child, it remains in its own caste, although it will inherit the Woman's property after her death.

50. Amongst Slaves, children are always of their Mother's Caste.

POSSESSION.

51. Two persons jointly possessing a piece of ground without division; and one of them fencing off and planting a portion of it, the other may ask to have the ground divided, but in complying therewith care must be taken to give the improved part to the partner who planted it, as the fruit of the trees clearly belong to the Planter.

52. The above division may be delayed till the other partner has also improved an equal share, and then the division must be general.

53. A person planting Cocoanut Trees by permission in another man's ground, claims two-thirds of the fruit if he furnished the plants; if not, he only claims one-third—or, if each furnished half the plants, they divide the produce equally.

54. A Person having a few Palmira Nuts in an Odial Bed has no claim, if they grow up, as they belong to the owner of the ground.

55. The produce of fruit-bearing Trees, planted with care and trouble, entirely belongs to the planter, although they should overhang another person's ground.

56. The produce of trees growing without trouble, such as Margosa, Tamarind, or Illepe, belongs to the owners of the ground the branches overshadow.

57. The branches of such Trees as are specified in the last Clause, may be cut by the owners of the grounds they overshadow, without permission of the owner of the ground the Trees grow on; and although a person may cut down such Trees as grow in his own ground he must give the branches thereof to any person whose grounds they overshadow.

58. The owners of the ground possess all young Palmira Trees that grow upon it, even if the old Palmira Trees belong to another person, except in the Village of Araly, where the owners of the old Palmira Trees take the young ones.

59. Owners of ground have a right to extirpate all young plants growing thereon when wanted for cultivation.

60. In Timmoratchie and Patchilepally, if Trees only and not Grounds are specified in the Thomboos, the owners of the old Trees take the young ones, but if the ground is specified, the owner of it, takes the young Trees.

61. In Caretchy and Ponereen, where there are no Thomboos, the owners of old Trees take the young ones.

62. In Delft where the ground belongs to Government, the owners of the old Trees take the young ones.

GIFTS.

63. A Husband living separate from his Wife cannot give any part of her Dowry property away; but if they live together, he may, with her consent, give a tenth part of it away.

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64. A Husband even without his Wife's consent may give away one-tenth part of his Hereditary property.

65. A Wife can give away nothing without the consent of her Husband.

66. A married couple receiving a garden in gift, on the death of either childless, it reverts to the nearest Heirs of the Husband or Wife to whom the gift was given, but the proceeds of it during marriage, belongs to the Acquired property.

67. If any one gets a present of a Slave, Cow, Sheep, Goat, or any thing that can be increased by procreation, it, as well as all its produce, belongs solely to the person it was given to, married or unmarried, and it will be inherited by his or her Heirs.

68. No compensation can be claimed for any part of a Gift sold or diminished.

69. A married couple being childless may give away part of their property of any kind to their Nephews or Nieces, if the nearest relations consent; as also one-tenth of the Acquired property, even should they not consent. Such Gifts to Nephews who die childless devolve to their Brothers, or Brother's children, and Gifts to Nieces dying childless, to their Sister, or Sister's Children. Wanting these, Gifts devolve to their Parents or Parent's Heirs, or eventually, to the Donors or their Heirs.

70. A Husband may give away by a regular Deed, part of his Hereditary property to one of his Sons, if he has no Daughters; and at the Parent's death the Son may claim that Gift previous to the general division of the property, if he can show the Gift Deed.

71. Should the Son last mentioned die childless, the Gift would devolve to his Brothers, or their Children, next to Parent or Parents, or eventually the gift with half the property acquired on it would devolve to his Uncles, and the other half acquisition to his Aunts.

72. Had the gift been given by the Mother in the last case, it would devolve, on the Son's death, to Brothers or their Children, next to Parent or Parents, or, the Gift and half the Acquired property to Aunts, and the other half acquisition to Uncles.

73. A Gift from other than Parents, would devolve, failing Brothers, Sisters, or Parents to the male and female Heirs in equal shares.

74. Although property acquired by Sons before marriage, belongs to the common Estate, as mentioned in Clause ninth, yet they are entitled to keep Gifts of any kind in their own possession.

75. If a Husband has given away to his Heirs any of the acquired property without his Wife's knowledge, and they both die childless, the Wife's Heirs are entitled to an equal portion of the Acquired property, provious to the general division

MORTGAGE.

76. A garden being mortgaged, conditionally that the produce is taken instead of interest, can only be redeemed after the crop is reaped.

77. In the last case, if the Mortgagee wishes for his money back, he must deliver up possession of the garden to the Mortgager, and wait

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one year for his money. If at the expiration of that period it is not redeemed, it must be offered to the Heirs for purchase, and if they refuse, the Mortgagee must keep the land, and be confirmed in possession by a regular Deed.

78 It is the rule te redeem Warrago lands in July or August, Paddy lands in August or September, or if the Paddy ground was not sown that year, in November; Palmira, Betal, and Tobacco Gardens in November.

79. A Mortgager wishing to redeem his land, and forgetting to give due notice, must give the Mortgagee a proper share of that year's produce, according to the usual custom of the Village; but if they cannot agree, the Mortgagee holds the land that year.

80. A Mortgagee cannot prevent the sale of the ground by the Mortgager, but must receive his money back at the usual period of the year.

81. Fruit Trees are to be redeemed in December and January; and up to the day they are so redeemed, the Mortgagee may pluck all the fruits that can be considered ripe.

82. Should Slaves be mortgaged, the mortgager ought to pay for any medical aid required, but if the Mortgagee does it, he has no claim for remuneration.

83. Mortgaged Slaves dying, the Mortgager must pay the money back to the Mortgagee.

84. Money advanced conditionally that Bullocks, or Buffaloes should be lent to plough, the proprietor must furnish other ones, should the cattle die.

85. If a person to whom Jewels are pledged, wears them himself, or lends them out in any way to be worn, he can make no claim for interest on the sum so lent.

HIRE.

86. A persen hiring Cattle of any description, has a claim for others, if those fall sick or die.

87. If hired cattle are hurt accidentally, the proprietor has no claim for the loss, but if they are hurt from carelessness, the hirer is answerable for the damage.

PURCHASES.

88. Heirs, Partners, Mortgagees, and neighbouring landholders, are entitled to have the first choice for purchasing any grounds put up for Sale.

89. If a garden is sold on which a Mortgage exists, the first Deed must be cancelled, and a new one passed in the name of the purchaser, if not redeemed as in Clause 80.

90. There is no occasion for any Deeds being passed on sales of cattle,

91. Bullocks sold as "fit for ploughing," and not being found fit, may be returned back in fifteen days, at the purchaser's option.

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92. A cow sold as having calved, and proving to being, and always having been, barren, may be returned to the seller in one year, but a "Heifer" sold and proving barren cannot be returned.

LOANS OF MONEY ON INTEREST.

93. Goods pledged as security for money lent, may be sold on application to the Judge (by a regular suit) if not redeemed with interest.

94. Securities must pay if the Debtor absconds, and they may recover from him afterwards, unless it can be proved that the Creditor fraudulently recommended the Debtor to abscond, on purpose to make the Securities liable.

95. If two persons jointly borrow money, and the Tamil expression "he who is present must pay the debt" is inserted in the Bond, the Creditor may recover the whole sum from either Debtor, who may afterwards recover half the debt from the joint borrower; but if the expression is not there, only half the debt can be recovered from each Debtor.

96 If a man contracts debts without his family's knowledge, his own property is liable thereto at his decease; or if he leaves none, his Sons are answerable if the debt be duly and plainly proved.

97 If a Woman gets in debt without her Husband's knowledge, the Creditor cannot recover, unless it be proved that she was a regular known "Trader" at the time the debt was contracted. If that be proved, the claim must be paid from the Acquired property, or if that is not sufficient, from her Dowry property only.

98 When Interest undrawn (from the last day of payment of any) equals the amount of principal, no further claim can be made.

99 If Money, or Paddy for seed corn, is lent, to receive Paddy for Interest, the quantity must be stipulated, and if the crop fails no Interest can be claimed; if the Harvest is bad, interest must be calculated accordingly.

100 If a Man and his Wife jointly borrow money on a Garden, and neglecting to deliver it over to the creditors, should afterwards give it in Dowry, the Creditor cannot on their death claim the Garden, but must recover from the remaining property; and the Sons are also liable to the debt.

101 One person cultivating another's field without previous agreement, must pay the Government tithe, and one-third of the crop to the Proprietor. If the crop fails he is to pay nothing.

102 If when an Agreement is made, the crop fails on that ground only, and other grounds in the Village have good harvests, the Cultivator must pay the amount agreed on, as it is supposed the crop failed merely from inattention.

103 Fine Grains are exchanged at an equal rate, but Paddy at one Parrah for one and a half Parrahs of Fine Grain.

SLAVES.

104 All slaves must be registered.

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105 Slaves must have their Proprietor's leave before they can marry.

106 Slaves dying childless, the Master may claim the Dowry and Hereditary properties, also the Acquisition, if both slaves belonged to him; otherwise the Masters divide the Acquired property. If the Masters are rich, the Slave's Brothers and Sisters ought to possess, if the Master permit, but not otherwise.

107 A Child cannot inherit from its Father, if the Mother did not belong to the same Master.

108 A mother dying, her Master may take half the Dowry and one quarter of the Acquired property, or at his will may give all to her children.

109 All children belong to the Proprietor of the Mother.

110 Slaves living separate from their Masters must maintain themselves, but ought to perform their Master's Government services, and fence their fields, receiving maintenance whilst so employed. Before the English came, they used to give, if of the Palla or Nallava Castes, four fanams each, yearly to their Masters.

111 If Nallava or Palla Slaves whilst living separate from their Masters, are brought to bed, they may demand maintenance from their Masters, or may pawn one of their chidren for it. Covias also claim maintenance in like manner, but cannot pawn their children.

112 Persons selling Slaves who have lands, must take possession of those lands before the Slave is sold, or otherwise have no claim.

113 One giving a Slave Girl to another person, loses all right to her, or her Goods. The Girl also has no claim on her Parent's property, nor can they give her any thing without her former Master's consent.

114 A married couple having Children, may emancipate any of their Slaves at pleasure.

115 A Man having no children may emancipate any Slaves, by proclaiming it at the Church any three Sundays. If they belong to his Wife's Dowry, she must consent. If there is any dispute they must appoint Arbitrators.

116 A Man having a child by his Slave may emancipate it, and give it a donation not exceeding one-tenth from his Hereditary property.

117 An emancipated Slave dying childless, the property devolves to any Brother or Sister on the Mother's side that is or are also free;—next, to the legitimate children of the deceased's Father, or eventually to the persons from whom the deceased received the property, or their Heirs.

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